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

September 30, 2013

VIA EMAIL

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: FINRA Rule 5131 (New Issue Allocations and Distributions); File Number SR-FINRA-2013-037

Dear Ms. Murphy:

Managed Funds Association ("MFA")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission's (the "SEC") notice of the Financial Industry Regulatory Authority's ("FINRA") notice of a proposed rule change to amend FINRA Rule 5131 (New Issue Allocations and Distributions).[2] The amendments would provide that, in complying with paragraph (b) of Rule 5131, members may rely upon a written representation from a person authorized to represent an account that does not look through to the indirect beneficial owners of a fund invested in the account, provided that the fund meets certain conditions.

We agree with FINRA that, for the reasons described in the Notice, the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Securities Exchange Act of 1934, which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In particular, the propose rule change will promote capital formation and aid member compliance efforts, while maintaining investor

[1] The Managed Funds Association ("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 all other regions where MFA members are market participants.

[2] Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 5131 (New Issue Allocations and Distributions), Securities Exchange Act Release No. 70312 (Sept. 4, 2013); 78 F.R. 55322 (Sept. 10, 2013) (the "Notice").

confidence in the capital markets. Initial public offerings are a critical source of funding for private companies to expand their businesses, and as participants in the IPO market, hedge funds and other investors play an important role in allocating capital to these companies. We are concerned that Rule 5131 has reduced the willingness of hedge fund managers to participate in new issue allocations in a manner that we do not believe FINRA intended.

In our previous letters,[3] we explained that, due to their structure, diversified range of investors, and investment activity of allocating capital across a broad portfolio of assets, there is a significantly reduced risk of spinning through an investment in a hedge fund. As a result, these investments do not raise the concerns that the Rule is designed to address, and we recommended that FINRA consider providing additional guidance of the type proposed in the Notice. We agree with FINRA that members and their customers, have had difficulty obtaining, tracking and aggregating information from funds regarding indirect beneficial owners, such as participants in a fund of funds, and that this has resulted in compliance difficulties in determining an account's eligibility for the *de minimis* exception. We therefore support the proposed change and urge the Commission to approve FINRA's proposed amendment to Rule 5131.

We would, however, recommend one amendment to the proposed change. The proposed guidance would exclude a fund that has a beneficial owner that also is a control person of such fund's investment adviser. We note that a control person of a hedge fund's investment adviser may also own interests in the fund. Such an investment in the fund would serve to align the interest of a control person with the interests of fund investors, and is a practice that institutional investors often require from fund managers. We recommend that rather than excluding such a fund from relying on the proposed guidance, the guidance be amended to provide that a member may rely upon a written representation obtained within the prior 12 months from a person authorized to represent an account that does not look through to the indirect beneficial owners of a fund invested in the account (other than a beneficial owner that is a control person of the investment adviser to such private fund), and meets the other proposed conditions.

* * * * * * *

[3] Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to Marc Menchel, Executive Vice President and General Counsel for Regulation, FINRA (Aug. 19, 2011), available at: http://www.managedfunds.org/wp-content/uploads/2011/09/MFA_Comments_to_FINRA_Rule5131.pdf; Letter from Stuart J. Kaswell to Marc Menchel (Oct. 4, 2011), available at: http://www.managedfunds.org/wp-content/uploads/2011/10/Comments_on_FINRA_Rule5131_10-4-11.pdf.

If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Matthew Newell, Associate General Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

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

Cc: Richard G. Ketchum, Chairman & Chief Executive Officer, FINRA
Robert L. D. Colby, Chief Legal Officer, FINRA
Racquel Russell, Associate General Counsel, FINRA