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COMMENT

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November 21, 2005

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

Re: Proposed Rule Regarding the Definition of "Client"  
of a Commodity Trading Advisor

Dear Ms. Webb:

The Committee on Futures Regulation (the "Committee") of the New York City Bar Association (the "Association") is pleased to support the Commission's proposal, which was published in the Federal Register at 70 *F.R.* 56608 (September 28, 2005), to define the term "client" in a new Commission rule (the "Proposal").

The Association is an organization of over 22,000 lawyers. Most of its members practice in the New York City area. However, the Association also has members in nearly every state and over 50 countries. The Committee consists of attorneys knowledgeable in the regulation of futures contracts and other derivative instruments and it has a history of publishing reports analyzing regulatory issues critical to the futures industry and related activities, including those affecting commodity trading advisors. The Committee appreciates the opportunity to comment on the Proposal.

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The Committee supports the Proposal, which would define the term “client” in new Commission Rule 1.3(bb)(2) to clarify that (1) all customers who receive advice from commodity trading advisors are classified in the same manner regardless of the format used to provide such advice, (2) all advisees of commodity trading advisors are protected by Commission antifraud jurisdiction, and (3) Section 40 antifraud authority applies to all commodity trading advisors, regardless of the type of services they provide to customers.

The Committee agrees with the reasoning in the Proposal that it is important to eliminate inconsistencies between the Commodity Exchange Act and the rules promulgated thereunder concerning how advisees of commodity trading advisors are described or defined. The Committee believes that such inconsistencies developed incidentally over time and were never intended to create substantive differences among customers of commodity trading advisors based on the nature of the services they received, or to create differences in Commission jurisdiction to prosecute fraud related to non personalized advisory services. As the Proposal states in note 8, “there is no logical reason for such customers [“subscribers”] to receive less protection under the statute than other customers of CTAs.”

Please contact us if you have questions or if there is any assistance we can provide in connection with the Proposal.

Very truly yours,

A handwritten signature in black ink that reads "Rita M. Molesworth". The signature is written in a cursive, flowing style.

Rita M. Molesworth

New York City Bar Association  
Committee on Futures Regulation  
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Barbara Wierzynski  
David Yeres

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

\*\* Chair of the Subcommittee that drafted this letter of comments.

Adjunct Members

Elizabeth Kurtz  
Cindy Ma  
Stephen J. ObieΦ  
Lore Steinhauser

Φ Mr. Obie abstained from participating in this letter of comments.