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

November 15, 2018

**Via E-Mail:**

Jay Clayton, Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

J. Christopher Giancarlo, Chairman
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: A Proposal for a Harmonized Primary Regulator Approach to SEC and CFTC Regulation of Dual Registrants**

Dear Chairmen:

Managed Funds Association ("**MFA**")[1] is submitting this proposal to both the Securities and Exchange Commission (the "**SEC**") and the Commodity Futures Trading Commission (the "**CFTC**" and, together with the SEC, the "**Commissions**") for a harmonized approach to the regulation of firms that are SEC-registered investment advisers ( "**RIAs**") and also CFTC-registered commodity pool operators ( "**CPOs**").[2] These dually registered firms are currently subject to a range of duplicative and overlapping regulatory requirements. As MFA has previously discussed in meetings with each of you and your staffs, as well as in meetings with CFTC Commissioners Brian Quintenz, Dan Berkovitz and Dawn Stump, and SEC Commissioners Hester Peirce, Robert Jackson and Elad Roisman, MFA believes that the Commissions have a unique opportunity to create significant efficiencies by taking a more coordinated and harmonized approach to the regulation and examination of dual registrants by adopting a "primary regulator safe harbor." Importantly, the proposal described in this submission would (1) support the goals

[1] 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] Because the principal focus of this letter is private funds that are considered commodity pools (*i.e.*, funds operated and advised by CFTC registrants operating pursuant to CFTC Rule 4.7), we have addressed the status of RIAs and CPOs and have not specifically addressed commodity trading advisors ("**CTAs**"). However, we note that any changes to the regulatory scheme for CPOs that are effected to implement this harmonization proposal should also extend in parallel, as applicable, to CTAs advising CFTC Rule 4.7 private funds (where those CTAs are also RIAs). In addition, MFA looks forward to discussing with the Commissions how the safe harbor concept could potentially apply in a broader context, including to registrants operating and advising funds that are registered and funds that are non-exempt commodity pools.

of the CFTC, SEC and Treasury Department that relate to promoting coordination, harmonization and efficiency across regulators,[3] (2) assist regulators in prioritizing resources and reducing unnecessary costs that are ultimately passed along to and borne by investors, and (3) be consistent with and complementary to the CFTC Chairman's support of a similar approach to substituted compliance in the cross border context and the SEC's statement regarding their approach to business conduct requirements for security-based swap dealers that are also CFTC-registered swap dealers.[4]

For these reasons, MFA is proposing a "primary regulator safe harbor" pursuant to which eligible dual registrants will establish either the CFTC or the SEC as their primary regulator and comply with a specified set of requirements of the primary regulator, as an alternative to, and in satisfaction of, the analogous requirements of the non-primary regulator. Under this safe harbor, dual registrants would be subject to regular full examination by the primary regulator and only supplemental, targeted or issue-specific examination by the non-primary regulator. MFA is proposing that the safe harbor cover adviser/CPO regulations, systemic risk reporting, examination, and certain other requirements that apply to the adviser and CPO. As such, this framework would apply with respect to regulations under the Investment Advisers Act of 1940 ("**Advisers Act**"), CFTC Part 4 regulations, and certain National Futures Association ("**NFA**") regulations. Registrants would continue to be subject to the antifraud and trading regulations of each regulator. Moreover, even for in-scope regulations, the non-primary regulator would continue to retain the authority to conduct investigations, and, as appropriate, initiate enforcement actions.

## 1. A Primary Regulator Safe Harbor for Dual Registrants

### *a. Overview*

MFA proposes that the SEC and CFTC implement a safe harbor through parallel SEC and CFTC exemptive orders issued pursuant to their respective statutory exemptive

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[3] *See, e.g.*, A Financial System That Creates Economic Opportunities – Asset Management and Insurance, Department of the Treasury, October 2017, available at: https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf; Annual Report to Congress 2017, Office of Financial Research, available at: https://www.financialresearch.gov/annual-reports/files/office-of-financial-research-annual-report-2017.pdf; *and* 2017 Annual Report, Financial Stability Oversight Council, December 14, 2017, available at: https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**") also promotes coordination. *See, e.g.*, Section 712, which requires the Commissions to consult and coordinate before rulemaking or issuing an order on swaps. 15 U.S.C. § 8302.

