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

February 9, 2011

Via Electronic Mail:

The Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Request to testify at Hearing Regarding the Proposed Definition of Fiduciary Regulation

Ladies and Gentlemen:

Managed Funds Association ("MFA")[1] respectfully requests an opportunity to testify at the Department of Labor's (the "Department") hearing on March 1, 2011. In our testimony, we expect to address the following issues, each of which was addressed in more detail in a February 3 comment letter in response to the Department's proposed regulation redefining an investment advice fiduciary under section 3(21) of the Employee Retirement Income Security Act of 1974 ("ERISA"):

- Hedge funds are a key component of the investment portfolio of many benefit plans because hedge funds provide diversification, risk management and risk-adjusted returns that are not correlated to traditional asset classes.
- In 2006, Congress determined that general partners, managing members, advisers, or other service providers to pooled investment funds with less than 25% ERISA investors should not be fiduciaries under ERISA. We do not believe the proposed rule should be interpreted in a way that would make these persons become fiduciaries with respect to their activities in connection with funds that comply with the Congressionally determined *de minimis* test.

[1] MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately $1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

- We do not believe that general partners, managing members, advisers, or other service providers to pooled investment funds should become fiduciaries solely because they provide reports to investors and prospective investors with the net asset value of the pooled fund.
- Several technical changes to the language in the definition of "fiduciary" could make managers or others become fiduciaries without knowing or intending to do so. Those changes include: (1) deleting the language that the agreement, arrangement or understanding between a service provider and a plan be mutual; (2) changing the test that advice be a primary basis for a plan's investment decision to requiring only that advice "may be considered" by the plan; and (3) removing a requirement that advice be individualized or tailored to a plan. While the DOL may not have intended these changes to have such broad reaching effects, the broad language in the proposed rule creates uncertainty as to the scope of people who will be affected.
- It is unclear the extent to which service providers (*e.g.*, prime brokers, swap counterparties, administrators) to pooled investment funds might be deemed fiduciaries under the proposed rule and it is important for the DOL to implement any changes to the definition of fiduciary (or provide appropriate exemptions or exceptions) in a way that allows funds to enter into these normal financial transactions on commercially reasonable terms.
- The selling exception in the proposed rule should be revised to cover the normal marketing activities of pooled investment funds.
- The definition of "fees" should be revised to clarify that market participants would not have to aggregate unrelated transactions for purposes of determining fiduciary status.

Given the potential implications of the Department's proposal, MFA would appreciate the opportunity to testify at the March 1 hearing and elaborate on the above issues. MFA strongly supports the DOL's goal of protecting benefit plans and their participants, and we recognize that imposing fiduciary status on certain service providers to plans furthers that goal. We welcome the opportunity to work with the Department as it considers this important topic.

If you have any questions regarding the outline of MFA's testimony, or if we can provide further information with respect to these or other regulatory issues, please do not hesitate to contact Stuart J. Kaswell or me at (202) 730-2600.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker
President and CEO