MANAGED FUNDS ASSOCIATION

WRITTEN STATEMENT

OF

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MANAGED FUNDS ASSOCIATION

For the Hearing on The State of the Derivatives Market and Perspectives for CFTC Reauthorization

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BEFORE THE

U.S. SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

JUNE 25, 2019

WRITTEN STATEMENT OF MANAGED FUNDS ASSOCIATION

The State of the Derivatives Market and Perspectives for CFTC Reauthorization

Chairman Roberts, Ranking Member Stabenow, Managed Funds Association ("**MFA**") greatly appreciates the opportunity to share its views on the state of the derivatives market and perspectives for the CFTC Reauthorization. MFA represents the world's largest alternative investment funds and is the primary advocate for sound business practices for hedge funds, funds of funds, managed futures funds, and service providers. MFA's members manage a substantial portion of the approximately $3 trillion invested in hedge funds around the world. Our members serve pensions, university endowments, and charities, among others.

MFA's members are a valuable component of the capital markets. They provide liquidity and price discovery to capital markets, capital to companies seeking to grow or improve their businesses, and important investment options to investors seeking to increase portfolio returns with less risk, such as pension funds trying to meet their future obligations to plan beneficiaries. Our members' skills help their customers plan for retirement, honor pension obligations, and fund scholarships, among other important goals.

MFA members are also highly sophisticated investors who participate in the commodities and derivatives markets as commodity pool operators ("**CPOs**") and/or commodity trading advisors ("**CTAs**"). MFA has consistently supported the reforms to the over-the-counter ("**OTC**") derivatives markets contained in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank Act**") that mitigate systemic risk, increase transparency, and promote an open, competitive, and level playing field. We welcomed the U.S. market's transition to central clearing for liquid, standardized swaps that occurred over the course of 2013. We believe that liquid, safe, and efficient derivatives markets facilitate investment to the benefit of everyone in the marketplace, including corporate treasurers, farmers, and ranchers who need to protect themselves against swings in crop prices, and pensioners who seek reliable returns on their retirement investments.

MFA has welcomed the many opportunities to be a constructive partner to this Committee. In that spirit, and in support of the broader policy and regulatory authorities in the United States, we offer some recommendations with respect to CFTC Reauthorization and the state of the derivatives market, as follows:

(1) Amend the Commodity Exchange Act ("**CEA**") to adopt "Dodd-Frank-like" protections for confidential, sensitive intellectual property, and to enhance data protection at regulators through the Protection of Source Code Act;

(2) Ensure accessibility and affordability of customer clearing;

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(3) Encourage CFTC to adopt regulatory refinements to the swaps trading framework;

(4) Encourage CFTC to implement measures relating to initial margin requirements for uncleared derivatives;

(5) Encourage a harmonized U.S. approach to regulation of commodity pool operators and investment advisers.

ENHANCING DATA PROTECTION

For several years now, MFA has engaged with policymakers and regulators, including the CFTC and Securities and Exchange Commission ("**SEC**"), on the issue of data security and treatment of confidential information. MFA and its members have significant concerns about information security at regulatory agencies. Information security vulnerabilities at a regulator jeopardize not only market participants and their investors, but also the U.S. economy through the loss of domestic trade secrets and confidence in the integrity of the regulatory framework. This month, the CFTC Office of Inspector General issued a report highlighting the vulnerability of the CFTC's Integrated Surveillance System to hacking, which reinforces this concern.

Over the last several years, due to both statutory mandates and regulatory discretion, agencies have expanded the scope and breadth of the types of information that they request of registrants. These agencies, however, have generally continued to rely on the same frameworks for information collection and protection. Thus, we were especially pleased with the announcement earlier this year of CFTC Commissioner Dawn Stump's data protection initiative. That initiative aims to ensure that the CFTC only collects data required for its regulatory responsibilities, removes duplicative reporting streams, explores alternative mechanisms for accessing sensitive information, enhances internal controls for interacting with data, examines response procedures to cyber incidents, and updates data retention best practices.