[4] J. Christopher Giancarlo, Chairman, CFTC, *Cross-Border Swaps Regulation Version 2.0: A Risk-Based Approach with Deference to Comparable Non-U.S. Regulation* (Oct. 1, 2018), available at: https://www.cftc.gov/sites/default/files/2018-10/Whitepaper_CBSR100118_0.pdf; SEC, *Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants*, 2018-249 (published Oct. 31, 2018), available at: https://www.sec.gov/rules/policy/2018/34-84511.pdf (the "**SEC Statement**"); about which SEC Chairman Jay Clayton said: "Today's [S]tatement reflects the culmination of outreach by [SEC] staff, and their counterparts at the [CFTC], consistent with the agencies' shared commitment to achieving greater harmonization of [Dodd-Frank] Title VII rules."

authorities.[5] MFA proposes that the safe harbor include conditions expressly requiring the registrant respond to any and all requests for information from the non-primary regulator regarding the firm's business and its compliance with the primary regulator's rules, remain subject to the statutory provisions and rules of the non-primary regulator that prohibit fraud and manipulation, and remain subject to each rule of the non-primary regulator that is not expressly addressed in the exemptive order.

*b. Scope of Safe Harbor*

Dual registrants are subject to a wide range of related but not identical requirements. The rules and regulations highlighted in Table 1 below provide an illustrative example of possible rules that could be included in a dual registrant safe harbor. We have highlighted a series of SEC and CFTC parallel rule sets that serve the same substantive purposes and overarching objectives of ensuring that registrants reconsider their compliance and related procedures each year to operate safely, protect investors, and promote fair and robust markets. In fact, the rules show that the SEC and CFTC have comparable regulatory frameworks for advisers and CPOs. MFA looks forward to working with the Commissions to identify and map the specific rules and requirements that should be selected for designation for purposes of the proposal set forth in this submission.

[5] Section 206A of the Investment Advisers Act of 1940 (the "**Advisers Act**") and Section 4(c) of the Commodity Exchange Act ("**CEA**") provide the SEC and CFTC, respectively, with broad authority, subject to certain exceptions and conditions, to provide public interest exemptions from the Advisers Act, SEC rules thereunder, the CEA, and CFTC rules thereunder. *See* 15 U.S.C. § 80b-6a and 7 U.S.C. § 6(c). In Section 3 of this letter, we discuss in greater detail the statutory authority that permits the SEC and CFTC to issue these types of exemptive orders or rules.

Table 1:

Selected Examples of Overlapping SEC and CFTC Rules and Regulations

| **Issue Addressed** | **SEC Rule(s)** | **CFTC/NFA Rule(s)** |
|---|---|---|
| Systemic risk reporting | SEC Advisers Act Rule 204(b)-1 (17 C.F.R. § 275.204(b)-1) | CFTC Rule 4.27 (17 C.F.R. § 4.27) |
| Examinations[6] | Advisers Act Section 204 (15 U.S.C. § 80b-4) | CFTC Regulation 1.52 (17 C.F.R. § 1.52) |
| Advertising, marketing, sales practice and promotional materials | SEC Adviser Act Rule 204-1; Adviser Act Rule 204-3 (17 C.F.R. §§ 275.206(4)-1 and (4)-3) | CFTC Regulation 4.41 (17 C.F.R. § 4.41); NFA Compliance Rules 2-29 and 2-36 |
| Recordkeeping | Adviser Act Rule 204-2 (17 C.F.R. § 275.204(b)-1) | CFTC Regulation 4.23 (17 C.F.R. § 4.23) |
| Privacy policies, information security and cybersecurity | Regulation S-P Rule 30 (17 C.F.R. § 248.30); Advisers Act Section 204 (15 U.S.C. § 80b-4a); OCIE, *Observations from Cybersecurity Examinations* (Aug. 7, 2017); SEC Division of Investment Management, Guidance Update No. 2015-02 (Apr. 2015) | Appendix D of the NFA Self-Exam Checklist; Interpretive Notice to NFA Compliance Rules 2-9, 2-36 and 2-49; NFA Interpretive Notice to NFA Compliance Rules 2-9, 2-36 and 2-49 (Aug. 20, 2015) |
| Self-assessment | Advisers Act Rule 206(4)-7 (17 C.F.R. § 275.206(4)-7) | NFA Compliance Rule 2-9 (and 2-37 with respect to forex-related activities) |
| Business continuity and disaster recovery planning | SEC Division of Investment Management, Guidance Update No. 2016-04 (June 2016); SEC Release No. IA-2204 (Dec. 17, 2003) | NFA Compliance Rule 2-38 and Interpretive Notice 9052 |
| Ethics | Advisers Act Rule 204A-1 (17 C.F.R. § 275.204A-1) | NFA Compliance Rule 2-9 |
| Forms | Non-public sections of Form ADV | NFA Form 7-R |

