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

December 2, 2019

Via email: taxpublicconsultation@oecd.org

International Cooperation and Tax Administration Division
Centre for Tax Policy and Administration
Organisation for Economic Co-Operation and Development
2, rue André Pascal
75775 Paris Cedex 16
France

Re: Managed Funds Association Comments on Public Consultation Document, Global Anti-Base Erosion Proposal ("GLoBE") – Pillar Two

Dear Sir / Madam:

The Managed Funds Association[1] appreciates the opportunity to submit comments regarding the Organisation for Economic Co-Operation and Development's ("OECD") consultation document – Global Anti-Base Erosion Proposal ("GLoBE") – Pillar Two (the "Consultation Paper"). MFA supports the OECD's objective of developing a framework that seeks to prevent multinational operating businesses from shifting profit to jurisdictions where they are subject to no or very low taxation. While the consultation paper seeks industry feedback on a number of technical aspects of the Pillar Two approach, we believe a key aspect of this work program is clearly defining the appropriate scope of operating businesses and business profits that should be subject to Pillar Two. In that regard, we support the OECD's call for "exploration of options and issues in connection with the design of thresholds and carve-outs to restrict application of the rules under the GloBE proposal, including… [t]he appropriateness of carve-outs for specific sectors or industries."[2] For the reasons discussed below, we encourage the OECD to clarify that asset management structures, such as pooled investment funds, are not in scope of Pillar Two as they are not operating businesses.

We note that the Consultation Paper states the intended objective of the GloBE proposal to be, "ensuring that the profits of internationally operating businesses are subject to a minimum rate

[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 over time. 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] Consultation Paper, page 23.

of tax."[3] It is important to recognize pooled investment funds, both "collective investment vehicles" ("CIVs") as defined in paragraph 22 of the Commentary on Article 1 of the 2017 OECD Model Tax Convention on Income and Capital and privately offered investment funds that do not meet the OECD's definition of CIVs, and other asset management structures are not operating businesses. Pooled investment funds themselves generally do not have employees. These funds have owners (the underlying investors) who realize gains or losses based on the performance of the investments made by the fund. As such, pooled investment funds are fundamentally different than the operating multi-national businesses relevant to the policy rationale underlying the GLoBE proposal and Pillar Two.

Pooled investment funds are managed by a separate entity (the asset manager) that employs the investment professionals who make investment decisions on behalf of the pooled investment fund. In most jurisdictions, the asset manager to a pooled investment fund is a regulated entity. For example, in the United States, asset managers to pooled investment funds, including privately offered funds, are regulated by the Securities and Exchange Commission, the Commodity Futures Trading Commission, or both, and in the European Union they are regulated by national competent authorities under the Alternative Investment Fund Managers Directive, as well as applicable national laws.

Asset managers and asset management structures, such as pooled investment funds, play a critical role in providing investors with expert investment advice when they invest capital on a cross-border basis in global markets. Pooled investment funds fulfill this function by buying, holding, and selling assets such as securities and commodities on behalf of investors who are the owners of the investment fund. In this regard, pooled investment funds are similar to other types of asset management structures, such as securities accounts or other types of accounts, that allow investors to invest in global capital markets while obtaining the benefits of a professional adviser, the asset manager. Notably, the investor rationales for investing in CIVs, as recognized by the OECD,[4] apply equally to privately offered investment funds (*e.g.*, risk diversification and economies of scale).

Pooled investment funds facilitate investment by underlying investors, such as pension plans and charitable foundations, who are located around the world. Pooled investment funds are organized to achieve a tax neutral result for these underlying investors by seeking to avoid increasing the tax obligations for investors in a pooled fund – or at least trying to minimize tax disadvantages – as compared to their tax treatment if they had invested directly in capital markets. While there is no single pooling vehicle in any jurisdiction that would preserve such neutrality for all investors in all jurisdictions, it is critical for asset managers to be able organize their pooled investment funds in jurisdictions that, to the extent practicable, maintain tax neutrality and minimize the risk of double taxation for those investors.

Because asset management structures such as pooled investment funds are not operating businesses, we believe they should not be deemed in scope of the Pillar Two rules, including the GLoBE proposal. Moreover, the profits earned by pooled investment funds and their investors already are subject to a comprehensive international tax framework that allocates taxes among the

[3] Consultation Paper, page 6.
[4] See section 2.1 of the OECD's Report on "The Granting Of Treaty Benefits With Respect To The Income Of Collective Investment Vehicles" dated 23 April 2010.

source countries of a fund's portfolio investments, the countries of the investors in the pooled investment fund, and the country of the pooled investment fund itself, as applicable. Because a robust tax framework already exists to allocate the gains of pooled investment funds, there is not a regulatory gap that needs to be addressed by the GLoBE proposal or Pillar Two. Indeed, we are concerned that overlaying the GLoBE proposal onto the existing framework will create additional complexity and uncertainty and increase the risk of double taxation for investors in pooled investment funds. Accordingly, we encourage the OECD to clarify that asset management structures such as pooled investment funds are not within the scope of the GLoBE proposal and Pillar Two.

While the asset managers that provide professional investment advice to investors through asset management structures are operating businesses, we believe that they are not the types of operating businesses that raise the policy issues underlying the GLoBE proposal and Pillar Two. Asset managers generally organize and operate in jurisdictions based on key business considerations, such as (1) proximity to: investors, markets in which the manager invests fund assets, and critical counterparties and service providers; (2) clear and consistent legal and regulatory frameworks; and (3) the availability of employees with necessary investment, risk management, and other critical skills. The profits earned by asset managers also already are subject to comprehensive tax rules that subject managers to appropriate taxation in the jurisdiction where they have a significant economic presence. Accordingly, we do not believe that asset managers present the types of risks underlying the GLoBE proposal and encourage the OECD to exclude them from the scope of the proposal and Pillar Two.

Conclusion

We appreciate the OECD's work to develop a framework to address the tax challenges arising in a digitalized economy. We support the OECD's recognition that certain sectors, such as the financial services industry, can appropriately be exempted from the scope of the GLoBE proposal and Pillar Two. In considering the appropriate scope of the GLoBE proposal, OECD to clarify that asset management structures, such as pooled investment funds, are not in scope of Pillar Two. We further encourage the OECD to exclude asset managers from the scope of the proposal and Pillar Two. We look forward to continuing to engage with the OECD on these important topics. If you have any questions regarding any of the issues discussed in this letter, please do not hesitate to contact us at (202) 730-2600.

Respectfully submitted,

/s/ Mark D. Epley

Mark D. Epley
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/s/ Benjamin Allensworth

Benjamin Allensworth
Associate General Counsel