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January 23, 2003

COMMENT

Received CFTC
Records Section

1/29/03

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

OFC. OF THE SECRETARIAT

2003 JAN 29 PM 12:56

RECEIVED
C.F.T.C.

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

Dear Sir/Madam:

We represent a wide range of managers and sponsors of investment pools, including both investment companies registered under the Investment Company Act of 1940, as amended, and private investment funds operating under the exemption under either Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act.

On behalf of the managers and sponsors of the private investment funds that we represent, we welcome the proposed relief provided by either proposed Rule 4.9 or the proposed amendments to Rules 4.13 and 4.14. Both proposals, in our view, provide appropriate relief to the managers and sponsors of private investment funds, the interests in which are not publicly offered to retail investors, and at the same time give the Commission sufficient notice to permit the Commission and its staff to perform its oversight role.

Rule 4.9. We prefer the approach represented by proposed Rule 4.9, which in our opinion represents a logical extension to the relief currently provided by Rule 4.7. Many managers and sponsors of private investment funds, including many that are not primarily engaged in trading futures and that only use futures to hedge securities or other investments, elect not to trade futures, even on a very limited basis, in order to avoid registration with the Commission as a CPO or CTA. Proposed Rule 4.9, like Rule 4.7, recognizes that a lesser degree of review and oversight by the Commission and its staff is appropriate in the case of pools which are not publicly offered. At the same time, the proposed rule provides for the Commission to receive notice at least annually of all investment funds operated under the

exemption provided by the rule, thereby permitting the Commission to monitor the operation of pools operated under the exemption on an ongoing basis.

Rules 4.13 and 4.14. We believe that the proposed amendments to Rules 4.13 and 4.14 also offer appropriate relief to private investment funds, in a way that represents a logical extension of the relief currently provided to registered investment companies under Rule 4.5. Many of the private investment funds that we represent could be operated under this exemption, if it were available. However, a substantial number of private investment funds would not meet the 5% test in the rule.

Rules 4.9, 4.13 and 4.14, as proposed to be amended, are consistent with each other and could all be adopted in their present proposed form, although we believe that in that case most private investment funds would then elect to rely on the exemption under Rule 4.9.

In the event that the Commission for any reason determines not to proceed at this time with adoption of either of these proposals, we would urge the Commission to clarify the application of the interim no action relief in one respect: At present, due to the recent issuance of the interim no action relief, relatively few investment pools are operated under the exemption provided by the interim relief. Accordingly, the requirement in footnote 15 that a fund of funds, in order to qualify for the interim relief, invest exclusively in investee funds for which the CPO has actually claimed the relief, is unduly restrictive. Instead, we suggest that the relief be made available to a fund of funds that invests exclusively in investee funds for which the CPO either (1) is eligible to claim, and has claimed, the relief, or (2) is eligible to claim the relief but has not done so because the CPO is already registered with the Commission.

Respectfully submitted,



Christopher M. Wells