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

March 19, 2018

Via Electronic Filing:

Internal Revenue Service
CC:PA:LPD:PR (REG—120232-17; REG—120233-17)
Room 5207
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Managed Funds Association Comments on Centralized Partnership Audit Regime: Rules for Election Under Sections 6226 and 6227, Including Rules for Tiered Partnership Structures, and Administrative and Procedural Provisions

Dear Ladies and Gentlemen:

Managed Funds Association ("MFA")[1] would like to provide comments to the Department of the Treasury ("Treasury") and the Internal Revenue Service (the "IRS") on proposed rules REG–120232-17 and REG—120233-17 to implement the centralized partnership audit regime (the "Proposed Rules") that was enacted as part of the Bipartisan Budget Act of 2015. We strongly support the proposal to permit pass-through partners, as defined in proposed rule §301.6241(a)(5), to make an election under Section 6226 or an administrative adjustment request ("AAR") under Section 6227 of the Internal Revenue Code of 1986, as amended (the "Code"), respectively.[2] We also generally support the approach taken in the Proposed Rules with respect to implementation of a Section 6226 election or an AAR by pass-through partners.

We generally support the Proposed Rules and encourage Treasury and the IRS to move forward with finalizing the rules in an expeditious manner, however, there are a few areas in the Proposed Rules that we encourage Treasury to clarify or modify, as discussed in more detail below. We believe that the suggestions set out below would help improve the administrability of the Proposed Rules for partnerships and their partners and are consistent with the framework contemplated by the Proposed Rules and the statute.

---

[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.

[2] References to Sections refer to Sections of the Code, unless indicated otherwise.

Symmetrical Adjustments for Overpayments and Underpayments

As noted in our August 14, 2017 comment letter on the June 14, 2017 rule proposals, we believe it is critical for taxpayers to receive symmetrical treatment with respect to adjustments under Section 6226, including adjustments for overpayments or other adjustments that would serve to reduce the taxpayer's imputed underpayment.[3] Section 6226 has specific provisions for adjustments to be made for underpayments, but does not clearly provide that similar adjustments should be made for overpayments. We note, however that Section 206(e) of the Tax Technical Corrections Act of 2016 (the "Technical Corrections Bill"),[4] which permits adjustments for increases and decreases in tax, clearly indicates Congress's intent to permit taxpayers to make adjustments for overpayments as well as underpayments.

Providing symmetrical adjustments also is consistent with basic principles of tax fairness. Permitting adjustments only for underpayments will result in taxpayers being subject to excess tax payments and will result in taxpayers paying liabilities of other taxpayers. Neither of these outcomes is consistent with the intent of the statute or the policy goals underlying the statute. We therefore encourage Treasury and the IRS to provide certainty that adjustments may be made for overpayments as well as underpayments by amending proposed rule §301.6226-3(b) to provide that the correction amount for a partner is the amount by which the reviewed year partner's chapter 1 tax would increase or decrease for the first affected year and all intervening years. Treasury and the IRS also would need to make corresponding changes to provide for the possibility that the correction amount would be less than zero.

Modifications by Upper-Tier Pass-Through Partners

Under proposed rule §301.6226-2(e)(5), a partnership that makes an election under Section 6226 must include on the information statement it sends to its partners all modifications approved with respect to the reviewed year partner (including indirect partners, assuming the lower-tier partnership has sufficient information on such indirect partners). It is unclear under proposed rule §301.6226-3(e)(4) whether a pass-through partner that elects to pay an imputed underpayment is only permitted to make modifications that are included on the information statement provided by the lower-tier partnership, or if the pass-through partner also is permitted to make modifications based on the pass-through partner's own partners (to the extent such modification is not already reflected on the information statement). We believe that each pass-through partner should be permitted to make modifications based on its own partners, to the extent the pass-through partner would be permitted to make modifications under Section 6225 if it were the partnership directly under audit. If the final rules do not permit a pass-through partner to make modifications

[3] As noted in our August 2017 letter, we have concerns regarding adjustments for overpayments under Section 6225 as well. MFA's letter is available at: https://www.managedfunds.org/wp-content/uploads/2017/09/MFA-Comment-Letter-on-Partnership-Audit-Regulatory-Framework.pdf.

