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May 1, 2003

By Facsimile

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 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") proposed rules regarding additional registration and other regulatory relief for commodity pool operators ("CPO") and commodity trading advisor ("CTA") (68 Fed. Reg. 12622, March 17, 2003) (the "Proposed Rules"). 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. 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 business in futures contracts on behalf of their customer accounts. We believe that the specific proposals for relief contained in the Proposed Rules certainly are significant steps in the right direction.

I. Limited Trading Exemption (Rule 4.13(a)(3))

Proposed Rule 4.13(a)(3) provides several registration exemptions for CPOs that operate pools that trade a limited amount of commodity interests, including a registration exemption for a CPO that limits the amount of the pool's assets committed to establish commodity interest positions to two percent of the liquidation value of the pool's portfolio (the "Two Percent Limit"). While we generally are supportive of the limited trading exemptions contained in new Rule 4.13(a)(3), we feel that the Two Percent Limit is too low of a threshold. Such a low threshold may undermine the stated purpose of the Proposed Rules of encouraging and facilitating participation in the commodity interest markets by additional collective investment vehicles, especially with respect

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to fund managers that would like to utilize certain stock index and security futures contracts that have initial margin rates that significantly exceed two percent of contract value. Therefore, we request that the Two Percent Limit be raised to a more appropriate *de minimis* limit, such as the five percent limit suggested by the National Futures Association in its recent rule proposal to the Commission.

Also, we recommend that the proposed exemption under Rule 4.13(a)(3) be modified to permit pools to admit not only "accredited investors," but also "knowledgeable employees," as defined in Rule 3c-5 under the Investment Company Act of 1940, as amended. While certain knowledgeable employees may not satisfy the requirements of an accredited investor, we believe they possess the requisite sophistication and should be permitted to invest in a 4.13(a)(3) pool.

II. Proposed Amendment to Rule 4.5

We strongly support adoption of the Commission's proposal to eliminate the current restrictions contained in Rule 4.5 on the purpose and scope of an "otherwise regulated" entity's trading of commodity interests (i.e., the "5% Test"). In response to the Commission's specific request for comments on this subject, we further encourage the Commission to take the additional step of eliminating the current prohibition contained in Rule 4.5 that prohibits the marketing of a "qualifying entity" as a commodity pool or otherwise as a vehicle to trade commodity interests (the "Marketing Prohibition"). Given that the Commission has proposed to eliminate the objective 5% Test, we feel the subjective Marketing Prohibition unnecessarily creates uncertainty as to what entities qualify for the Rule 4.5 registration exemption. Consistent with the Commission's conclusion that it is unnecessary that these "otherwise regulated" entities be burdened with the full weight of the Commission's regulatory powers, we see no value in retaining the subjective Marketing Prohibition as the investors in such "otherwise regulated" entities are adequately protected through regulation by other state or federal regulators. Retention of the Marketing Prohibition will continue to have an unquantifiable prophylactic effect on the participation in the commodity interest markets by otherwise regulated institutional investors. In addition, we feel that retention of the subjective Marketing Prohibition potentially is harmful as it gives rise to the possibility of unequal enforcement of Rule 4.5.

III. Fund-of-Funds Clarification

We also request that the Commission clarify its treatment of "funds-of-funds" in the context of CPO registration. Specifically, we request that the Commission confirm that a fund-of-funds that independently satisfies one of the limited trading exemptions contained in Rule 4.13(a)(3) is eligible for exemption from registration. By way of example, we believe that a fund-of-funds that accepts only "accredited investors," has a liquidation value of \$1 million, and has a portfolio

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invested 20% in an "investee fund" that, in turn, solely invests in commodity interests, and the 80% remainder of the portfolio is invested in underlying funds that do not trade any commodity interests, should be eligible for the registration exemption contained in Proposed Rule 4.13(a)(3) as such fund-of-funds has a net notional value of commodity interest positions that does not exceed 50% of its liquidation value. We respectfully request that the Commission confirms that the foregoing analysis is accurate.

KMZ Rosenman appreciates the opportunity to comment on the Proposed Rules. If the Commission or any of its staff members have any questions concerning the comments in this letter, please do not hesitate contact William Natbony at (212) 940-8930 or Wesley G. Nissen at (312) 902-5365.

Sincerely,



Katten Muchin Zavis Rosenman