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January 10, 2003

COMMENT

By Facsimile and Federal Express

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

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OFC. OF THE SECRETARIAT

Re: Advance Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions

Dear Secretary Webb:

Katten Muchin Zavis Rosenman ("KMZ Rosenman") is pleased to have the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") advance notice of proposed rulemaking regarding the potential establishment of additional exemptions from commodity pool operator ("CPO") and commodity trading advisor ("CTA") registration (67 Fed. Reg. 68785, November 13, 2002) (the "Advance Notice"). KMZ Rosenman is a national law firm whose clients include a large number of commodity pool operators, commodity trading advisors, hedge fund managers and securities investment advisers located throughout the U.S. and worldwide.

KMZ Rosenman and its clients generally are appreciative of the Commission's various initiatives to modernize and liberalize its rules relative to trading facilities and intermediaries, as directed by Congress through the Commodity Futures Modernization Act ("CFMA"). In particular, KMZ Rosenman and its clients welcome the Commission's efforts to reduce, under appropriate circumstances, the barriers to entry of advisors and fund managers who wish to transact in futures contracts on behalf of their customer accounts. We believe that the specific proposals for relief contained in the Advance Notice certainly are steps in the right direction.

I. CPO Registration Exemption

With regard to the specific proposals for creating a new exemption from CPO registration contained in the Advance Notice, we believe that both the Managed Funds Association's proposal, which would create a new Rule 4.9 ("MFA Proposal") and the National Futures Association's proposal, which would create a new paragraph (a)(3) of Rule 4.13 (the "NFA CPO

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Proposal”) have merit. We also believe that there may be merit in adopting both the MFA Proposal and the NFA CPO Proposal, because each proposal, due to their different prerequisites for relief, may be more beneficial to one segment of the intermediary community than the other, depending upon the trading activities and target clients of the particular intermediary. Nonetheless, if the Commission were inclined to adopt only one proposal, we prefer the MFA Proposal. We believe the MFA Proposal would strongly encourage hedge funds that specialize in trading securities (including fund-of-funds) to use the futures markets (including in particular, security futures). We represent several such entities (both foreign and domestic) which avoid using the futures markets today solely because of the CPO registration obligation (irrespective of how much or little these markets are intended to be used). Moreover, we believe that the MFA Proposal provides pool operators sufficient flexibility in their ability to trade futures contracts, while providing the necessary protection to pool participants by requiring that they meet certain objective financial sophistication standards and also by requiring that pool operators (even though unregistered) adhere to various regulatory requirements. On the other hand, we believe that the requirement set forth in the NFA CPO Proposal that a pool limit its non-hedging futures transactions to five percent of the liquidation value of the pool’s overall portfolio is unduly restrictive. Further, in our view, such a low threshold could be administratively burdensome to monitor and to comply with on an ongoing basis, and could result in a pool inadvertently exceeding the threshold as a result of daily fluctuations in the market value of the pool’s overall portfolio.

Regarding the specific text of the proposed Rule 4.9 set forth in the MFA Proposal, we note that one requirement is that a pool operator deliver to pool participants for each pool it operates under the proposed exemption year-end audited financial statements. These statements must be filed with the Commission within 180 days of the end of the pool operator’s fiscal year (proposed Rule 4.9(b)(ii)). We believe that this requirement should be revised to make clear that the audited financial statements must be delivered and filed within 180 days of the end of the pool’s (as opposed to the pool operator’s) fiscal year, which would be consistent with existing Commission requirements regarding the delivery and filing of audited financial statements (e.g., Rule 4.22(c) and Rule 4.7(b)(3)).

II. CTA Registration Exemption

We believe that enactment of the MFA Proposal in particular would be tremendously beneficial to the U.S. futures industry and the investing public. We are mindful, however, that the MFA Proposal does not address the issue of any proposed exemption from CTA registration, while the proposal submitted by the National Futures Association does provide for such an exemption, which would create a new paragraph (a)(10) of Rule 4.14 (the “NFA CTA Proposal”). Again, as a general matter, we support any attempt by the Commission to increase the ability of intermediaries to offer to their customers the benefits of futures transactions in an efficient and cost-effective manner. However, we believe that the requirement set forth in the NFA CTA Proposal that an advisor limit its commodity advisory activities to pools that are exempt from registration under the NFA CPO Proposal or that are excluded from the definition of “commodity pool” under Commission Rule 4.5 does not go far enough. Instead, in the spirit of

the CFMA, we urge the Commission to enact an exemption from CTA registration featuring requirements similar to the MFA Proposal. In particular, by requiring an advisor to limit its commodity advisory activities to customers that meet objective financial sophistication standards, the Commission can be assured that customers who do not demonstrate the necessary financial sophistication will continue to receive the full protections afforded by the Commodity Exchange Act and the Commission's rules.

* * *

KMZ Rosenman appreciates the opportunity to comment on the Advance Notice. If the Commission or any of its staff members have any questions concerning the comments in this letter, please do not hesitate to contact Fred M. Santo at (212) 940-8720 or Wesley G. Nissen at (312) 902-5365.

Sincerely,



Katten Muchin Zavis Rosenman