



MANAGED FUNDS ASSOCIATION

October 4, 2007

VIA ELECTRONIC MAIL:
rule-comments@sec.gov

Attention: Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Electronic Filing and Simplification of Form D; File No. S7-12-07

Ladies and Gentlemen:

Managed Funds Association (“MFA”) appreciates the opportunity to make this submission of comments to the U.S. Securities and Exchange Commission (“SEC” or the “Commission”) on the proposed rule on Electronic Filing and Simplification of Form D, Release No. 33-8814 (the “Release”).

MFA is the voice of the global alternative investment industry. Our members include professionals in hedge funds, funds of funds and managed futures funds. Established in 1991, MFA is the primary source of information for policymakers and the media and the leading advocate for sound business practices and industry growth. MFA members represent the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the over \$1.67 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

Introduction

MFA commends the Commission for its efforts to modernize and simplify the filing of Form D. We believe that an interactive and easily searchable online system will serve an important data collection function, provide greater transparency, and assist in economic analyses of the private placement market.

Specific Comments to the Release

We provide specific comments on the proposed amendments and responses to questions asked in the Release below.

A. Federal and State Coordination

The Release discusses the uniformity and coordination the proposed electronic filing system would bring between federal and state regulators, as well as how the electronic filing system would significantly reduce the costs and burdens of preparing and filing Form D information. We believe that the proposed electronic filing system has great potential for reducing the costs and burdens of preparing and filing Form D. Nevertheless, we are concerned

that unless state securities regulators agree to permit “one-stop” filing and a central payment system is created, the proposed electronic filing system would increase rather than reduce the costs and burdens of preparing and filing Form D.

Without the allowance of one-stop filing and the creation of a central payment system, issuers would still have to make filings, including fee payments, with individual states. Further, if the Commission starts to require, as proposed, annual Form D amendments for offerings that last more than a year, issuers could potentially be required to file 50 separate amendments and pay filing fees to the states each year if states do not agree to allow one-stop filing and fee collection through a central payment system. Similarly, even though the Commission proposes to combine the federal and state signature requirements, without the adoption of one-stop filing and a central payment system, issuers would still have to make additional state filings.

The Release suggests that the proposed amendments to Form D and conversion of Form D filings to an electronic system would decrease legal fees and allow issuers to file Form D notices themselves without the assistance of a law firm. MFA members have indicated that as long as states require separate filings and fee payments, in order to manage the administrative burden of complying with blue sky laws, they will outsource to law firms the responsibility to file Form D and any amendments with individual states. We are concerned the proposals in the Release will increase the cost and burden of filing Form D unless the states agree to adopt a one-stop filing and central payment system for Form D filings.

We recommend that the Commission take a leadership role in coordinating a one-stop filing and central payment system among states in order to make uniform the federal and state filing systems, and to reduce the costs and burdens associated with preparing and filing Form D.

B. Proposed Amendments

1. Basic Identifying and Contact Information

We support the Commission’s proposal to delete the current requirement that issuers identify owners of 10% or more of a class of their equity securities as “related persons.” For pooled investment funds, it is not unusual to have 10% equity owners that are not executive officers, directors, or promoters. We believe that investor information for pooled investment funds is not pertinent to a fund’s operations or its reliance on the Regulation D exemption. We also believe that requiring such information on Form D infringes upon private investors’ expectation and request for privacy.

2. Information About Issuer

The Commission proposes including industry group and revenue range information in the Form D filing to help determine the types and sizes of issuers that rely on the Regulation D and Section 4(6) of the Securities Act of 1933 (“Securities Act”) exemptions. We support the Commission’s proposal to create an industry group dropdown menu as we agree with the Commission that it would be less burdensome for issuers and more useful for the regulatory purposes underlying the Form D filing requirement.

With respect to the proposal to identify revenue range, we believe that more meaningful information for regulators and the public would be a pooled investment fund’s assets under management. We believe that revenue information for a pooled investment fund may be



misleading to the public as revenue information does not provide an accurate assessment of the size of the issuer, nor is it an indicator of the fund's future performance. Finally, it is not clear how revenue should be calculated for a pooled investment fund.

