MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
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MFA Statement
CFTC Roundtable on Regulation 4.13(a)(3) and (a)(4)
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My name is Marc Baum and I am the General Counsel and Chief Compliance Officer for Serengeti Asset Management LP. Serengeti oversees investments predominantly made in North America that are focused on sector dislocations, uncovered or misunderstood opportunities and liquidations. Serengeti is based in New York.

I am here today to speak on behalf of Managed Funds Association ("MFA") and its members. On their behalf, I am pleased to provide this statement in connection with the CFTC's Roundtable on Regulation 4.13(a)(3) and (a)(4). MFA appreciates the opportunity to participate in the CFTC's Roundtable discussions on issues faced by managed funds industry members with respect to the proposed rescission of Sections 4.13(a)(3) and (a)(4) (the "Private Pool Exemptions"). MFA represents the majority of the world's largest hedge funds and is the primary advocate for sound business practices and industry growth for professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. MFA's members manage a substantial portion of the approximately $2 trillion invested in absolute return strategies around the world. Our members serve pensions, university endowments, and other institutions to diversify their investments, manage risk and generate reliable returns to meet their obligations to their beneficiaries.

MFA's members are active participants in the commodity, securities and over-the-counter ("OTC") derivatives markets and engage in a variety of investment strategies across many different asset classes. MFA has consistently supported intelligent and well-informed regulation of the U.S. securities and futures markets. From the beginning of the 2009-2010 legislative process, we took an early and unambiguous stand in favor of mandatory investment adviser registration, which in many respects has been codified in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd Frank Act"). We also consistently have endorsed the notion that our regulators need a necessary amount of market and participant information and appropriate funding to discharge their regulatory responsibilities effectively. MFA members have met with numerous legislators and regulators in an effort to strengthen the current regulatory framework and to make proposed reforms workable.

However, we do not believe that rescission of the Private Pool Exemptions for entities registered with the Securities and Exchange Commission ("SEC") under the Investment Advisers Act of 1940 ("Advisers Act") ("registered advisers"), which is not a step mandated (or, in our reading, even expressly contemplated) by the Dodd-Frank Act, is necessary to achieve the public policy objectives of the Dodd-Frank Act. In fact, we are very concerned that such a rescission would require many registrants subject to SEC-registration to become dually registered with the CFTC and subject to redundant, unnecessary, and inefficient regulation. Dual registration can be excessively burdensome for registrants, especially as the Commission and the SEC's (together, the "Commissions") regulatory/compliance requirements may be similar but still differ in many respects.

We believe that with respect to pools that have an investment adviser registered with the SEC: (1) rescission of the Private Pool Exemptions is unnecessary to achieve the public policy objectives of the Dodd-Frank Act; (2) the preservation of the Private Pool Exemptions is consistent with current law and inter-agency comity; and (3) the Commission still will receive information it needs from new Form PF, the SEC and exchanges even if the Commission retains the Private Pool Exemptions.

MFA believes the Commission should work with the SEC and other members of the Financial Stability Oversight Council ("FSOC") to implement an appropriate information sharing framework for systemic risk data, and for the Commission to review and analyze Form PF data before considering whether rescission of the Private Pools Exemption is necessary. As alternatives to rescinding the Private Pool Exemptions, MFA respectfully suggests that the Commission under an information sharing framework with the SEC: (1) retain the exemption in section 4.13(a)(4) for a pool with an investment adviser registered with the SEC; and (2) retain the exemption in section 4.13(a)(3) for a pool that is not engaged primarily in trading commodity interests and that has an investment adviser registered with the SEC. If the Commission believes after receipt and analysis of the Form PF data that the information sharing afforded by Form PF for Private Pool Exemptions filers is not sufficient, we propose that the Commission consider a tiered registration framework based upon the amount a pool trades in commodity interests.

