



April 15, 2011

**Via Electronic Mail:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

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

**Re: Beneficial Ownership Reporting Requirements and Security-Based Swaps;  
File No. S7-10-11**

Dear Ms. Murphy:

Managed Funds Association (“MFA”)<sup>1</sup> appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission”) on its proposed rulemaking on “Beneficial Ownership Reporting Requirements and Security-Based Swaps” (the “Release”).<sup>2</sup> MFA supports the Commission’s proposed rulemaking and provides some comments below.

## **I. Beneficial Ownership Rules**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) amends the Securities Exchange Act of 1934 (the “Exchange Act”) by adding Section 13(o) to provide that for Sections 13 and 16 “a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security . . . .”<sup>3</sup>

The Release proposes to preserve the existing scope of the Commission’s rules relating to beneficial ownership after Section 766 of the Dodd-Frank Act becomes effective;<sup>4</sup> and proposes

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<sup>1</sup> 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.

<sup>2</sup> 76 FR 15874 (March 22, 2011).

<sup>3</sup> See Section 766 of the Dodd-Frank Act; Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> See Section 774 of the Dodd-Frank Act.

to readopt without change Rules 13d-3(a), 13d-3(b), 13d-(d)(1), and to readopt without change a portion of Rules 16a-1(a)(1), and 16a-1(a)(2) (collectively, the “Proposed Rules”).<sup>5</sup>

MFA supports the Commission’s proposals to preserve the application of the existing beneficial ownership rules to persons who purchase or sell security-based swaps. We followed the legislative process leading up to the enactment of the Dodd-Frank Act closely and believe that Congress wanted to allow for the same determinations of beneficial ownership as currently exist but wanted to be explicit in its application to securities-based swaps. Given the nature of the Proposed Rules, we believe that the Commission’s consultation with the prudential regulators and the Secretary of the Treasury need not be extensive. For any additional rules which may be considered by the Commission in this area, we believe more comprehensive consultations will be important, which we believe reflect Congress’s intent behind Section 766 of the Dodd-Frank Act.<sup>6</sup>

The Release references a separate project to develop proposals to “modernize” reporting under Exchange Act Sections 13(d) and 13(g).<sup>7</sup> We note that reporting issues with respect to Schedules 13D and 13G do not exist in a vacuum but are part of a broader regulatory framework including proxy rules and related modernization initiatives, tender offer rules and other aggregate and position level transparency reforms, and raise a host of interrelated issues concerning the relationships among corporate management and shareholders, the market for corporate control, economy-wide secondary market capital allocation and price discovery.

We urge the Commission to consider whether “modernization” efforts as they relate to Section 13(d) and 13(g) should follow rather than precede already existing initiatives including, without limitation, proxy reform, swaps market structure reform, broader security clearing and systemic risk initiatives, investment adviser registration and other transparency initiatives, which will further inform the discussion.

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<sup>5</sup> 76 FR 15874, 15880-15882.

<sup>6</sup> We hope that pursuant to Section 766, to the extent the Commission seeks to issue further rulemaking under section 13(o) of the Exchange Act, it will commence a more formal and public consultation with the prudential regulators and the Secretary of the Treasury prior to issuing a proposed rule.

<sup>7</sup>76 FR 15874, 15876.

## **II. Conclusion**

MFA appreciates the Commission's rulemaking to clarify that following the July 16, 2011 statutory effective date of Section 13(o) of the Exchange Act, persons who purchase or sell security-based swaps will remain within the scope of these rules to the same extent as they are now. If the Commission or its staff has questions relating to the Proposed Rules or modernizing reporting under Sections 13(d) and 13(g), please do not hesitate to contact Jennifer Han 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  
Meredith Cross, Director  
Division of Corporation Finance