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*The Association for investment
professionals in futures, hedge funds
and other alternative investments.*

November 12, 1999

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

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Re: Notice of Proposed Rulemaking
"Use of Electronic Signatures by Customers, Participants
and Clients of Registrants"
Release No. 4309-99; 64 Fed. Reg. 47151
August 30, 1999 (the "Proposed Rulemaking")

Dear Ms. Webb:

The Managed Funds Association (the "MFA") appreciates the opportunity to provide comments in response to the Proposed Rulemaking recently issued by the Commodity Futures Trading Commission (the "CFTC" or the "Commission").

MFA, located in Washington, D.C., is the only membership organization based in the United States dedicated to serving the needs of professionals who specialize in the international managed funds industry, which provides alternative investment opportunities to institutional and individual investors world-wide. MFA's objective is to increase understanding of the managed funds industry, to further constructive dialogue with regulators in pursuit of regulatory reform, and to improve communication with, and training of, the Association's members. MFA's more than 700 members provide diverse perspectives of alternative investment professionals,

including commodity trading advisors, investment advisers, hedge fund managers, commodity pool operators, fund of funds managers and hedge fund sponsors. These professionals in the aggregate manage the vast majority of the over \$40 billion invested in managed futures and a significant portion of the nearly \$250 billion invested in hedge funds. MFA members also include professionals providing essential services to the managed funds industry such as futures commission merchants, broker-dealers, foreign exchange dealers, banks, exchanges, introducing brokers, cash managers, lawyers, accountants, consultants and academics.

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General

The MFA applauds the CFTC's proposal to permit the use of electronic signatures in executing the various account papers, receipts of risk disclosure statements and disclosure documents, etc. required to be executed and delivered by the customers and clients (collectively, "Clients") of CFTC registrants ("Registrants"). It is clearly to the benefit of Clients and Registrants alike to expedite the paperwork process by taking advantage of ongoing technical developments, and the MFA sees no reason for the CFTC not to adopt, as soon as practicable, rules confirming the acceptability of electronic signatures. In fact, several states, including New York, have passed and the Federal government is close to passing legislation giving full recognition to electronic signatures.¹

¹ The House of Representatives recently overwhelmingly passed a bill making electronic signatures as legally binding as written ones, and a companion bill is awaiting a Senate vote.

Customer Protection

From a regulatory perspective, the primary concerns regarding electronic signatures are whether the mechanics by which these are collected incorporate adequate safeguards to ensure that: (i) the signatures are genuine; and (ii) Clients focus on the documents in question (at least to the point that having actually to sign a document ensures such focus). These are entirely legitimate concerns. However, the MFA does not believe that the customer protection issues involved with electronic signatures differ from those involved with manual signatures, or that the former will result in any reduction in Client or Registrant protection as compared to the latter. The methods and procedures of protecting electronic signatures will, of course, be different than those used in the past, but there is every indication that they may actually be more, not less, effective. Indeed, there is a very real possibility that fully-computerized account opening procedures may be able to be made more secure than existing "hard copy" methods. What these account opening procedures should be, however, should continue to be left — as it has been historically — to the individual Registrants to develop through their internal compliance process.

There is no need for electronic signatures to attract any of the "extra protections" suggested by the Release — for example, a waiting period prior to opening an account electronically. MFA also sees no purpose served by a CFTC-required disclaimer warning that electronic signatures may not be recognized for all purposes by all states. Analogous issues arise in the case of manual signatures (for example, if not duly authorized the signature might not be binding on an entity customer), but there has never been perceived to be a need for Registrants to warn investors concerning general matters of law. No issues are raised by electronic signatures on CFTC documents that are not raised by the use of electronic signatures in general, and there

is no need to impose on Registrants either (i) a special burden of "general law" disclosure in using electronic signatures not applied to manual signatures, or (ii) a special burden not borne by the countless other persons accepting electronic signatures in the ordinary course of commerce (none of whom provide any "risk disclosure statement" re the use of such signatures). Any such "extra protection" would serve only to distinguish electronic and manual signatures. This is counterproductive. Electronic signatures necessarily require different procedures and mechanics than manual signatures (just as e-mail requires different procedures and mechanisms than regular mail), but there should be no qualitative regulatory differences between the two.