MFA believes that the Committee should include in the CFTC Reauthorization two legislative solutions with respect to enhancing data privacy, protection, and collection.

First, the Committee should adopt "Dodd-Frank-like" protections for confidential and sensitive intellectual property of asset managers. The Dodd-Frank Act specifically amended the Investment Advisers Act of 1940 to protect the confidentiality of reports (*i.e.,* systemic risk reports, such as Form PF) that the SEC requires for SEC-registered investment advisers, but no corresponding amendments were made to the CEA for CFTC reports (*i.e.,* Forms CPO-PQR and CTA-PR). The current inconsistency between the confidentiality protections afforded to reports by investment advisers as opposed to reports by CPOs and CTAs exposes CPOs and CTAs to greater risk of public disclosure

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of their confidential and proprietary data than investment advisers. The Committee should amend section 8 of the CEA consistent with section 404 of the Dodd-Frank Act to ensure that consistent confidentiality protections would extend to the reports, documents, records and sensitive and proprietary information of CPOs and CTAs.

Second, the Committee should amend the CEA, by including Senator David Perdue's the "Protection of Source Code Act," introduced in the 115th Congress, which would require the CFTC to issue a subpoena before compelling a person to "produce or furnish source code, including algorithmic trading source code or similar intellectual property that forms the basis for design of the source code." Senator Perdue also introduced a measure that would apply parallel requirements to the SEC under the securities laws. MFA believes that legislation such as the Protection of Source Code Act and companion House legislation introduced in the 115th Congress would be an important and constructive step for implementing and ensuring that regulators have a robust process in place when it comes to determining the necessity of highly sensitive, confidential information. Significantly, the legislative measure does not impede regulators from seeking the information they need, it only ensures that regulators have a process in place before seeking certain types of information, balancing the needs of regulators and registrants.

ENSURING THE ACCESSIBILITY AND AFFORDABILITY OF CUSTOMER CLEARING

MFA has long championed the post-crisis reform efforts of Congress. Specifically, MFA strongly supports the effort to reduce risk in the derivatives markets by transitioning standardized and liquid OTC derivative contracts into central clearing. MFA believes that central clearing has greatly benefited the derivatives markets by reducing systemic, counterparty, and operational risk, and has resulted in a well-functioning and safer system where counterparties face a well-regulated CCP. As such, MFA is opposed to efforts and policies that would weaken or undermine the clearing mandate of the Dodd-Frank Act. In this regard, we raise to the Committee's attention our concerns with the leverage ratio rules ("**Leverage Ratio**") of the Basel Committee on Banking Supervision ("**BCBS**" or "**Basel Committee**"), which threaten the ongoing success and benefits of central clearing. Without revision, these rules threaten the affordability and accessibility of customer clearing.

The current Leverage Ratio disincentivizes derivatives clearing because it does not provide an offset for customer "initial margin" ("**IM**"). That unfavorable treatment limits the ability of customers to use centrally cleared derivatives and could limit the ability of end-users to hedge their risks. MFA was gratified, therefore, by the announcement last week that the Basel Committee has called for an offset for IM in the Leverage Ratio for customer-cleared derivatives. If the Basel Committee's forthcoming published standards are consistent with the announcement, we would join CFTC Chairman J. Christopher Giancarlo in his call to U.S. prudential regulators to implement expeditiously the revised leverage ratio in their respective rules.

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Customers have been key to the success of central clearing in the United States and across the globe. While some clearing of swaps between dealers existed prior to enactment of the Dodd-Frank Act, artificial barriers to entry prevented customers from similarly participating in the cleared swaps market. Implementation of the central clearing requirement eliminated many of those artificial barriers and resulted in substantial customer clearing.

