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COMMENT

May 1, 2003

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

Re: Proposed Rules for CPO and CTA Registration and Other Regulatory Relief

Dear Ms. Webb:

The Committee on Futures Regulation (the "Committee") of the Association of the Bar of the City of New York is pleased to submit the following comments on the Commodity Futures Trading Commission's (the "Commission") proposed rules published in the Federal Register on March 17, 2003 (68 F.R. 12622) (the "Proposed Rules") concerning a broad range of regulatory relief for Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs").

The Association is an organization of over 22,000 lawyers. Although most of its members practice in the New York City area, the Association has members in 48 states and 51 countries. The Committee consists of attorneys knowledgeable concerning the regulation of futures contracts and other derivative instruments, and has a history of publishing reports analyzing regulatory issues critical to the futures industry and related activities. The Committee appreciates the opportunity to comment on the proposed rules and stands ready to assist the Commission and its staff if further clarification of any of the points raised in this letter would be helpful.

The Committee supports the Commission's continued efforts, demonstrated in the Proposed Rules and earlier initiatives, to modernize its rules as part of the Commission's implementation of the Commodity Futures Modernization Act of 2000.

1. <u>Proposed Rule 4.13(a)(2)</u>. The proposed increase in the dollar limits for small pools from $200,000 to $400,000 is a sensible adjustment of this rule in response to the decreased value of the dollar due to inflation since the rule was first adopted in 1981; the proposed new dollar limit is a more realistic level today for such exempt pools. The exclusion of certain persons affiliated with the exempt pool's operator and advisor in counting the permitted number of investors in an

exempt pool is beneficial in conforming the rule's requirements with relief routinely granted by Commission staff.

2. Proposed Rule 4.13(a)(3). The proposed rule creating a new category of de minimis pools provides that a CPO must ensure that a pool either (a) commits 2% or less of its liquidation value to futures margin or premiums, or (b) establishes futures positions the "aggregate net notional value" of which is 50% or less of the liquidation value of the pool. "Aggregate net notional value" should be defined to make clear what amounts or values are to be netted for this calculation.

   The Commission should consider requiring CPOs to provide their investors with the disclosure legends currently required by the interim CPO/CTA no-action position that was published with the Proposed Rules. We suggest, however, that CTAs that are affiliated with CPOs should not be required to provide such disclosure to their affiliates. Similarly, CPOs in master/feeder fund structures should be required to provide the disclosures to outside investors only and not to themselves or their affiliates. This approach would be consistent with the relief the Commission is otherwise proposing with respect to affiliated CPOs and CTAs in the master/feeder fund context.

   We note that the proposed rule does not appear to require that the pool be privately offered, only that investors must be accredited. The Commission should consider clarifying this point.

3. Proposed Rule 4.14(a)(10). The revision of this rule to count specified legal organizations as a single investor for purposes of the statutory exemption from CTA registration would conform this rule to the treatment of investors by the rules applicable to exempt investment advisers under Securities and Exchange Commission ("SEC") rules. The Committee believes that harmonization of regulatory approach by the CFTC and the SEC is desirable and suggests that the agencies coordinate to assure that their parallel exemptions are construed in accordance with the SEC's current rule and the CFTC's proposed approach.

4. Proposed Rule 4.22(c). The introductory paragraph of the rule states that two copies of the annual report must be filed with the Commission within 90 days of the pool's fiscal year end. In light of the Commission's recent additional delegation of authority to the National Futures Association with respect to processing annual reports, query whether the final rule should state that the report should be filed with the National Futures Association, rather than the Commission, and if so, whether only one copy would be required to be filed.

5. Proposed Rule 4.22(h). The Committee recommends that the same standard be applied to each situation where a CPO is required to execute documents. The Committee believes that requiring as a universal standard that signatures be by "a

representative duly authorized to bind" the CPO would simplify the requirements under rules 4.7(d), 4.12(b), 4.13(b) and 4.22(h).

6. Funds of funds. The Commission specifically requested comment on how funds of funds should be treated in the context of CPO registration under Rule 4.13. Without advocating any particular method, the Committee makes the following practical suggestions for the Commission's consideration:

   The final rules should make clear that a fund of funds operating pursuant to the de minimis exemption is permitted to invest in a pool that trades only futures so as not to disadvantage CPOs registered with the Commission. The discussion of the treatment of funds of funds under the interim CPO/CTA no-action relief states at 68 F.R. 12631 that the CPO of a fund of funds may rely on statements by the CPO of an investee fund that the investee fund is operated "in compliance with the no-action relief." The statement as currently drafted may cause confusion if carried as is into a final de minimis rule.

   The final rules should permit the CPO of a fund of funds to multiply the amount invested in each investee fund by a logical fraction to determine compliance with the de minimis requirement. One method would be to divide the amount invested by the fund's total equity at the time of investment.

   The Commission should consider whether a higher de minimis percentage is warranted for funds of funds. If a fund of funds is required to count towards its 2% margin-to-equity limit its entire investment in another fund, then the fund of funds will likely reach the limit much more quickly than a fund that directly trades futures. That is an odd result since the fund of funds arguably is subject to less risk than a fund that trades directly. Because futures funds rarely, if ever, commit 100% (or anything close to it) of their equity to futures margin, a higher de minimis limit for funds of funds might provide parity across funds.

7. Please note that the title of Rule 4.7 in the Proposed Rules used the phrase "qualified eligible clients" in reference to CTAs. The title of Rule 4.7 should end with the phrase "qualified eligible persons."

The Committee stands ready to assist the Commission and its staff with further information or other assistance concerning these issues.

Sincerely yours,

Susan C. Ervin

Susan C. Ervin

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* Member of Subcommittee that drafted this letter of comments.
** Chair of Subcommittee that drafted this letter of comments.

<u>Adjunct Member</u>
Cindy Ma

Φ Ms. Steinhauser abstained from participating in this letter of comments.

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