In addition to these rule sets, MFA believes that a single systemic risk report would substantially enhance regulatory efficiency, for both regulators and registrants, in a meaningful way.[7] As an alternative to a single, harmonized systemic risk report, MFA proposes under the safe

[6] As noted above, under this proposed safe harbor, dual registrants would be subject to regular full examination by the primary regulator and supplemental, targeted or issue-specific examination by the non-primary regulator.

[7] MFA is separately working with both Commissions to identify amendments and revisions to improve their respective systemic risk reports, and this letter is a complement to and not a replacement of those efforts. This fall, MFA filed letters with Chairman Clayton and Chairman Giancarlo, advocating for systemic risk reporting reform and rationalization of the reporting regimes. In September, MFA advocated for a streamlined Form PF, and submitted a

harbor that a dual registrant file the form of its primary regulator (*i.e.*, a registrant would file Form PF if its primary regulator is the SEC and Form CPO-PQR if its primary regulator is the CFTC). The registrant would include all funds on the form of its primary regulator and submit it to the SEC, CFTC and NFA in satisfaction of its reporting requirements. Providing relief from filing both Form PF and Form CPO-PQR—where the forms differ largely in form rather than substance—would reduce duplication of reporting and inconsistency among definitions and instructions, allow regulators to monitor systemic risk using data reported in a consistent manner, improve the quality of systemic risk analysis across the industry, and reduce the expenses and other resources required to comply with both regimes.[8] At the same time, each agency would retain full authority to obtain any records or information it requires for market conduct oversight of registered firms.

markup of the Form in its letter to Chairman Clayton. *See* Letter from the Honorable Richard H. Baker, President and CEO, MFA, and Jennifer W. Han, Associate General Counsel, MFA, to the Honorable Jay Clayton, Chairman, SEC, on September 17, 2018, regarding A Streamlined Form PF: Regarding Regulatory Burdens, available at: https://www.managedfunds.org/wp-content/uploads/2018/09/MFA.Form-PF-Recommendations.attachment.final_.9.17.18.pdf. In October, MFA filed a supplementary letter to Chairman Giancarlo, advocating that the CFTC recommit to a single risk report for all CPO and adviser filers. *See* Letter from the Honorable Richard H. Baker, President and CEO, MFA, and Jennifer W. Han, Associate General Counsel, MFA, to the Honorable Christopher Giancarlo, Chairman, CFTC, on October 8, 2018, regarding A Streamlined Form PF: Reducing Regulatory Burdens, available at: https://www.managedfunds.org/wp-content/uploads/2018/10/MFA.CFTC-Form-PF.final-w.-attachment.10.9.18-1.pdf.

[8] A single systemic risk report would also align more closely with the concept and policy surrounding systemic risk reporting requirements, and enhance regulators' ability to use such reports effectively. As MFA has argued in the past, an important purpose of systemic risk reports is to provide information to the Financial Stability Oversight Council ("**FSOC**") on potential sources of systemic risk in the financial system. However, the Commissions' forms do not lend themselves to being aggregated by FSOC. *See* Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to the Honorable Walter J. Clayton, Chairman, SEC, on May 18, 2017, regarding Managed Funds Association Regulatory Priorities, available at: https://www.managedfunds.org/wp-content/uploads/2017/05/MFA-Regulatory-Priorities-Letter-to-SEC-Chairman-Clayton.pdf and Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to the Honorable J. Christopher Giancarlo, Chairman, CFTC, on June 6, 2017, regarding Managed Funds Association Regulatory Priorities, available at: https://www.managedfunds.org/wp-content/uploads/2017/06/MFA-Letter-to-Acting-Chair-Giancarlo-Appendix.pdf for more information. As described in the MFA letter to Chairman Giancarlo, the Dodd-Frank Act states that the SEC and CFTC shall consult with FSOC and then jointly promulgate rules for private fund reports. However, the SEC, CFTC, and NFA currently require registrants to file "slightly different" systemic risk reports for each organization.