At present, swaps customers exclusively access CCPs indirectly through clearing members (typically banks), rather than becoming direct members of CCPs, for a variety of reasons, both financial and operational. Swaps customers must post IM, which is the customer's money, and CFTC rules require clearing members to hold customer funds from the clearing member's own assets (*i.e.*, "segregate" the IM).

Unfortunately, the current BCBS Leverage Ratio rules fail to provide an offset that recognizes the exposure-reducing effect of customers' segregated IM. According to the BCBS, the reason for the lack of an offset for customer IM that is held by the clearing member and not segregated is that it not only offsets exposures, but also can be used by the clearing member for further leverage. In the U.S., segregation rules severely restrict the ability of IM to be held in anything other than extremely low-risk and extremely liquid assets, assuring that it is always available to absorb losses ahead of the bank. Moreover, the substantial majority of segregated IM is posted to the CCP, and therefore, is entirely outside the control of the clearing member.

The failure of the Leverage Ratio to recognize the purpose of segregated IM discourages the use of cleared derivatives by customers. The lack of offset will result in clearing members incurring large Leverage Ratio exposures, which will likely raise prices for customer clearing significantly. As the CFTC stated in its recent letter to the U.S. prudential regulators, "[f]ailing to reduce a clearing member's exposure by the segregated client margin it holds results in an inflated measure of the clearing member's exposure for a cleared trade."

In addition, the Leverage Ratio's current overstatement of a clearing member's actual economic exposure in a cleared derivative transaction has disincentivized banking organizations from providing clearing services to many customers. The Leverage Ratio is estimated to increase significantly the cost of using cleared derivatives. As a result, MFA members expect reduced access to clearing services and higher prices for such access without an appropriate revision to the Leverage Ratio. This substantial cost increase may cause other customers to reduce their hedging activities to levels that are inadequate to manage their risk, which could result in price increases and volatility for food, gasoline, and other consumer goods.

In MFA's view, prudential requirements that inflate the economic risk of derivatives, particularly the Leverage Ratio, impose artificial barriers for clients to access cleared derivatives and work at cross-purposes with mandates to clear. We support Senator Perdue's efforts to address the adverse impact of the current formulation of the U.S. supplementary leverage ratio on customer clearing, and for co-sponsoring in the last Congress S. 3682 to require the appropriate Federal banking agencies to recognize the

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exposure-reducing nature of client margin for cleared derivatives.

Therefore, to ensure the continued affordability and robustness of customer clearing in this country, we encourage the Committee to support the CFTC in urging U.S. prudential regulatory authorities to implement a similar offset for U.S. clearing members to the announced BCBS revision to the Leverage Ratio. To avoid competitive disadvantage to U.S. banks, U.S. prudential regulators should act promptly.

ENCOURAGE CFTC TO ADOPT REGULATORY REFINEMENTS TO THE SWAPS TRADING FRAMEWORK

MFA's members have a strong interest in open, fair, competitive, transparent and liquid markets. In general, the CFTC's swaps trading regime has been beneficial for investors as it has helped develop vibrant markets for the trading of liquid, standardized, cleared swaps on swap execution facilities ("**SEFs**") and designed contract markets ("**DCMs**"). MFA and its members have petitioned the CFTC to adopt regulatory refinements to the current swaps trading framework, and are not in support of the comprehensive reforms proposed by the CFTC in November of 2018.[1] To promote the continued growth of vibrant U.S. SEF markets, and the Dodd-Frank Act goal of pre-trade price transparency to increase price competition and liquidity, and lower transaction costs, MFA recommends that the Committee encourage the CFTC to adopt regulatory refinements to the swaps trading framework, as discussed below.