[4] H.R. 6439, 114th Cong. (2016).

based on its own partners, we believe pass-through partners will have a disincentive to elect to pay an imputed underpayment. To avoid creating this disincentive, we encourage Treasury and the IRS to clarify that each pass-through partner is permitted to make any modification permitted under Section 6225 based on the pass-through partners own partners.

Payment of Interests and Penalties on Behalf of Non-U.S. Partners

Under proposed rule §301.6226-3(f), a non-U.S. partner subject to interest and penalties must file an income tax return to pay the interest and penalties. For non-U.S. partners who are not otherwise required to file an income tax return, they would be required to obtain a taxpayer identification number solely for this purpose, which we believe adds a layer of administrative burden and complexity for partnerships and their partners. We encourage Treasury and the IRS to issue guidance that would create a process by which a partnership could pay the interest and penalties on behalf of its non-U.S. partners to avoid this complication. As part of that process, Treasury and the IRS could require the partnership to obtain documentation from its non-U.S. partners authorizing the partnership to make such payments. To the extent Treasury and the IRS create such a process, it is important to confirm that a partnership is not precluded from making a Section 6226 election as a result of making such a payment of interest and penalties on behalf of non-U.S. partners.

Timing to Furnish Information Statements

We believe that the timing set out in proposed rule §301.6226-3(e)(3)(ii) for a pass-through partner to furnish the required information statement to its affected partners and for those partners to report and pay any tax owed is generally reasonable. There may be exceptional or unusual circumstances, however, when a pass-through partner is unable to furnish the information statements to all of its affected partners within the specified time period. We encourage Treasury and the IRS to provide a process by which a pass-through partner could apply to the IRS for a short-term extension of the time period set out in the Proposed Rules, which the IRS could grant at its discretion.

Guidance on Certain Pass-Through Partners

Under proposed rule §301.6241-1(a)(5), a pass-through partner includes a partner that is an S corporation or a partnership that has elected out of the new partnership audit regime under Section 6221 (an "exempt pass-through partner"). We appreciate that the Proposed Rules permit exempt pass-through partners to make an AAR under Section 6227 and make a push-out election under Section 6226. There may be uncertainty, however, with respect to how an exempt pass-through partner complies with the requirements of the new partnership audit regime. For example, an exempt pass-through partner that is generally not subject to the new audit regime may not have designated a partnership representative prior to making a decision to file an AAR or make a Section 6226 election following a lower-tier partnership pushing out any audit adjustment. We believe that Treasury and the IRS should issue further guidance with respect to exempt pass-through partners, including providing

guidance that confirms an exempt pass-through partner making an AAR or Section 6226 election as a result of a lower-tier partnership pushing out an audit adjustment will not be deemed subject to Subchapter C of Chapter 63 of the Code for other purposes.

Treatment of Foreign Tax Credits

The proposed rules regarding international provisions under the centralized partnership audit regime,[5] assume both that the partners claimed foreign tax credits ("FTCs") for all creditable foreign tax expenditures ("CFTEs") originally reported and that FTC limitations would prevent any additional CFTEs from being claimed as credits. As noted in that proposal, this assumption could lead to overpayment of taxes by partners under the new audit regime, to the extent that one or more partners would be eligible to take an additional FTC as a result of any adjustments made following the conclusion of an audit. While we understand the administrability concerns identified by Treasury and the IRS, we believe that taxpayers should be permitted to claim FTCs for which they are eligible, provided that the taxpayer can provide sufficient evidence to the IRS when claiming the credit. We believe that this approach would limit the administrative burden placed on the IRS while providing taxpayers the ability to avoid asymmetrical treatment of CFTEs and FTCs.

MFA appreciates the willingness of Treasury and the IRS to consider the issues discussed above, and we would welcome the opportunity to further discuss the issues raised in this letter with Treasury and IRS staff. If you have any questions regarding any of MFA's comments, or if we can provide further information with respect to the issues raised in our letter, 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

[5] 82 FR 56765 (Nov. 30, 2017).