*c. Examinations*[9]

Under the Advisers Act and the CEA, registrants are subject to review and examination by a regulator (the SEC under the Advisers Act and a self-regulatory organization under the CEA).[10] Given limited regulatory resources, we propose under our safe harbor framework that regulators prioritize resources by only conducting routine examinations of registrants for which they are the primary regulator, and only expending examination resources on registrants for which they are not the primary regulator when it comes to cause-based examinations. This would reduce a significant expenditure of resources on the part of the Commissions (or NFA), as well as greatly reduce the burdens associated with dual registration for registrants. Dual examinations offer minimal additional regulatory benefit, as both the SEC and CFTC (and NFA) aim to achieve similar overarching investor protection purposes through their examination requirements, and both Commissions retain other mechanisms to ensure proper oversight of registrants, including the authority to actively review, supervise and monitor for trade conduct-related issues. The underlying exchanges, which have authority as self-regulatory organizations (or "**SROs**") would continue to monitor for trade conduct compliance, including anti-fraud and other market-based conduct rules as they do now, as well as continue to work with the SEC, CFTC or NFA on inquiries, examinations and/or enforcement matters.

The concept of partnering with another regulatory body to achieve efficiency is not a novel concept,[11] and we believe that both the CFTC and SEC will find that a harmonized regulatory approach to dual registrants can unlock efficiency for all stakeholders—including regulators, the registrants, and their investors.

**2. Bright Line Test to Establish a Primary Regulator**

To determine a registrant's primary regulator, MFA proposes a bright line test based on assets under management under the safe harbor and to permit dual registrants to submit an electronic notice to both regulators. We propose that if a registrant's assets under management across all funds consist of a majority of investments in securities (*i.e.*, 50.1%), then the SEC would

[9] MFA understands that the SEC takes a risk-based approach to examinations and does not perform regular periodic examinations. The proposed approach to examinations would still let each agency prioritize examinations within the eligible pools and, as mentioned above, does not preclude cause-based examinations.

[10] *See* 15 U.S.C. § 80b-4 and 17 C.F.R. § 1.52.

[11] Consider, for example, that the CFTC defers to the SEC's net capital requirements for dual registered futures commission merchants and broker-dealers. Similarly, the CFTC has permitted substituted compliance (by deferring to another regulator and regulatory program) in several instances in the context of the cross-border regulation of over-the-counter swaps activities. *See also* SEC Statement *supra* n.4, which permits compliance with certain aspects of the CFTC's business conduct rules as an alternative to compliance with analogous SEC rules. Importantly, the Statement also encourages market participants to highlight other areas for which similar relief might be required: "To the extent there are additional differences between the CFTC's Business Conduct Rules and the SEC's Business Conduct Rules that otherwise present documentation implementation difficulties that could result in potential for market disruption, the [SEC] encourages market participants to provide that information to the [SEC]." SEC Statement *supra* n.4.

be its primary regulator; likewise, where a registrant's assets under management across all funds consist of a majority of investments in derivatives the CFTC would be its primary regulator.[12] MFA proposes that a registrant would evaluate its assets under management and investments using the same regulatory assets under management ("**RAUM**")[13] approach and valuation standard that dual registrants currently use to complete Form PF and Form ADV.[14] Alternatively, MFA proposes proposes that registrants perform the investments evaluation using the valuation methods required under Form CPO-PQR.

Upon making its primary regulator calculation, a dual registrant would file a single notice with both regulators reflecting that determination. Absent objection from either regulator within a specified period, the notice would become effective. Once the notice became effective, the primary regulator framework would apply to the dual registrant for the next five years, absent significant and material changes in the business profile and operations of the adviser/CPO.

### 3. Legal Authority to Establish a Primary Regulator Safe Harbor

Section 206A of the Advisers Act and Section 4(c) of the CEA grant the SEC and the CFTC, respectively, broad exemptive authority.[15] The exemptive authorities provide the agencies with sufficient leeway to work together to enhance regulatory efficiency by developing a harmonized approach to dual regulation and creating a safe harbor for dual registrants.