A. Information Sharing Framework

We believe that the Commission has alternative tools to assist with effective regulatory oversight of an investment adviser's fund that is currently exempt from registration as a commodity pool operator ("CPO") under the Private Pool Exemptions. The Commissions have proposed new rules and new Form PF under the Commodity Exchange Act ("CEA") and the Advisers Act to collect extensive information from advisers of private funds with respect to the size, strategies, and positions of large private funds. We believe new Form PF will provide the Commissions with detailed information on private funds; and that the Commission should rely on Form PF of entities that are exempt from registration under Section 4.13 to determine whether they are systemically risky rather than rescind the Private Pool Exemptions.

The Dodd-Frank Act sets out a framework for information sharing among regulators. It requires the SEC to share systemic risk information collected from private funds with the FSOC, which includes the Commission. The Dodd-Frank Act also requires the SEC and other recipients, including any department, agency, or self-regulatory organization, to maintain confidentiality of systemic risk data. As supported by the Dodd-Frank Act, we believe Congress intended to minimize the burdens and redundancy of dual registration by retaining and strengthening exemptions from registration under the Advisers Act and the CEA, and creating an information sharing framework among regulators.

Thus, pursuant to the information sharing provisions in the Dodd-Frank Act, the Commission will have access to information on registered advisers trading commodity interests

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through Form PF and will be able to use information obtained through Form PF to assist with its regulatory programs. This information should address the Commission's concern over any feared lack of accountability with respect to systemically important private pools advised by a registered adviser. Moreover, we believe this framework may lend itself to a more efficient use of limited resources given the significant fiscal constraints regulators face.

We recognize that the Commissions are still in the process of developing Form PF, including the logistics for receiving and/or distributing Form PF. To the extent the Commission is concerned that it may not directly receive Form PF from entities trading commodity interests, we recommend including in Form PF three categories/checkboxes: SEC registrant; CFTC registrant; and Section 4.13 Exempt. Forms tagged CFTC registrant or Section 4.13 Exempt should be directly accessible by the Commission.

1. Amending Section 4.13(a)(4) – Sophisticated Investor Exemption

The current registration exemption under section 4.13(a)(4) provides relief from CPO registration for a CPO if the interests in the pool are exempt from registration under the Securities Act of 1933 (the "Securities Act") and the participants are all qualified eligible persons, *i.e.*, highly sophisticated investors. The Commission adopted section 4.13(a)(4) and other provisions providing relief from registration in 2003 "to encourage and facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit to all market participants of increased liquidity." We believe section 4.13(a)(4) serves that objective and we are concerned that repeal of the exemption would require the adviser (or its commonly controlled affiliates) to go to the unnecessary expense of registering with the CFTC. As a consequence the repeal of the exemption could discourage market participants from participation in the commodity interest markets. Dual registration is inefficient, unnecessary and costly, and provides investors with little or no additional benefit. Currently section 4.13(a)(4) is available to any market participant, regardless of whether that market participant is registered with the SEC. To address the Commission's concern that through its section 4.13(a)(4) exemption systemically important market participants could fall outside of the oversight of any regulators, we recommend that the Commission retain the current exemption provided in section 4.13(a)(4) provided that the pool has an investment adviser registered or that will be registered with the SEC. In this way, the Commission would ensure that the adviser was subject to regulatory oversight and the Commission would have access to information on private funds investing in commodity interests without unduly burdening the market.

2. Amending Section 4.13(a)(3) – Not "Engaged Primarily" in Trading Commodity Interests

The current registration exemption under section 4.13(a)(3) provides relief from CPO registration for a CPO if the interests in the pool are exempt from registration under the Securities Act and offered only to qualified eligible persons, accredited investors, or knowledgeable employees, and the pool's aggregate initial margin and premiums attributable to commodity interests do not exceed five percent of the liquidation value of the pool's portfolio. We propose that the Commission amend section 4.13(a)(3) to provide pool operators with relief

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from registration in a manner consistent with the Dodd-Frank Act. In our view, consistent with the Dodd-Frank Act, a pool operator should not have to register with the CFTC as a CPO if its commodity pool is not "engaged primarily" in trading commodity interests. We respectfully urge the Commission to coordinate with the SEC as it develops further guidance on the meaning of "engaged primarily" and for the Commissions to harmonize registration and compliance requirements to the extent possible to lessen the burden on those firms that are required or choose to register with both regulators.

