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WILLKIE FARR & GALLAGHER

COMMENT

April 28, 2003

VIA FEDEX

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

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Re: Additional Registration and Other Regulatory Relief for CPOs and CTAs

Dear Ms. Webb:

Willkie Farr & Gallagher regularly advises commodity pool operators ("CPOs"), commodity trading advisors ("CTAs"), investment advisers and collective investment funds in the United States and abroad. We have been interested and involved in the Commodity Futures Trading Commission's ("Commission") review of the regulations applicable to intermediaries and participated in last September's roundtable on CPOs and CTAs (the "Roundtable"). In addition, we have assisted industry groups in considering and proposing exemptive relief for CPOs and CTAs. Therefore, we applaud the Commission for its thoughtful consideration of the issues and are pleased to submit this letter supporting the adoption of the exemptions and other relief proposed by the Commission in its release published in the Federal Register on March 17, 2003 (the "Release").

We believe that the proposed regulations go a long way toward addressing the issues discussed at the Roundtable. Most importantly, the Commission has proposed two separate exemptions from CPO registration and coordinating exemptions from CTA registration. Adoption of these exemptions will reduce barriers to entry and the costs of conducting investment management businesses that employ futures and options on futures. In addition, adoption of these exemptions will better harmonize the Commission's regulation of investment management professionals with that of the Securities and Exchange Commission.

Without diminishing our support for the proposals, I have the following minor questions and suggestions.

1. The Release requested comment on application of the proposed exemptions in Rule 4.13 to funds of funds. Funds of funds seem to present a compelling case for CPO exemption, especially if the fund of

funds trades futures only indirectly, through investee funds. Historically, the operators of such funds of funds generally have been required to register as CPOs as have the operators of the investee funds. Thus, two separate levels of registration were required. Arguably, investors are amply protected by one level of registration. Moreover, arguably the more relevant level at which to protect investors is the investee fund level where the futures trading actually occurs. Therefore, it is important that the new exemptions accommodate CPOs of funds of funds.

Proposed Rule 4.13(a)(4) will easily accommodate CPOs of funds of funds. The CPO of a fund of funds would be eligible to claim the exemption based solely on the sophistication of the fund of funds' investors.

Proposed Rule 4.13(a)(3) is more difficult to apply to funds of funds because it contains trading limitations. If the Commission applies its historical interpretation, the CPO of a fund of funds would be required to compute and aggregate the futures trading engaged in directly (if any) and in its investee funds in order to comply with the exemption. With respect to the investee funds, the CPO would need clarification of the acceptable methods of computation and aggregation. For example, if a fund of funds invests 10% of its assets in an investee fund, and the investee fund's operator represents that it complies with the requirements in 4.13(a)(3)(i)(A), presumably the CPO of the fund of funds could count its futures positions in the investee fund as 2% of 10% or .2% of the fund of fund's assets. Similarly, if the CPO of the investee fund (whether registered as a CPO or exempt) represents that the fund would use no more than 10% of its assets for initial margin and premiums on futures and options, presumably the fund of funds could count its futures positions in the investee fund as 10% of 10% or 1% of the fund of fund's assets. These amounts are easily added together to aggregate the total amount of the fund of fund's assets allocated directly or indirectly to initial margin and premiums on futures and options on futures. I am not sure of how the CPO of a fund of funds could aggregate a combination of investee funds that complied variously with the requirements in 4.13(a)(3)(i)(A) and 4.13(a)(3)(i)(B).

In order to simplify application of the exemption in 4.13(a)(3) without sacrificing customer protections, I suggest that the exemption be interpreted to be available to the CPO of a fund of funds, provided that the fund of funds does not directly trade futures or options on futures, without reference to the investee funds, provided that the CPO of each of the investee funds represents that it is registered or exempt from registration with the Commission. In the case of a fund of funds that trades futures directly as well as through investee funds, the Commission should provide guidance on how to aggregate the futures trading of the investee funds in order to comply with the exemption, as it did in connection with its interim no-action position on CPO registration.

These recommendations could and should be effected by interpretation. Therefore, consideration of fund of fund issues should not impede the Commission in adopting the exemptions as proposed.

2. The proposed amendments to Rule 4.5 as well as the exemption in 4.14(a)(3)(i)(B) and the interim no-action positions reaffirmed in the Release contain the phrase "aggregate net notional value". It would be helpful to clarify in the appropriate adopting release the definition of this term. For example, if a fund has long and short positions in the same futures contract but for different delivery months, may those contracts be netted in determining "aggregate net notional value"? Could all of a fund's long

positions be netted against all of its short positions in related futures contracts (i.e., contracts that are part of an arbitrage or other paired strategy)? Could all of a fund's long positions be netted against all of its short positions regardless of the underlying commodity?

3. Please note that the description in the Release of proposed rule 4.14(a)(4) left the words "to the public" out of the phrase "no sales to the public in the United States." The text of the proposed rule contains this phrase, and the Release should have contained it as well.

4. The Commission asked for comment on whether notice registrations should be considered in lieu of the proposed exemptions. In my view, a notice registration regime would not improve the information available to the Commission or its ability to enforce its rules and the Commodity Exchange Act. A notice registration would raise issues for the Commission and National Futures Association as well as notice registrants with respect to the need for recordkeeping, supervision and audit.

I thank the Commission for this opportunity to comment on the proposed exemptions and for its continued commitment to streamlining regulation and encouraging market growth while protecting customers. I look forward to the timely adoption of the proposed exemptions.

Respectfully,



Emily M. Zeigler