MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

April 11, 2011

Via Electronic Mail:

The Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Proposed Definition of Fiduciary Regulation

Ladies and Gentlemen:

Managed Funds Association ("MFA")[1] appreciates the opportunity to have testified at the Department of Labor's (the "Department") hearing on its proposed regulation regarding the definition of the term "fiduciary" under section 3(21) of ERISA. We believe the full and open discussion of viewpoints and potential consequences is an important part of the public comment process and we applaud the attention that the Department gave the hearings, and particularly Ms. Borzi's attendance at so much of the hearing.

During the hearing, Mr. Wong asked the following question regarding the fiduciary to a plan asset vehicle:

> Under current law would you view that fiduciary -- that valuation of the plan asset vehicles assets as being fiduciary in nature in and of itself just because it's a plan asset vehicle?

As we promised, we would like to answer this question more fully for the record. In responding to Mr. Wong's question, we also would like to address why the proposed appraisal provisions could be worrisome to MFA members with respect to a fund that is deemed to hold plan assets.

[1] 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 $1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

As you know, the assets of any private investment fund in which 25 percent of the total value of any class of equity interest in the fund is held by benefit plan investors are deemed to be plan assets for purposes of ERISA. As such, managers to these so-called "Plan Asset Funds" are fiduciaries to the Plan Asset Fund, including with respect to the valuation of the Plan Asset Fund's assets. However, the service providers and counterparties to Plan Asset Funds that provide information regarding the value of an asset typically are not fiduciaries under ERISA under current law.

Values in any fund are derived from public reporting services, for those assets that are publicly traded, listed, or otherwise daily reported. However, many assets held by hedge funds, such as swaps, structured notes, private equity, nonpublicly traded debt, and other similar instruments are priced by reference to dealer quotes, issuer quotes, appraisals and other similar sources. We are concerned that the parties that provide such quotes could be deemed to be fiduciaries under the Department's proposed regulation.

MFA is concerned that imposing fiduciary status on service providers, such as fund administrators and custodians, that provide input on the value of illiquid securities held by Plan Asset Funds could impair the ability of Plan Asset Funds to find suitable service providers on a commercially reasonable basis. This is because imposing fiduciary status on service providers could affect the compensation of every prime broker, custodian or fund administrator, as many of the existing agreements likely would violate the prohibited transaction provisions of ERISA, if applicable. Further, any service provider deemed a fiduciary would need to be bonded, have fiduciary liability insurance, and would likely raise its fees in order to cover the cost of potential litigation regarding the values provided to Plan Asset Funds.

We are also concerned about the potential for counterparties that provide input as to the value of illiquid securities to be deemed fiduciaries under the proposed rule. Counterparties that are best able to provide input as to the value of illiquid assets, such as over-the-counter derivatives, also often are the best trading partners for Plan Asset Funds. Imposing fiduciary statues on these counterparties because they provide input to Plan Asset Fund managers could preclude those counterparties from transacting further with a Plan Asset Fund on a principal basis, to the detriment of the Plan Asset Fund and its investors.

The additional costs to and limitations on Plan Asset Funds would ultimately be borne by investors in the fund, thereby increasing the costs to plans that invest in Plan Asset Funds. Faced with potentially prohibitive costs or the inability to find suitable service providers in the first place, funds may be reluctant -- or even unable -- to take investments from plans, which would greatly limit plans' alternative investments options. The cost to plans of these lost opportunities and limited choices could be significant.

If you have any questions regarding the outline of MFA's testimony, or if we can provide further information with respect to these or other regulatory issues, please do not hesitate to contact Benjamin Allensworth or me at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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