NFA NATIONAL FUTURES ASSOCIATION

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March 26, 2009

COMMENT

Received CFTC
Records Section
3/26/09

Via E-mail: secretary@cftc.gov

Mr. David Stawick
Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Commodity Pool Operator Periodic Account Statements and Annual Financial Reports – RIN 3038-AC38

Dear Mr. Stawick:

NFA supports the Commission's proposed changes to CPO reporting requirements relating to periodic account statements and annual financial reports. Although the number of CPO annual reports filed late has been significantly reduced in recent years, both the Commission and NFA continue to experience problems with CPOs not filing their annual reports within the required time frames. NFA believes the Commission's proposed changes will assist CPOs in complying with the Commission's requirements without sacrificing any customer protections.

Although NFA supports the overall proposal, we recommend that the Commission consider certain modifications. Details of our recommendations follow.

Waiver of Certified Annual Report from Participants in Liquidating Pool

CPOs of liquidating pools are often reluctant to prepare and file a certified annual report for the pool because the costs involved in preparing this report dilutes the assets that would otherwise be available for distribution to participants. NFA commends the Commission for recognizing this situation and proposing changes that will simplify the process for liquidating pools. NFA supports the Commission's proposed changes, but requests that the Commission consider a minor change with respect to the participant waiver requirement.

Under the Commission's proposal, if the final report would otherwise be required to be certified, the CPO may prepare an unaudited annual report if it obtains, from each participant, a waiver of its right to receive the certified report from each participant and the CPO files those waivers with NFA. NFA does not see any benefit to requiring the CPO to file these waivers with NFA. Rather, NFA recommends that the

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Commission require that the CPO file a certification with NFA that it received a waiver from each participant. The CPO would also be required to produce the waivers to NFA upon request. NFA believes that this process will provide the same protections without burdening CPOs with the obligation of sending a copy of each waiver to NFA.

Notice Regarding Final Distributions that Occur After Final Report Date

NFA believes that the Commission's proposed amendment to 4.22(c) with respect to the due date of the final annual report of a liquidating pool will clear up the confusion with respect to the reference to two possible time frames. Again, however, NFA believes that the process can be streamlined without sacrificing any customer protections. Under the Commission's proposed amendment, a CPO that has not distributed all funds to participants by the date of the final report would be required to include information in the annual report about the return of the funds, including an estimate of the value of the funds remaining to be distributed and the anticipated time frame of when those funds are expected to be returned. Once the remaining funds are returned, the CPO would then be required to send a notice to all participants and to NFA.

NFA believes the Commission can achieve the same objective without requiring CPOs to file a notice of final distribution with NFA. Rather, NFA recommends that any CPO that does not make the final distribution within the time frame outlined in the annual report be required to file notice of this fact with NFA, along with an explanation why the final distribution has not been completed. NFA will then periodically follow up with these CPOs to ensure that the final distribution is made. NFA believes this will be a more efficient and effective way for NFA to monitor CPOs that have not made the final distribution.

Extension Provisions Under Regulation 4.22(f)

The Commission's proposal also provides needed relief to funds of funds with respect to the deadline for filing annual reports. Under the current framework, a CPO of a fund of funds may claim up to an additional 60 days to distribute the pool's annual report by filing a notice containing specific representations with NFA. Those CPOs that are unable to file the annual report by the 60 day extended deadline may request an additional amount of time, up to 30 days, to file. Under the proposal, a CPO of a fund of funds may claim the entire 90 day extension by filing a single notice with NFA. Additionally, the *Federal Register* release states that extending the total period of time to file an annual report for funds of funds to 180 days "would eliminate the need for CPOs to file an additional request under CFTC Regulation 4.22(f)(1), and would reduce the administrative burden to NFA of processing these additional requests."

NFA certainly agrees that lengthening the automatic extension for all funds of funds statements from 60 to 90 days will assist CPOs in meeting their filing deadlines. We also recognize that this change, however, will primarily benefit single tier

funds of funds. This change will provide little, if any, benefit to a multi-tiered fund of funds that must await statements from a last investee fund before it can prepare its own annual report. Therefore, NFA recommends that the Commission still permit CPOs operating multi-tiered funds of funds the ability to request pursuant to 4.22(f)(1) an additional amount of time, up to 30 days, to file their annual reports because in many cases the funds may not have received all the information needed to complete their annual reports within the 90 day extension period .

The Commission's proposed changes provide much needed relief to CPOs while maintaining important customer protections. NFA requests, however, that the Commission consider the above noted modifications, which we believe will help ensure that CPOs are regulated in the most efficient and effective manner.

If you have any questions on the proposed modifications, or would like to discuss them further, please do not hesitate to contact me.

Very truly yours,

Thomas W. Sexton, III
Senior Vice President and
General Counsel

(caw:Comment Letter CPO Reporting Changes)

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