



December 20, 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”)<sup>1</sup> appreciates the opportunity to provide comments to the Securities and Exchange Commission’s (the “SEC” or the “Commission”) notice of the Financial Industry Regulatory Authority’s (“FINRA”) proposal to modify its amendments to FINRA Rule 5131 (New Issue Allocations and Distributions).<sup>2</sup> 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.

FINRA proposes a change to its amendments to provide that a member 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, other than a beneficial owner that is a control person of the investment adviser to such private fund, and meets the other proposed conditions.

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<sup>1</sup> 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.

<sup>2</sup> Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend FINRA Rule 5131 (New Issue Allocations and Distributions), Securities Exchange Act Release No. 70957 (Nov. 25, 2013); 78 F.R. 72946 (Dec. 4, 2013) (the “Notice”).

In our previous letter,<sup>3</sup> we explained that absent this 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 noted 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. Accordingly, we recommended that FINRA amend the guidance so as not to exclude such a fund from relying on the proposed guidance.

Previously, we have 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 by means of an investment in a hedge fund.<sup>4</sup> 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.

MFA strongly supports the efforts of the Commission and FINRA to prevent spinning. We greatly appreciate the willingness of the SEC and FINRA to consider MFA's concerns and suggestions to improve the operation of this important SRO rule and to make this rule more workable. We therefore support the amendment to Rule 5131 and the proposed change, and we urge the Commission to approve both the amendment and the proposed change to Rule 5131.

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<sup>3</sup> Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to Elizabeth Murphy, Secretary, Securities and Exchange Commission (Sept. 30, 2013), available at: <https://www.managedfunds.org/wp-content/uploads/2013/10/MFA-Comments-on-FINRA-Rule-5131-September-2013.pdf>.

<sup>4</sup> 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](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](http://www.managedfunds.org/wp-content/uploads/2011/10/Comments_on_FINRA_Rule5131_10-4-11.pdf).

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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