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

January 13, 2015

Via Electronic Submission: http://comments.cftc.gov

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Notice of Proposed Rulemaking on Residual Interest Deadline for Futures Commission Merchants (RIN 3038–AE22)

Dear Mr. Kirkpatrick:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the "**Commission**") on its notice of proposed rulemaking on the "Residual Interest Deadline for Futures Commission Merchants" (the "**Proposed Rules**").[2] MFA strongly supports the Proposed Rules and the Commission's determination to retain the current "Residual Interest Deadline"[3] of 6:00 p.m. Eastern Time on the date of the settlement referenced in Regulation 1.22(c)(2)(i) ("**Settlement Date**").[4] Therefore, we agree with the Commission and respectfully urge it to terminate the phase-in period and make permanent the Residual Interest Deadline of 6:00 p.m. Eastern Time on the Settlement Date as proposed.

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[1] Managed Funds Association 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 all other regions where MFA members are market participants.

[2] 79 Fed. Reg. 68148 (Nov. 14, 2014), available at http://www.gpo.gov/fdsys/pkg/FR-2014-11-14/pdf/2014-26978.pdf.

[3] *See* Final Customer Protection Rules (as defined below) at 68631, §1.22(c), which explains the residual interest calculation and provides that an FCM must maintain residual interest in segregated funds that is at least equal to its requirement prior to the Residual Interest Deadline.

[4] *See* Proposed Rules at 68149.

I. Support for Proposed Rules

During the proposal phase,[5] MFA encouraged the Commission to make the residual interest requirement a determination that futures commission merchants ("**FCMs**") must be in compliance with at a specific "point in time" and recommended 6:00 p.m. Eastern Time on the Settlement Date as the appropriate point in time.[6] Therefore, MFA applauded the Commission's adoption of this proposal in its final rules,[7] and we continue to support strongly the Residual Interest Deadline as set forth in the Proposed Rules.[8]

MFA supports the Commission's efforts to ensure adequate protection of customers and their funds by appropriately amending and augmenting the regulatory requirements for FCMs. Therefore, we strongly supported the Commission's Proposed Customer Protection Rules, which were an important step to address many core customer protection concerns.[9]

During the Commission's consideration of the proposed residual interest requirement, MFA expressed that, from a policy perspective, we agreed with the Commission that the "timely collection of margin is a critical component of an FCM's risk management program"[10] and that it was important to require FCMs to hold sufficient funds to protect against insufficient margin in customer accounts.[11] Therefore, as a general matter, we supported the requirement in proposed §1.20(i)(4) that would require an FCM to maintain residual interest "in segregated fund sufficient to exceed the sum of all margin deficits that the futures customers of the futures commission merchant have in their accounts".[12]

However, with respect to the Proposed Customer Protection Rules, MFA was concerned that the residual interest requirement in proposed §1.20(i)(4) was a continuous FCM obligation in that the Commission would require FCMs to maintain a sufficient amount of funds "at all

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[5] *See* Commission notice of proposed rulemaking on "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations", 77 Fed. Reg. 67866 (Nov. 14, 2012), available at http://www.gpo.gov/fdsys/pkg/FR-2012-11-14/pdf/2012-26435.pdf ("**Proposed Customer Protection Rules**")

[6] *See* MFA letter to the Commission on its Proposed Customer Protection Rules, dated February 15, 2013, available at: https://www.managedfunds.org/wp-content/uploads/2013/02/CFTC-Proposed-Enhancing-Customer-Protection-Rules-Final-MFA-Letter.pdf ("**MFA Letter**").

[7] *See* Commission final rules on "Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations", 78 Fed. Reg. 68506 (Nov. 14, 2013), available at: http://www.gpo.gov/fdsys/pkg/FR-2013-11-14/pdf/2013-26665.pdf ("**Final Customer Protection Rules**").

[8] *See supra note* 4.

[9] *See* MFA Letter at 1-2.

[10] Proposed Customer Protection Rules at 67881.

[11] *See id*. at 67882, where the Commission explained its rationale behind the FCM residual interest requirements in Proposed §1.20(i)(4).

[12] *Id*. at 67941.

times".[13] In response, we recommended that the Commission modify proposed §1.20(i)(4) so that it would not be a continuous real-time obligation, but rather a "point in time" obligation. We suggested that the appropriate "point in time" should be the close of business Eastern Time on the business day after the FCM issues a customer's margin call.

Therefore, MFA applauded the Commission's determination in the Final Customer Protection rules to adopt 6:00 p.m. Eastern Time on the Settlement Date as the initial Residual Interest Deadline. We believed, and continue to believe, that this timeframe is appropriate because it requires FCMs to ensure that they maintain sufficient residual interest to cover its customers' margin deficits on a consistent and timely basis while not placing undue burdens on customers, as further discussed below.

II. Customer Concerns with Shorter Residual Interest Deadline

MFA emphasizes that, from our perspective, requiring FCMs to comply with the residual interest requirement on a timeframe shorter than 6:00 p.m. Eastern Time on the Settlement Date would be problematic and we would encourage the Commission not to consider shortening the deadline.

We are concerned that a shorter Residual Interest Deadline would not allow FCMs sufficient time to collect margin from their customers, and thus, could significantly increase the operational burdens and costs on FCMs and their customers. In particular, the increased costs to customers could arise from FCM's seeking to ensure compliance with the residual interest obligation by requiring their customers to pre-fund their margin obligations or to meet intraday margin calls. We view both of these outcomes as troubling; however, we believe that any pre-funding obligation is an unacceptable imposition on customers. It would create margin inefficiencies by causing customers to reserve assets to pre-fund their obligations or in anticipation of intraday margin calls, and thus, reduce the amount of assets that customers have to use for investment or other purposes.

Therefore, MFA urges the Commission to retain the Residual Interest Deadline 6:00 p.m. Eastern Time on the Settlement Date as provided in the Proposed Rules, and not shorten the deadline in the future. We strongly believe that the Residual Interest Deadline in the Proposed Rules is appropriate because it eliminates the need for customer pre-funding or intraday margin calls, while also ensuring that FCMs will hold sufficient funds to protect against customer shortfalls.

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[13] *See id*.

We thank the Commission for the opportunity to provide comments on the Proposed Rules. We would welcome the opportunity to discuss our views in greater detail. Please do not hesitate to contact Carlotta King or the undersigned at (202) 730-2600 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President, Managing Director & General Counsel

cc:

The Hon. Timothy G. Massad, Chairman
The Hon. Mark P. Wetjen, Commissioner
The Hon. Sharon Y. Bowen, Commissioner
The Hon. J. Christopher Giancarlo, Commissioner