The language in Advisers Act Section 206A grants the SEC broad authority to exempt persons, transactions, or classes, conditionally or unconditionally, from the provisions, rules and regulations thereunder, "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended."[16] We note that the SEC has used its authority under Section 206A to exempt various types of market participants from multiple provisions of the Advisers Act.[17] In addition,

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[12] The concept of a "majority of the assets" test has already been implemented by the SEC in the context of determining registration obligation. *See, e.g.*, Form ADV General Instructions Item F.5(1), which describes the process for calculating securities portfolios for the purposes of determining RAUM.

[13] An adviser or operator should use fair value in order to report the reporting fund's regulatory assets under management. With respect to futures (including options on futures, foreign futures and foreign options, off-exchange retail foreign currency, leverage transactions, and security futures products), futures should be valued by using unrealized gain/loss plus the required margin/collateral. Swaps should be valued by using unrealized gain/loss plus required margin/collateral.

[14] *See* 17 C.F.R. § 275.204(b)-1 and 17 C.F.R. § 275.203-1.

[15] 15 U.S.C. § 80b-6a and 7 U.S.C. § 6(c).

[16] 15 U.S.C. § 80b-6a.

[17] The SEC has historically exercised this exemptive authority in a range of contexts, including in rulemaking and in implementing class-wide relief (see, e.g., SEC, *Certain Broker-Dealers Deemed Not to be Investment Advisers*, 70 Fed. Reg. 2,712 (Jan. 14, 2005); SEC Release No. IA-471 (Aug. 20, 1975)), and in issuing tailored exemptive orders on a range of issues for individual firms, including orders that exempt registrants from some of the regulations

the legislative history demonstrates that 206A was intended to be the "counterpart" of Section 6(c) of the Investment Company Act,[18] which "gives the Commission broad power to exempt any person, transaction, or security from any provision of that statute."[19] MFA therefore believes that the proposed primary regulator safe harbor clearly falls within the broad mandate of Advisers Act Section 206A and the public interest qualification, because the exemption would introduce meaningful regulatory clarity and efficiency and would be conditioned on compliance with the CFTC's rules and regulations.

Similarly, CEA Section 4(c) provides the CFTC with broad exemptive authority which the CFTC has described as follows: "Section 4(c)(1) of the CEA authorizes the [CFTC] to 'promote responsible economic or financial innovation and fair competition' by exempting any transaction or class of transaction from any of the provisions of the CEA (subject to certain exceptions) where the Commission determines that the exemption would be consistent with the public interest and the purposes of the CEA."[20] The language in the statutory provision extends also to "any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction[.]"[21] There are certain exceptions from the exemptive authority; however, they should not be applicable to the MFA proposal.[22] In order to approve an exemption or rulemaking in reliance on its CEA Section 4(c) authority, the CFTC must find, among other things, that the exemption or rules would be consistent with both the public interest and the purposes of the CEA. We believe that our safe harbor proposal satisfies these criteria as the proposal helps prioritize the use of regulatory resources while ensuring that

highlighted in Table 1, above (*see, e.g.*, SEC Release No. IA-977 (May 29, 1985), and SEC Release No. IA-966 (March 29, 1985)). The SEC has also used this authority, more recently, to provide exemptions from compliance with Rule 206(4)-5(a) relating to compensation for investment advisory services provided to certain government entities following a contribution by a covered associate (*see, e.g.*, SEC Release No. IA-4937 (June 6, 2018); SEC Release No. 4838 (Jan. 3, 2018)). As such, MFA believes it is well within the SEC's authority to provide exemptions, whether conditioned or otherwise, from a wide range of Advisers Act requirements.

[18] 15 U.S.C. § 80a-6(c).

[19] H. Rep. No. 91-1382, at 45 (1969). The Report goes on to state that "the flexibility [206A] would introduce … is appropriate." *Id*.

[20] *See* CFTC, *Final Exemptive Order Regarding Compliance with Certain Swap Regulations*, 78 Fed. Reg. 858, at 860 (Jan. 7, 2013) (the "**CFTC's January 2013 Exemptive Order**").

[21] 7 U.S.C. § 6(c).