We recommend that the Commission consider providing pooled investment funds with the alternative of indicating their assets under management range.

3. Amendments to Form D

The Commission proposes to revise Rule 503 of Regulation D and the Form D instructions to explicitly require Form D amendments. While we appreciate the Commission's clarification on the circumstances that warrant the filing of an amendment, we believe it would be overly burdensome for issuers, such as pooled investment funds, who engage in continuous offerings to file annual updates as well as report every mistake of fact and every change in information provided in Form D. As a notification document, we believe it would be more appropriate for the Commission to require such offerings to file an annual update and amendments limited to (1) *material* mistakes of fact and (2) *material* changes in information. We believe the annual update would capture any minor mistakes and changes. Filing amendments in this manner would be similar to the Commission's Form ADV amendment requirements for registered investment advisers.

We recommend that the Commission require issuers with offerings lasting more than one year file an annual updating amendment and amendments for *material* mistakes of fact and *material* changes in information. We believe that such filings will promote efficiency and help maximize investor protection by ensuring the availability of current information.

4. Free Writing

The Commission proposes that electronic Form D would not contain any place where "free writing" could occur to prevent Form D from being used to attract investor interest. We believe it is necessary to provide issuers with an opportunity to clarify any inaccurate responses in Form D in order to prevent the filing of inaccurate or misleading information; and believe that such free-writing may be done within the Commission's proposed safe harbor from the prohibition on general solicitation and general advertising. We agree with the American Bar Association's discussion on free-writing in its comment letter to the Commission on Form D¹ and urge the Commission to allow free-writing for the sole purpose of clarifying a response to Form D.

5. Submission of Offering Materials

The Commission proposes that issuers in signing and submitting Form D, submit that they are undertaking to furnish with the Commission and the states, upon written request, offering materials. We are concerned that this term of submission in Form D will create uncertainty as to an issuer's responsibility to furnish offering materials to states. Issuers offering securities pursuant to Rule 506 of Regulation D do not have an obligation to furnish such materials with state regulators absent a state investigation.

¹ American Bar Association Letter to the SEC on "Electronic Filing and Simplification of Form D" (Sept. 7, 2007) p. 13 at <http://www.sec.gov/comments/s7-12-07/s71207-9.pdf>.



Section 18(c)(2)(A) of the Securities Act preserves a state's right to receive the filing of any document filed with the Commission pursuant to the Act solely for notice purposes. Rule 503 of Regulation D does not require an issuer offering securities pursuant to Rule 506 to file offering materials as part of Form D. Thus, since offering materials are not filed by issuers offering securities pursuant to Rule 506, states are preempted from requesting such issuers to provide offering materials except in the case of a fraud investigation or enforcement action.²

We are concerned that the proposed undertaking to submit offering materials upon request in the Signature and Submission provision of Form D will create confusion as to an issuer's obligation to provide offering materials. We are concerned that the proposed submission will invite states to request offering materials and as a result, issuers will be faced with the burden of furnishing offering materials with each state or disputing their obligation to provide such materials. This proposal would significantly raise the costs and burdens associated with filing Form D for issuers.

We strongly recommend the Commission to not adopt the following submission in the Form D Signature and Submission provision:

“Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.”

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² Section 18(c)(1) of the Securities Act.



Conclusion

MFA appreciates the opportunity to comment on the Commission's proposed rule on Electronic Filing and Simplification of Form D. We support the Commission's efforts to modernize and simplify the filing of Form D, and urge the Commission to work with state regulators to adopt a one-stop filing and central payment system. We believe the proposed online electronic filing system for Form D would provide the Commission with important data on the private placement market, as well as improve transparency of these markets. We would be pleased to meet with the Commission or Staff to discuss our comments.

Respectfully submitted,



John G. Gain
President

CC: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins Commissioner
The Hon. Annette L. Nazareth
The Hon. Kathleen L. Casey
John White, Director
Division of Corporation Finance

