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MANAGED FUNDS ASSOCIATION

10 January 2012

VIA ELECTRONIC MAIL

Honorable Gary Gensler
Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Definition of "Eligible Contract Participant" (CFTC: RIN 3235-AK65; SEC: File No. S7–39–10)**

Dear Chairmen Gensler and Schapiro,

The Global Foreign Exchange Division ("**GFXD**")[1] and Managed Funds Association ("**MFA**")[2] are deeply concerned that the proposed eligible contract participant ("**ECP**") definition (the "**Proposed ECP Definition**") will cause substantial disruptions to our markets that harm not only our members but investors generally. We respectfully urge the Commodity Futures Trading Commission and the Securities and Exchange Commission (the "**Commissions**") to adopt appropriate changes to the ECP definition to allow private funds and other commodity pools to qualify as ECPs, provided that the funds and pools were not formed for the purpose of evading the ECP definition. We believe that private funds and commodity pools should be able to rely on Section 1a(18)(A)(v)(I) of the Commodity Exchange Act ("**CEA**") without the need to "look through" to determine whether every direct or indirect investor/participant is an ECP. GFXD, SIFMA's Asset Management Group and MFA have each expressed their views previously on the ECP definition and respectfully submit for your consideration our recommendations, which we have enclosed with this letter.

Adoption of the Proposed ECP Definition without appropriate changes by the CFTC and the SEC could lead to disruption of the currency markets and the potential for greater systemic risk without accomplishing the regulatory goal of enhancing the protection of actual retail investors. First, many of the funds that would become non-ECPs with respect to foreign exchange trading under the Proposed ECP Definition are sophisticated investors and significant liquidity providers to the U.S. foreign exchange market. If the Commissions' Proposed ECP Definition were to be adopted, it would have the potential of categorizing a significant proportion of traditional institutional accounts, managed by sophisticated money managers, as "retail" which will adversely impact the liquidity these market participants bring to the foreign exchange market through their active participation. In fact, investment funds and commodity pools may be precluded from trading certain currencies at all, as not all currencies have corresponding exchange-traded futures contracts or are represented on retail foreign exchange platforms.

Second, there is no indication that requiring customers that are clearly institutional in nature to trade in the retail markets will add any protection for the actual retail customers. The

Proposed ECP Definition is not consistent with the underlying rationale behind the sophisticated investor framework established through law and regulation by the Commissions[3] and limits the ability of entities managed by sophisticated money managers that are subject to registration and examination by regulators to qualify as ECPs.[4] The Proposed ECP Definition is also likely to preclude institutional accounts from effectively or efficiently diversifying or hedging their portfolio against foreign exchange risk and increase costs for individual investors (who, ultimately, are likely to bear the burden of greater costs).

Moreover, if institutional accounts and their counterparties were forced to trade in the retail foreign exchange market, we are concerned that many of the firms would have difficulty doing so from an operational perspective.[5] As a result, it will become very difficult for affected firms to operate within the U.S. In addition, requiring these entities to transact as non-ECPs for foreign exchange will mean that the entities would need to trade with a separate retail-focused dealer and not with the swap dealer that will be the counterparty to the entities on all other transactions.[6] Bifurcating trading entities will create systemic risk by eliminating the benefits of close-out netting.

This is a particularly inopportune time to take liquidity away from the U.S. foreign exchange market and to increase potential credit concerns by forcing counterparties to transact with different types of dealer entities. There is continued volatility in the foreign exchange market around the euro and concern about credit weakness and possible future ratings downgrades of market participants. In addition, this market has functioned effectively and efficiently for many years. We urge you to take affirmative steps to strengthen the market by adopting rules that allow investment funds and commodity pools to rely on Section 1a(18)(A)(v)(I) of the CEA for purposes of qualifying as an ECP, without the need to "look through" to their underlying participants.

We would welcome an opportunity to meet with you and your staff to further discuss these matters. We would appreciate your contacting Mandy Lam of Global FX Division (212-313-1229, mlam@gfma.org) or Jennifer Han of MFA (202-730-2600, jhan@managedfunds.org) to follow up on the concerns we have raised in our letter.

Sincerely,

/s/ Stuart J. Kaswell

James Kemp
Managing Director
Global Foreign Exchange Division

Stuart J. Kaswell
Executive Vice President & Managing Director
Managed Funds Association

cc: The Honorable Jill E. Sommers, Commissioner, Commodity Futures Trading Commission
The Honorable Bart Chilton, Commissioner, Commodity Futures Trading Commission
The Honorable Scott D. O'Malia, Commissioner, Commodity Futures Trading Commission
The Honorable Mark Wetjen, Commissioner, Commodity Futures Trading Commission
David Stawick, Secretary, Commodity Futures Trading Commission

Daniel Berkovitz, General Counsel
Richard Shilts, Division of Market Oversight
Ananda Radhakrishnan, Division of Clearing and Risk

The Honorable Elisse B. Walter, Commissioner, Securities and Exchange Commission
The Honorable Luis Aguilar, Commissioner, Securities and Exchange Commission
The Honorable Troy A. Paredes, Commissioner, Securities and Exchange Commission
The Honorable Daniel M. Gallagher, Commissioner, Securities and Exchange Commission
Elizabeth M. Murphy, Secretary, Securities and Exchange Commission

Robert Cook, Director, Division of Trading and Markets
David Blass, Chief Counsel, Division of Trading and Markets

Enclosures

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[1] The GFXD was formed in co-operation with the Association for Financial Markets in Europe, the Securities Industry and Financial Markets Association ("**SIFMA**") and the Asia Securities Industry and Financial Markets Association. Its members comprise 22 global FX market participants, collectively representing more than 90% of the FX market. See Euromoney FX Survey 2011: Overall Market Share.

[2] MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately $2 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

[3] *See* Section 4 of the Securities Act of 1933; Sections 3(c)(1) and (7) of the Investment Company Act of 1940; Regulation D, 17 CFR § 230.501; Rules 4.7, 4.13 and 4.14, 17 CFR §§ 4.7, 4.13, and 4.14.

[4] *See* Section 4m of the CEA and Part 4 thereunder; and Section 203 of the Investment Advisers Act of 1940 and the regulations thereunder.

[5] The structure, systems and supporting operations of foreign exchange platforms differ depending on the client base for which they are created, and retail platforms are likely to lack significant product, margin, operational, and other flexibility currently enjoyed by institutions active in the foreign exchange market.

[6] Under Section 2(c)(2)(B) of the CEA, only enumerated types of regulated entities are allowed to trade OTC foreign exchange with non-ECPs. Swap dealers are not included in this list.