[22] The CFTC's exemptive authority in CEA Section 4(c) includes exceptions for provisions related to, for example, retail commodity transactions, as well as exceptions that purport to restrict the CFTC from relying on CEA Section 4(c) in order to provide exemptions from certain provisions of the CEA that were added by the Dodd-Frank Act. The scope and effect of these exceptions has remained unclear given the awkward construction of the excepting language; however, MFA observes that the exception has not prevented the CFTC from relying on CEA Section 4(c) as the primary authority permitting it to issue multiple broad-based exemptions from many, if not all, of the swaps provisions of the CEA that were added by the Dodd-Frank Act, particularly during the time period in which the CFTC was still adopting the rules to implement those provisions. *See, e.g.*, the CFTC's January 2013 Exemptive Order, *supra* note 20; CFTC, *Exemptive Order Regarding Compliance With Certain Swap Regulations*, 77 Fed. Reg. 41,110 (Jul. 12, 2012); and CFTC, *Effective Date for Swap Regulation*, 76 Fed. Reg. 42,508 (July 19, 2011).

registrants are subject to comparable SEC regulations. Moreover, under the safe harbor proposal the CFTC would retain its ability to bring enforcement actions against its registrants, as necessary. The CFTC has also used its exemptive authority in similar circumstances in the past.[23]

Lastly, and importantly, we note that the CFTC has embraced a similar safe harbor or substituted compliance framework with respect to cross-border swaps regulation with non-U.S. regulations. MFA supports Chairman Giancarlo's proposed framework with international regulators, and we believe the CFTC and SEC should consider the value that can be found in using the same framework domestically, with respect to investment adviser and CPO regulations. In his recent white paper and in recent speeches, Chairman Giancarlo has stated that substituted compliance is a "key component of the CFTC's cross-border approach," and that the CFTC has "a long history of working collaboratively with non-U.S. regulators to facilitate cross-border activity."[24] MFA supports the application of this framework to collaboration within our borders, such as between the SEC and the CFTC,[25] and the proposed primary regulator safe harbor is an opportunity for both regulators to work together towards this model.

**Conclusion**

MFA's primary regulator safe harbor proposal provides a harmonized approach to CFTC-SEC regulation of dual registrants, with clear and quantifiable benefits to the Commissions, their registrants and the investing public. A safe harbor mechanism that allows dual registrants to simplify and streamline their compliance programs by satisfying certain non-primary regulator regulations by complying with their primary regulator's regulations will greatly reduce regulatory burden and legal and compliance costs for registrants and their investors. Moreover, reducing the regulatory duplication between the Commissions will conserve valuable government resources, reduce waste, promote good governance, and greatly enhance regulatory efficiency and effectiveness. Accordingly, MFA respectfully urges the Commissions to work together to

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[23] Consistent with the SEC examples provided *supra* n. 17, the CFTC has invoked its CEA Section 4(c) authority in multiple contexts and in order to address a range of different CEA and CFTC requirements, all of which supports the proposition that the provision provides a clear basis from which the CFTC may issue an exemption or rulemaking implementing MFA's proposal for a primary regulator safe harbor. *See*, *e.g.*, the CFTC's series of prior orders deferring to the SEC as the primary regulator of options on certain commodity based ETF products—CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to SPDR® Gold Trust Shares*, 73 Fed. Reg. 31,981 (June 5, 2008), CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to iShares® COMEX Gold Trust Shares and iShares® Silver Trust Shares*, 73 Fed. Reg. 79,830 (December 30, 2008), and CFTC, *Order Exempting the Trading and Clearing of Certain Products Related to ETFS Physical Swiss Gold Shares and ETFS Physical Silver Shares*, 75 Fed. Reg. 37,406 (June 29, 2010).

[24] *See* Giancarlo, *Cross-Border Swaps Regulation Version 2.0*, *supra* note 4; Remarks of Chairman J. Christopher Giancarlo to the City Guildhall, London, United Kingdom (Sept. 4, 2018), available at: https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo52.

[25] *See also* SEC Statement *supra* n. 4, permitting compliance with certain aspects of the CFTC's business conduct rules as an alternative to compliance with analogous SEC rules.

implement a harmonized approach to dual regulation of investment advisers and CPOs, among others.

MFA looks forward to discussing its primary regulator safe harbor proposal with you and your staff. If you have questions or comments, please feel free to contact Jennifer Han, Associate General Counsel, at (202) 730-2600.

* * * *

Respectfully submitted,

/s/ Richard H. Baker
Richard H. Baker
President and CEO

/s/ Jennifer W. Han
Jennifer W. Han
Associate General Counsel

Cc:

*Securities and Exchange Commission*
The Hon. Kara M. Stein
The Hon. Robert J. Jackson Jr.
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