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

March 2, 2015

Via Electronic Filing:

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Managed Funds Association Comments on Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act; File No. S7-12-14

Dear Mr. Fields:

Managed Funds Association ("MFA")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "SEC" or the "Commission") proposed rules, "Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act" (the "Proposed Rules"). MFA strongly supports the increased thresholds to registration under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") and we welcome the Commission's work to implement the JOBS Act provisions. In particular, MFA would like to comment on the questions raised by the Commission regarding how issuers should determine which of its record holders are accredited investors as well as the Commission's question asking if alternative definitions of "held of record" would more appropriately address the purposes of Section 12(g) of the Exchange Act.

Accredited Investor Determination

MFA supports the Commission's proposal to use the definition of accredited investor in Rule 501(a) of Regulation D for purposes of Rule 12g-1 under the Exchange Act.

[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, North and South America, and many other regions where MFA members are market participants.

We agree with the Commission that many issuers use and widely understand the Regulation D definition of accredited investor. Accordingly, a consistent definition will provide greater certainty to issuers and facilitate compliance, particularly for those issuers relying on Regulation D to conduct non-public offerings of their securities.

We further agree with the Commission that guidance on how issuers should make an annual determination regarding the accredited investor status of record holders would be helpful. As noted in the release, many issuers, including private investment funds, make a determination regarding accredited investor status at the time of offer and sale of the issuer's securities, but not on an ongoing basis. In connection with the offering of their securities, private investment funds form a reasonable belief about a prospective investor's accredited investor status based on due diligence and information gathering, which the manager may do in a variety of ways on behalf of the fund. We believe that the process an issuer undertakes to form a reasonable belief that a person is an accredited investor for purposes of Regulation D also should be sufficient for purposes of determining if a record holder is an accredited investor for purposes of Section 12(g).

It is worth noting that, with respect to private investment funds, Section12(g) registration is relevant only to those funds relying on the exclusion from the definition of "investment company" in Section 3(c)(7) of the Investment Company Act of 1940 (the "Investment Company Act"). Private investment funds relying on Section 3(c)(1) of that Act are limited to one hundred beneficial owners and, therefore, would not have more than 2,000 record holders or more than 500 non-accredited investors. Funds relying on Section 3(c)(7) ("3(c)(7) Funds") may have an unlimited number of investors under the Investment Company Act, provided that the investors are "qualified purchasers" as defined in Section 2(a)(51) of that Act, which is a significantly higher standard than the accredited investor standard in Regulation D. Moreover, many 3(c)(7) Funds have investment minimums well in excess of the net worth standard for natural persons in Rule 501(a) of Regulation D. As such, we believe that the approaches discussed below are particularly appropriate for issuers that are 3(c)(7) Funds, which are unlikely to have any investors who are not accredited investors and, therefore, do not present the types of concerns identified by the Commission in connection with the determination of a record holder's accredited investor status.

Given the qualified purchaser requirement, the fact that 3(c)(7) Funds may not engage in public offerings, and the fact that fund securities are not traded on secondary markets, we do not believe that 3(c)(7) Funds generally raise the policy issues underlying Section 12(g) of the Exchange Act. Because the qualified purchaser threshold is significantly higher than the accredited investor net worth threshold, we also do not believe 3(c)(7) Funds pose the same concerns regarding stale information about record holders as do issuers that are more likely to have record holders who may move above and below the accredited investor threshold. Finally, we note that the advisers to 3(c)(7) Funds are subject to the Investment Advisers Act of 1940, which provides the SEC with the ability to examine and monitor the types of disclosures being made to fund investors, unlike corporate issuers which, if not registered under Section 12(g), may not have their disclosures subject to effective SEC oversight. For these reasons, we request the SEC issue final rules that permit 3(c)(7) Funds to continue to rely on their initial determination of a record holder's qualified

purchaser and accredited investor status (made at the time of the offer or sale of the 3(c)(7) Fund) on a going forward basis, without being required to undertake additional diligence on an annual basis for purposes of Section 12(g).