B. Tiered Registration Framework

Alternatively, if the Commission believes after receipt and analysis of the Form PF data that the information sharing afforded by Form PF for Private Pool Exemptions filers is not sufficient, we propose that the Commission consider a tiered registration framework based upon the amount a pool trades in commodity interests. We believe a tiered registration approach would be able to provide the Commission with necessary information, while minimizing the regulatory burden on a firm. We propose a registration framework considering three tiers of trading activity, as discussed below:

1. 1st Tier – Trading at 5% or Less and Other Exemptions from Registration

A commodity pool operator is exempt from registration with respect to a pool if:

A. (1) The pool has 5% or less of initial margin on commodity interests, calculated by taking the amount the pool has in initial margin and premiums on options on futures divided by assets under management, as of the last trading day of any quarter of any calendar year (a pool that exceeds the threshold shall file a "Notice Registration" within 90 days after the last day of such calendar year); and

(2) The pool has an investment adviser registered with the SEC;

OR

B. The pool is only a passive investor in commodity interests, meaning that it primarily invests in other pools and does not directly trade commodity interests (*i.e.*, fund of funds and family offices), provided that the pool is not only trading commodity interests.

2. 2nd Tier – Trading Above 5% and Under 20% - Notice Registration

A commodity pool operator is subject to "Notice Registration" with respect to a pool if:

(1) The pool's trading activity in commodity interests is above 5% and under 20% of its net assets, calculated by taking the amount the pool has in initial margin and premiums on options on futures divided by assets under management, as of the last trading day of any quarter of any calendar year (a pool that exceeds the threshold shall file a registration statement within 90 days after the last day of such calendar year); and

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(2) The pool has an investment adviser registered with the SEC.

"Notice Registration" would entail:

- Filing basic pool information with the Commission.
- Submitting Form PF to the CFTC (to the extent the registrant is otherwise required to make such regular filings with the SEC).
- Requiring the pool to provide investors with annual audited financial statements.
- Requiring the pool's operator to annually certify its eligibility for Notice Registration.
- Managers qualifying for Notice Registration would not be subject to CFTC part 4 regulations or the requirement to become a member of the National Futures Association.

We believe the 5 – 20% threshold, discussed above, is appropriate in light of the increased number of products encompassed under the new definition of "commodity interest", as well as the higher margin levels that is likely to be mandated for certain instruments.

3. 3^{rd} Tier – Full Registration

A commodity pool operator would be subject to registration requirements pursuant to CFTC part 4 regulations if the pool's trading activity in commodity interests is equal to 20% or more of its net assets, calculated by taking the amount the pool has in initial margin and premiums on options on futures divided by assets under management, as of the last trading day of any quarter of any calendar year (a pool that exceeds the threshold shall file a registration statement within 90 days after the last day of such calendar year).

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MFA encourages the Commission to work with FSOC members to implement an appropriate information sharing framework with respect to systemic risk data pursuant to the Dodd-Frank Act, and for the Commission to review and analyze Form PF data before considering whether rescinding the Private Pool Exemptions is necessary. As alternatives to rescinding the Private Pool Exemptions, MFA respectfully suggests that the Commission under an information sharing framework with the SEC: (1) retain the exemption in section 4.13(a)(4) for a pool with an investment adviser registered with the SEC; and (2) retain the exemption in section 4.13(a)(3) for a pool that is not engaged primarily in trading commodity interests and that has an investment adviser registered with the SEC. If the Commission believes after receipt and analysis of the Form PF data that the information sharing afforded by Form PF for Private Pool Exemptions filers is not sufficient, we propose that the Commission consider a tiered registration framework based upon the amount a pool trades in commodity interests.

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