Trade Execution Requirement. The CFTC should maintain the current "made available to trade" process independent from its clearing determination as not all swaps subject to the CFTC's clearing requirement are suitable for mandatory execution on SEFs. The CFTC should modify the current "made available to trade" process by (i)

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[1] *See* MFA Petition for Rulemaking to Amend Certain CFTC Regulations in Parts 1 (General Regulations under the Commodity Exchange Act), 39 (Derivatives Clearing Organizations, Subpart B – Compliance with Core Principles) and 43 (Real-Time Public Reporting), submitted to Mr. Christopher Kirkpatrick, Secretary of the Commission, on October 22, 2015 ("**MFA SEF Petition**"), available at: https://www.managedfunds.org/wp-content/uploads/2015/10/CFTC-Petition-for-SEF-Rules-Amendments-MFA-Final-Letter-with-Appendix-A-Oct-22-2015.pdf; MFA Position Paper: Why Eliminating Post-Trade Name Disclosure Will Improve the Swaps Market, dated March 31, 2015, cited in fn. 9 at p. 61572 of the Name Give-Up Comment Request, available at: https://www.managedfunds.org/wp-content/uploads/2015/04/MFA-Position-Paper-on-Post-Trade-Name-Disclosure-Final.pdf; MFA letter in response to the CFTC's Proposed Rule, "Swap Execution Facilities and Trade Execution Requirement" (RIN 3038-AE25), submitted to Christopher Kirkpatrick, Secretary of the Commission, on March 15, 2019, available at: https://www.managedfunds.org/wp-content/uploads/2019/03/MFA-Comment-Letter-on-CFTC-SEF-Proposed-Rule-Final.pdf; *and* MFA letter in response to the CFTC's Request for Comment, "Post-Trade Name Give-Up on Swap Execution Facilities" (RIN 3038-AE79), submitted to Christopher Kirkpatrick, Secretary of the Commission, on March 15, 2019, available at: https://www.managedfunds.org/wp-content/uploads/2019/03/MFA-Letter-on-CFTC-Comment-Request-on-Post-Trade-Name-Give-up-on-SEFs-Final.pdf.

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eliminating the self-certification process and providing the CFTC with a more defined role, and (ii) providing market participants with an opportunity to participate in the process, such as through industry advisory committees and the public comment process.

Methods of Execution. Currently, for swaps that are subject to the trade execution requirement, a SEF must offer an Order Book or a "Request for Quote" system that requires transmission of requests to a minimum of three other market participants ("**RFQ-to-3**"). The CFTC should ensure a baseline level of pre-trade transparency and multiple-to-multiple execution on SEFs by retaining RFQ-to-3 to preserve the documented benefits of greater transparency, liquidity, and competition.

Impartial Access Requirements. MFA recommends that the CFTC codify its existing SEF impartial access guidance to ensure there is an open, competitive, and level playing field. Otherwise, MFA is concerned that a SEF may impose access limitations on buy-side firms either (i) directly by prohibiting buy-side firms from joining the venue or (ii) indirectly through activities-based criteria. Such barriers to access suppress natural market evolution, limit market competition and innovation and restrict the ability of buy-side firms to access specific liquidity pools and trading protocols.

Pre-Execution Communications and Block Trades. MFA recommends that the CFTC retain the current block trade exceptions, which allow block trades to be negotiated away from a SEF, provide an appropriate degree of execution flexibility and permit clients to continue to engage in bilateral conversations to obtain market color.

Straight-Through-Processing Requirements. MFA recommends that the CFTC codify existing CFTC staff guidance and no-action relief setting forth the current straight-through-processing ("**STP**") standards in order to provide market participants with clearing certainty immediately following execution. These standards require that SEF-executed cleared trades be submitted to the derivatives clearing organization within ten minutes; prohibit breakage agreements; and establish void *ab initio* for trades that are rejected from clearing for non-credit reasons in order to provide certainty and market-wide consistency.

Prohibit Post-Trade Name Give-Up. The CFTC should prohibit post-trade name disclosure (or "**name give-up**") by SEFs for swaps that are executed anonymously and intended to be cleared in order to provide an open, competitive, and level playing field for all market participants. A prohibition of name give-up would strengthen the CFTC's swaps trading regime by furthering the CEA's policy goals of promoting SEF trading of cleared swaps and enhancing price transparency and competition on SEFs. It is therefore critical that the CFTC issue a formal rule proposal addressing the practice of name give-up prior to finalizing its other SEF amendments.