While we believe that the process for initially determining whether someone is an accredited investor should be the same for Regulation D purposes and Section 12(g) purposes, we understand the Commission's concern about allowing issuers to rely on prior determinations for an indefinite period of time. If the SEC determines that 3(c)(7) Funds should be required to undertake some form of annual diligence to determine the accredited investor status of its record holders, we believe the SEC's concerns about relying on stale information would be addressed if issuers that have made a prior determination of a person's accredited investor status send an annual negative consent letter to record holders asking them to inform the issuer if their accredited investor status has changed. We believe the final rules should provide a non-exclusive safe harbor that explicitly permits issuers to treat a non-response to the negative consent letter as confirmation of the record holder's prior status.

This approach is similar to, for example, how private investment funds comply with FINRA rules 5130 and 5131 regarding the allocation and distribution of new issues. In order to make representations to broker-dealers as required by those rules, investment funds typically make a determination as to whether an investor is restricted from receiving new issues allocations at the time of the investor's investment in the fund and then confirm that status via annual notices to investors. Under the FINRA rules, after an initial affirmative determination regarding an investor's status, funds may rely on negative consent letters sent to investors on an annual basis.

The Commission also requested comment on the appropriate timing for issuers to determine whether they have more than 500 non-accredited investors as of the end of their fiscal year. We encourage the Commission to adopt a final rule that states an issuer relying on the negative consent safe harbor discussed above (or any similar safe harbor adopted by the Commission) may rely on that process for the fiscal year in which the issuer sends out a negative consent letter to its record holders. Many investment funds send communications to their existing investors following the end of the year and include in those communications negative consent letters in connection with the FINRA rules discussed above, as well as other annual notice requirements. We believe it would facilitate compliance by issuers subject to such rules for the SEC to adopt a non-exclusive safe harbor that would allow issuers to send negative consent letters to determine whether their holders of record are accredited investors in connection with other annual notices.

Definition of Holder of Record

The SEC also has requested comment on whether there are alternative definitions of "held of record" that would more appropriately address the purposes of Section 12(g). We strongly recommend the Commission not adopt an alternative definition of "held of record" for purposes of Section 12(g). As noted in the Commission's release, during the Congressional debate on the JOBS Act, Congress specifically considered and declined to

make additional amendments that would have changed how to calculate the threshold for purposes of Section 12(g). We believe it would be contrary to the intent of the legislation for the Commission to change the calculation of the threshold in a manner that would undercut the increased registration threshold in Title V of the JOBS Act.

With respect to private investment funds, we would be particularly concerned with an alternative definition that would require a fund to look through its investors to determine underlying ownership. Many private investment funds have entity investors, such as funds-of-funds or bank-sponsored platforms. Requiring investment funds to look through these entity investors to underlying owners would create significant burdens for those funds. Entity investors generally are unwilling to provide information about the number or identity of underlying investors they are representing, for competitive reasons. Finally, as noted above, with respect to private investment funds, Section 12(g) registration is only potentially relevant to 3(c)(7) Funds. Given the Investment Company Act requirement that only qualified purchasers may invest in such funds and the fact that 3(c)(7) Funds may not engage in public offerings, we do not believe there is a compelling policy rationale to require such funds to register under Section 12(g) of the Exchange Act. As such, to the extent the Commission considers changing the definition of "held of record" for purposes of Section 12(g), we encourage the Commission to consider an exclusion or other alternative for 3(c)(7) Funds to avoid imposing the costs and burdens of Exchange Act registration on such funds in the absence of any policy benefit from registration.

Conclusion

MFA appreciates the opportunity to comment on the Proposed Rules. We support the Commission's proposal to use the definition of accredited investor in Rule 501(a) of Regulation D for purposes of implementing the changes to Section 12(g) of the Exchange Act. We encourage the Commission to adopt a framework for determining the accredited investor status of an issuer's holders of record that minimizes burdens on issuers, particularly with respect to 3(c)(7) Funds, which we believe do not present the risks identified by the Commission in its release. Finally, we encourage the SEC not to amend the definition of "held of record" in Section 12(g), which we believe could undermine the Congressional intent in increasing the registration thresholds and which could impose significant burdens on 3(c)(7) Funds, with no resulting policy benefit. If you have any questions regarding any of these comments, 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

Stuart J. Kaswell

Executive Vice-President and Managing Director, General Counsel