



July 24, 2015

**Via: Email: [e-ORI@dol.gov](mailto:e-ORI@dol.gov)**

Office of Regulations and Interpretations  
Office of Exemption Determinations  
Employee Benefits Security Administration  
Attn: Conflict of Interest Rule (RIN 1210-AB32)  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

**Re: Request to Testify at Conflict of Interest Rule Hearing**

Dear Sir or Madam:

Managed Funds Association (“MFA”)<sup>1</sup> requests the opportunity to testify at the Department of Labor’s announced public conflict of interest rule hearing in August. MFA plans to address the issues raised in our written comment letter to the Department, which was submitted on July 21, 2015. Those issues include concerns that:

- The Proposed Rule may impose fiduciary status on fund managers and service providers in cases where the Department and Congress have established that no fiduciary status should exist, *i.e.*, in the case of managers and service providers to funds not deemed to hold plan assets under ERISA (“Non-Plan Asset Funds”);
- The Proposed Rule is ambiguous and could result in uncertainty regarding when providing a statement of value to investors in a private investment fund is a fiduciary act;
- The Proposed Rule creates disincentives for fund managers and service providers to provide certain information to plan investors, including reporting of the fund’s net asset value, market commentary, fund commentary, and transparency reporting often provided to all fund investors, to the detriment of those investors;

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<sup>1</sup> MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and other regions where MFA members are market participants.

- The Proposed Rule may make sales communications about an investment fund by that fund's manager to prospective plan investors—conduct which is already regulated under federal securities laws—fiduciary investment advice;
- The Proposed Rule will make it unreasonably difficult for managers of privately offered investment funds to discuss and sell interests/shares in those funds without providing additional protections for plan investors that are eligible to invest in private funds;
- The Proposed Rule will make it difficult for certain “plan asset” funds, including funds of funds and “funds of one,” to enter into necessary and routine transactions;
- The Proposed Rule imposes new standards that are inconsistent with existing Department rules, including Prohibited Transaction Exemption 84-14; and
- The BIC Exemption unreasonably restricts investment choices by plan investors that are otherwise eligible, under federal securities laws, to invest in privately offered funds and other investments.

I will be testifying at the hearing as a representative of Managed Funds Association. My title is included in the signature block below. MFA is located at 600 14<sup>th</sup> Street, NW, Suite 900, Washington, DC 20005. The telephone number is (202) 730-2600.

If you have any questions regarding MFA's request to testify, or if we can provide further information, please do not hesitate to contact Benjamin Allensworth or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell  
Executive Vice President & Managing  
Director, General Counsel