By focusing on more targeted reforms, such as improvements to the trade execution requirement and codifying existing impartial access and STP requirements, the CFTC would address critical process flaws and enhance and preserve key aspects of the current framework that are working well for investors. Thus, MFA respectfully urges the Committee to encourage the CFTC to adopt our recommended regulatory refinements to

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the swaps trading framework.

IMPLEMENTATION OF INITIAL MARGIN REQUIREMENTS UNDER THE UNCLEARED MARGIN RULES

The implementation of the final phases of the IM requirements under the uncleared margin rules ("**UMR**") adopted by the CFTC and other U.S. regulators has presented a myriad of challenges for buy-side firms. We are concerned that outstanding issues might result in prohibitive price increases and decreases in liquidity. MFA has recommendations for various short-term and long-term measures that are necessary to provide certainty and clarity for market participants.

While our members support incentives for central clearing of standardized OTC derivatives, we recognize that market participants have an ongoing need to be able to enter into bespoke and customized derivatives contracts that cannot be easily cleared by a CCP (so-called "uncleared derivatives"). MFA supports requiring buy-side firms to collateralize these uncleared derivatives through the posting of margin. Many MFA members already post IM for their uncleared derivatives, but currently, most do not collect IM from their swap dealer counterparties. Under UMR, buy-side firms will be required to receive regulatory IM from their swap dealers and segregate it with a third-party custodian bank.

For the last several years, MFA has engaged with U.S. and international regulatory bodies on implementation of UMR. Our primary concern with UMR implementation is maintaining reasonable costs and sufficient market liquidity for this important part of the swaps market. If the cost of trading uncleared derivatives is disproportionately increased by UMR implementation, it could reduce liquidity and adversely impact market participants' ability to invest and properly hedge their portfolios using these instruments. Moreover, for products where no central clearing offering is available and/or where central clearing is not appropriate, calibrating UMR to incentivize such clearing is unrealistic, and accordingly, may need to be revisited. UMR should be designed to properly mitigate the risks associated with uncleared derivatives, not to penalize market participants for using uncleared derivatives to meet their trading needs for prudent risk management, including entering into customized transactions where warranted.

On March 5, 2019, BCBS and IOSCO[2] issued a public statement that the BCBS-IOSCO international margin framework does not specify documentation, custodial or operational requirements if the bilateral IM amount does not exceed the framework's 50 million US$/Euro IM threshold. Although the BCBS-IOSCO Guidance is a good first step in providing needed clarity to market participants, MFA urges the Committee to

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[2] Available at: https://www.bis.org/press/p190305a.htm (the "**BCBS-IOSCO Guidance**").

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encourage the CFTC to coordinate with the U.S. prudential regulators and other regulators to adopt expressly the BCBS-IOSCO Guidance this summer.

Although the UMR does not require an in-scope entity to post regulatory IM until its bilateral IM amount in a counterparty relationship exceeds $50 million, the requested guidance would, nonetheless, help clarify the obligations of market participants and manage and prioritize their resources. MFA believes the issuance of the requested guidance this summer is critical to ease resource burdens and avoid trading disruptions for swaps market participants in the final phases, especially for the relatively large influx of newly in-scope entities, including many MFA members, on the September 1, 2020 implementation date for Phase 5.

MFA also urges the Committee to encourage the CFTC to coordinate with the U.S. prudential regulators and other regulators to provide a forbearance period of six months after a Phase 5 entity's counterparty relationship that was initially below the $50 million regulatory IM exchange threshold later exceeds such exchange threshold. Such forbearance is necessary to allow the Phase 5 entity to put the necessary bilateral collateral documentation and trilateral custodial arrangements in place to both post and receive regulatory IM and avoid trading disruptions. A reasonable forbearance period would help to alleviate the complexities, compliance expenses, and resource constraints facing Phase 5 entities, including with respect to separately managed accounts and associated risks.