The Proposed Rulemaking specifically requested comment on whether electronic document processing is in some manner inherently less secure than "paper work." MFA believes that the answer is an unequivocal "No." The telephone is itself only an early incarnation of the electronic age and avoids the "face to face" dealing which the CFTC describes as characteristic of "paper work." However, the financial industry has operated primarily on the basis of telephonic orders for many years. Voice messaging through the telephone is only a less efficient means of communicating than electronic messaging — there is nothing qualitatively more secure or face-to-face about voice contact. Why should there be considered to be any such distinction between "electronic" and "paper" signatures? Furthermore, the unavoidable fact is that the financial industry is increasingly becoming fully electronic, eliminating the inefficiencies created by processing physical documents, requiring faxed or original signatures, missing signature lines, misplaced files, face-to-face meetings, etc. In this context, any attempt to maintain a distinction between electronic and written signatures is outdated and anti-competitive.

The MFA fully supports the CFTC's proposal not to promulgate specific guidelines as to what constitutes "reasonable safeguards" to be adopted by Registrants for ensuring that electronic signatures are authentic. Industry experience has repeatedly demonstrated the diversity of the different back office and operating systems used by different Registrants. To impose any specific set of required safeguards would inevitably force a large number of Registrants to modify, or even replace, systems which achieve comparable results but through different software protocols. In an analogous regulatory context, the Securities and Exchange Commission has uniformly refused to promulgate specific rules governing the proprietary trading of investment adviser personnel precisely because the wide range of different advisory operations and back offices makes any specific rules certain to be inappropriate, to a greater or lesser degree, for many affected parties. More importantly, the same safeguards might not be equally effective in all contexts. Any specific procedures that the CFTC might promulgate with respect to electronic signatures also would inevitably work less well for certain Registrants than for others, and would not only require needless and costly system modifications in the case of some Registrants but also might be ineffective in the case of a number of others.

MFA emphasizes that the interests of Registrants and the CFTC are not adverse in ensuring the validity of electronic signatures. Registrants' economic survival very much depends on minimizing the number of "outtrades," invalid customer accounts, etc. incurred in the case of their operations. Registrants might be regarded by the Commission as susceptible to overvaluing convenience and economy of regulatory compliance procedures in certain contexts, but the validity and enforceability of customer account papers is certainly not one of these. MFA has no doubt that by permitting Registrants to develop their own reasonable safeguards, the CFTC not only will avoid the unjustified expense involved in requiring all Registrants to conform to

uniform electronic procedures, but also is highly likely to promote the development of better safeguards than the CFTC could feasibly promulgate on an industry-wide basis.

Contract Law Issues; Other Legal Issues

MFA is not qualified to comment on the technical definition of what constitutes a valid electronic signature except to note that MFA has the highest regard for the National Conference of Commissioners of Uniform State Laws and every reason to believe that the definition proposed by the Uniform Electronic Transfer Act is fully adequate and workable.

Coordination with Self-Regulatory Organizations

MFA urges the CFTC to ensure that the industry adopts uniform rules regarding electronic signatures. It would be entirely unworkable and reasonably expensive for different self-regulatory organizations to have the ability to impose different requirements regarding the use of electronic signatures. MFA strongly advocates a simple and universal industry rule confirming the validity and effectiveness of such signatures for all CFTC purposes.

Proposed Text of Rule 1.4

The MFA endorses the following text for a proposed rule 1.4 — the same text proposed by the Futures Industry Association in its Comment Letter on the Release:

"§1.4 Use of electronic signatures

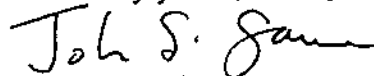
(a) A registrant shall be deemed to have complied with any provision of this Chapter I that requires a registrant to obtain from a commodity customer, commodity pool participant or a commodity trading advisor client a document signed by such person, if such document has been signed by means of an electronic signature.

(b) For purposes of this section 1.4, the term "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent of signing such record."

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Our thanks for the opportunity to comment on the Proposed Rulemaking.

Sincerely yours,



John G. Gain
President