MEMORANDUM

TO: File Number S7-08-12

FROM: Valentina Minak Deng
Special Counsel
Office of Financial Responsibility, Division of Trading and Markets
U.S. Securities and Exchange Commission

DATE: June 3, 2014

RE: Meeting with Managed Fund Association Representatives

On June 3, 2014, Commission staff met in-person with representatives of the Managed Fund Association ("MFA") to discuss the proposed rules and rule amendments on capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants and capital requirements for broker-dealers (release number 34-68071).

Commission staff included Valentina Deng, Michael Macchiaroli, Thomas McGowan, Randall Roy, Sheila Swartz, and Timothy Fox.

MFA representatives at the meeting included David Hong (King Street Capital Management L.P.), Eugene Fialkovskiy (King Street Capital Management L.P.), Laura Harper (MFA), Ken Kopelman (Sidley Austin LLP), and Christopher Ramsay (Citadel LLC).

Agenda
June 3, 2014

Managed Funds Association

- Overview of Relevant Documentation

    o   ISDA Master Agreement and Credit Support Annex

    o   ISDA 2013 Account Control Agreement, with Annex ("ACA")

- MFA Proposed Contractual Provisions for Inclusion in ACA (See Attachment)

    o   Topic Covered

    o   MFA Proposal

    o   Corresponding ACA Annex Selections

Managed Funds Association – Contractual Provisions for Inclusion in the ACA

Topic Covered	MFA Proposal	Corresponding Menu Items from ISDA ACA Annex

1. Pledgor default under Section 5(a)(vii)(4) and 5(a)(vii)(6) of the ISDA Master	• Secured Party entitled to deliver a NOEC
	• NOEC may instruct Securities Intermediary to immediately release all Collateral to Secured Party
	• Pledgor shall not have any dispute rights
	• Applies only to "hard" bankruptcy event
		Part 2 - NOEC Provisions
		
		• (a) <u>Notice of Exclusive Control</u> → OPTION 1
		• (b) <u>Pledgor Dispute Provisions</u> → STRIKE
		• (c) <u>Definitions</u>
		   o "IA Seizure Amount" → Option 1
		   o "Release Time" → Option 1

2. Secured Party default under Section 5(a)(vii)(4) and 5(a)(vii)(6) of the ISDA Master	• Pledgor entitled to deliver a Notice of Pledgor Access
	• Notice of Pledgor Access may instruct Securities Intermediary to immediately release all Collateral to Pledgor
	• Secured Party shall not have any dispute rights
	• Applies only to "hard" bankruptcy event
		Part 3 - Pledgor Access Provisions
		
		• (a) <u>Pledgor Access</u> → OPTION 1
		• (b) <u>Secured Party Dispute Provisions</u> → STRIKE
		• (c) <u>Definitions</u>
		   o "IA Return Amount" → Option 1
		   o "Release Time" → Option 1

3. Movement of Collateral prior to delivery of NOEC or Notice of Pledgor Access	• The consent of the Secured Party should be required for the Pledgor to withdraw excess Collateral from the tri-party account • Similarly, the consent of the Secured Party should be required for the Pledgor to substitute Collateral in the account • The specific provisions under which the Pledgor may withdraw or substitute Collateral should otherwise be open to negotiation by the parties • Collateral disputes to be resolved in accordance with the terms of the CSA	Part 7 – Return of Collateral to Pledgor • OPTION A or OPTION C

4. Other Termination Events, Events of Default or Specified Conditions	• The parties should be permitted to negotiate provisions under which the Secured Party may deliver a NOEC, and the Pledgor a Notice of Pledgor Access, upon the occurrence of Termination Events, Events of Default, or certain Specified Conditions
	• Delivery of a NOEC or Notice of Pledgor Access, as applicable, should be conditioned on the non-defaulting party's designation of an Early Termination Date, as per the ISDA Master
	• The parties should be entitled to provide for a delay in effectiveness of the notice in order for a determination to be made as to whether the event has in fact occurred
	• Dispute rights should be negotiable between the parties
	• NOEC or Notice of Pledgor Access may instruct Securities Intermediary to release all Collateral
		Part 2 - NOEC Provisions
		
		• (a) <u>Notice of Exclusive Control</u> → OPTION 1
		• (b) <u>Pledgor Dispute Provisions</u> → AS NEGOTIATED
		• (c) <u>Definitions</u>
		  o "IA Seizure Amount" → Option 1
		  o "Release Time" → AS NEGOTIATED
		
		Part 3 - Pledgor Access Provisions
		
		• (a) <u>Pledgor Access</u> → OPTION 1
		• (b) <u>Secured Party Dispute Provisions</u> → AS NEGOTIATED
		• (c) <u>Definitions</u>
		  o "IA Return Amount" → Option 1
		  o "Release Time" → AS NEGOTIATED

5. Account Naming	• The tri-party custodial account should reflect accurately the ownership of the Collateral and the relationship among the parties • An appropriate naming convention would be to list the account in the name of the Pledgor, for the benefit of the Secured Party, pursuant to the governing agreement	Part 1 – Nature of Account • OPTION 1

| 6. Limitation on Securities Intermediary Liens | • The Securities Intermediary cannot have a general lien against the account, but may retain a limited lien in respect of fees and amounts related directly to the custodial account. | Part 10 – Securities Intermediary's Security Interest and Rights of Recoupment and Setoff

• (a) <u>Securities Intermediary's Security Interest</u> → OPTION 1 or OPTION 3
• (b) <u>Priority of Securities Intermediary's Security Interest</u> → OPTION 1 or OPTION 2 |

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