In addition to these near-term measures, MFA urges the Committee to encourage the CFTC to coordinate with the U.S. prudential regulators and other regulators through the BCBS-IOSCO Working Group on Margining Requirements ("**WGMR**") to implement broader regulatory solutions that would involve targeted recalibration of UMR IM requirements. MFA recommends that the CFTC and other WGMR members consider:

- Excluding physically settled foreign exchange swaps and forwards in calculations of aggregate average notional amount thresholds for determining whether counterparties are in-scope of the UMR IM requirements. This recalibration is logical and would smooth implementation by avoiding the inclusion of products that should not otherwise be affected by the rules into the process.

- Adopting another phase-in threshold between 750 billion US$/Euro and 8 billion US$/Euro; specifically, MFA recommended a Phase 5.a. threshold of 100 billion US$/Euro in 2020, with 8 billion US$/Euro pushed back to 2021 as Phase 5.b. A more gradual and orderly staging would ensure that there is market infrastructure in place to support the final stages of IM phase-in and avoid market disruption. Such a further phase-in would also be preferable to a blanket delay of Phase 5, which would simply defer the cliff-edge effect of the threshold dropping from 750 billion US$/Euro to 8 billion US$/Euro without further facilitating the industry's transition.

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- Enhancing the use and risk-sensitivity of approved IM models, including the ISDA SIMM™, by:
  - Exempting Phase 4-5 non-dealer counterparties from prudential-style governance of IM models designed for bank capital standards;
  - Enhancing portfolio margining in IM models;
  - Accelerating regulatory approvals of business-specific IM models to avoid model herding to a single standard IM model; and
  - Authorizing opt-in margining of non-regulated products to enhance portfolio offsets in IM models.
- Requiring robust data security protections by third-party software vendors that provide functionality for regulatory IM calculations, reconciliation, and margin workflows.

We respectfully urge the Committee to encourage the CFTC to coordinate with other regulators and the WGMR to implement our requested regulatory measures as soon as possible to avoid significant swaps market disruption.

A HARMONIZED U.S. APPROACH TO REGULATION

MFA supports the harmonization efforts that CFTC Commissioner Brian Quintenz and SEC Commissioner Hester Peirce have undertaken to enhance regulatory efficiency and effectiveness between the SEC and CFTC. To support this initiative and the goals of the CFTC, SEC, and Treasury that relate to promoting coordination, harmonization, and efficiency across regulators, MFA developed a proposal for a harmonized approach to CFTC and SEC regulation of firms that are registered with both the CFTC as CPOs or CTAs and with the SEC as investment advisers ("**dual registrants**").[3] We have urged the CFTC and SEC to enhance coordination and efficiency in the regulation of dual registrants, and we believe that this Committee has an important oversight role to play in ensuring that regulators take a more harmonized or coordinated approach to regulation of dual registrants.

Dual registrants are subject to a wide range of related, but not identical, requirements arising from CFTC, SEC, and National Futures Association ("**NFA**") rules.

[3] *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, and the Honorable Christopher Giancarlo, Chairman, CFTC, dated November 15, 2018, on "A Proposal for a Harmonized Primary Regulator Approach to SEC and CFTC Regulation of Dual Registrants", available at: https://www.managedfunds.org/wp-content/uploads/2018/11/MFA-Proposal-for-Dual-Registrants.final_.11.15.18.pdf.

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These requirements include systemic risk reporting, examinations, advertising, marketing, sales practice and promotional materials, recordkeeping, privacy policies, information security and cybersecurity, self-assessment, business continuity and disaster recovery planning, ethics, and registration forms.

