



June 20, 2011

Via Electronic Mail

Meredith B. Cross, Director, Division of Corporation Finance
Lona Nallengara, Deputy Director, Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Potential Rulemaking Under Section 13 of the Securities Exchange Act of 1934

Dear Ms. Cross and Mr. Nallengara:

Managed Funds Association (“MFA”)¹ is writing with respect to Section 929R of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), and the petition for rulemaking that Wachtell, Lipton, Rosen & Katz submitted to the Securities and Exchange Commission (the “Commission”) on March 7, 2011 (the “Wachtell Proposal”).² The Commission in a prior release has referred to proposals to “modernize” reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934,³ and recent press coverage has indicated that the Commission staff may be considering acting upon the Wachtell Proposal in the near future.⁴

In our view, the changes to existing law requested in the Wachtell Proposal could have significant long-term consequences to all investors in public companies and to the orderly functioning of the capital markets. Reporting on holdings in public companies through the Schedules 13D and 13G regimes do not exist in a vacuum, but are part of a broader regulatory framework that balances the interests of all investors, current shareholders and the boards and management of public companies. This broader regulatory framework includes proxy rules and related modernization initiatives, tender offer rules and other aggregate and position level transparency reforms, and involve a host of interrelated issues concerning the relationships

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.

² Available at: <http://www.sec.gov/rules/petitions/2011/petn4-624.pdf>.

³ Beneficial Ownership Reporting Requirements and Security-Based Swaps, Exchange Act Rel. No. 64087, 76 Fed. Reg. 15874 (Mar. 22, 2011).

⁴ See, e.g., Stephen Davis & Aaron Bernstein (editors), Global Proxy Watch Newsletter, June 3, 2011; Steven M. Davidoff, *Why Wachtell Wants the S.E.C. to Act*, The New York Times, March 16, 2011.

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between corporate management and shareholders, the market for corporate control, economy-wide secondary market capital allocation and price discovery.

We believe the scope of these issues requires that policy makers consider them with the utmost care and deliberation, and we therefore urge the Commission, prior to engaging in any proposed rulemaking, to conduct a comprehensive review of the existing beneficial ownership regime and the potential implications of any changes to the regime. We believe such a review would be consistent with the policy intent underlying Section 929R, which neither requires the Commission to enact changes to Section 13, nor sets a deadline by which it must undertake its review.

In this regard, we note that a policy memorandum on this topic is being prepared by counsel on behalf of several MFA member firms. The memorandum, which we would be pleased to share with you when completed, provides a helpful summary of the history and policy underlying the Williams Act's disclosure regime, and raises key issues that we believe the Commission should consider as it determines what changes, if any, would best serve overall shareholder interests. In particular, we believe the Commission should only make changes to the rules under Section 13(d) in furtherance of a clearly defined set of policy objectives that endeavor to balance the interests of all investors, and that are supported by rigorous empirical evidence demonstrating that such rules would achieve the objectives.

We would appreciate the opportunity to meet with you and your colleagues on the staff to discuss this matter in greater detail. Please do not hesitate to contact Matthew Newell, Assistant 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:

The Hon. Chairman Mary Schapiro
The Hon. Kathleen L. Casey, Commissioner
The Hon. Elisse B. Walter, Commissioner
The Hon. Luis A. Aguilar, Commissioner
The Hon. Troy A. Paredes, Commissioner