Under our proposed CFTC-SEC approach to harmonized regulation, currently dual registrants would continue to be registered with, and subject to oversight by, both agencies. All trading activities in the futures and swaps market would continue to be governed by CFTC rules and all securities market activities would continue to be subject to SEC rules. However, through an exemptive-relief safe harbor, each agency would provide substituted compliance for CPO/CTA and adviser regulations, whereby a registrant would be able to satisfy its compliance obligations with one agency by complying with the other agency's rules that serve the same purpose. A dual registrant would determine which agency's rules it would need to comply with based upon an assets under management test. For example, if a majority of a registrant's exposure was from derivatives overseen by the CFTC, it would comply with the CFTC and NFA regulations, and would be granted substituted compliance by the SEC for certain investment adviser regulations.

MFA believes that a harmonized approach to CFTC-SEC regulation of dual registrants could significantly enhance regulatory efficiency and effectiveness, and reduce regulatory burdens by streamlining systemic risk reporting and implementing joint or coordinated exams of dual registrants. These aspects to dual regulation create the greatest additional ongoing cost and burden. A harmonized approach would also provide clear and quantifiable benefits to the CFTC and SEC, registrants and the investing public, as well as conserve valuable government resources, reduce waste, promote good governance, and greatly enhance regulatory efficiency and effectiveness.

Separately, to assist regulators with streamlining and rationalizing systemic risk reporting, MFA also submitted to the CFTC and SEC detailed comments and suggestions for revising Form PF, a joint systemic risk report.[4] MFA supports the CFTC and SEC's role in overseeing systemic risk consistent with the Dodd-Frank Act, which requires the SEC, the CFTC, in consultation with the Financial Stability Oversight Committee ("**FSOC**") to work together in developing a systemic risk report for private funds.[5] Nevertheless, we had envisioned a single form to be used by both the SEC and CFTC, rather than three similar but separate forms: joint SEC-CFTC Form PF, CFTC Form CPO-PQR, and CFTC Form CTA-PR. MFA's recommendation for a single, harmonized systemic risk report and proposed revisions would improve the accuracy and relevancy of

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[4] *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, dated October 9, 2019, on "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.

[5] See Section 404 of the Dodd-Frank Act, Pub. L 111-203, 124 Stat. 1376 (2010), available at: https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.

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information about the industry, individual managers and pools/funds; and allow regulators to more effectively assess systemic risk across commodity pools and investment funds, and minimize the significant regulatory costs imposed on operators and advisers of private pools/funds.

MFA continues to engage with CFTC and SEC staffs to discuss an optimal framework for a harmonized approach to CFTC and SEC regulation of dual registrants. MFA has recommended that the CFTC and SEC prioritize adopting a harmonized approach to the regulation of dual registrants that would decrease duplicative regulation, allow for substituted compliance, joint, or coordinated exams, and permit the submission of a single systemic risk report to the CFTC, SEC, and NFA.

We respectfully urge that the Committee exercise its oversight role in ensuring that regulators take a more harmonized or coordinated approach to regulation of dual registrants.

CONCLUSION

On behalf of MFA, I greatly appreciate the ability to share our recommendations regarding CFTC Reauthorization and the state of the derivatives market. MFA members value liquid, safe, and efficient derivatives markets and effective oversight of these markets and market participants. As such, MFA believes that the Committee should include in the CFTC Reauthorization legislative solutions with respect to enhancing data privacy, protection, and collection.

In addition, to strengthen the U.S. derivatives markets and financial system, we respectfully urge Congress and the Committee, through their oversight powers, to encourage the CFTC to: ensure the accessibility and affordability of customer clearing; adopt regulatory refinements to the swaps trading framework; coordinate with other regulators and the WGMR to implement regulatory measures as soon as possible to avoid significant swaps market disruption; and work with the SEC to adopt a more harmonized or coordinated approach to regulation of dual registrants.

MFA is committed to working with Members and staff of Congress, the Committee, and regulators to address these issues towards the goal of strengthening our nation's economy.

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