95-44

ADVISORY NO. _ __

INSTANT FILING PROCEDURE FOR COMMODITY POOL
AND COMMODITY TRADING ADVISOR DOCUMENTS

The purpose of this Advisory is to inform commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") that the Commission's Division of Trading and Markets, which is responsible for reviewing commodity pool and commodity trading advisor Disclosure Documents ("Documents"), is revising its procedures[1/] for processing certain types of Document filings. This modification of the Division's review process will result in an "instant" filing procedure for CPOs and CTAs whose Documents qualify for expedited processing by staff. Under the Division's new policy, qualifying CPOs and CTAs will be able to begin solicitation using the new Documents in a more expeditious manner than presently permitted under §§4.21(g) and 4.8 of the rules, because Documents that qualify will be able to be used for purposes of solicitation shortly after being filed with the Commission and will not be reviewed or commented upon by the Division.

As a result of this modification of review procedures, Division staff will be able to concentrate resources on those filings that most need review, while also meeting its goal of expediting the processing of certain filings for pools and CTAs. The Commission has requested that the Division implement an expedited procedure to address the growing volume of such filings. For example, in each of the past three years (1992-1994), the Division processed nearly 4,000 Disclosure Documents, compared to 1,445 Disclosure Documents in 1983. This substantial increase in the volume of filings has not been accompanied by a commensurate increase in staffing.

Under the present filing procedure, nearly all Documents are reviewed by staff within 21 days from the date of filing. Such reviews routinely result in comment letters and subsequent revision to Documents in response to the comments raised in staff's letters. The new filing procedure will benefit

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1/ Commission Rule 4.21(g)(1) requires that the CPO file a Document with the Commission not less than 21 calendar days prior to the date the CPO first intends to deliver the Document to a prospective participant in the pool. An exception is available under Rule 4.8, which permits a registered CPO offering a pool in an offering exempt from registration under the Securities Act of 1933 to solicit funds from prospective participants in that pool upon filing of the Disclosure Document with the Commission. However, such filings are reviewed by the Division and may result in comment letters being sent which could interfere with the solicitation process because solicitation must cease, in accordance with Rule 4.21(b), if material changes need to be made to the Document.

registrants by permitting acceptance upon filing for those Documents that qualify, thus expediting the commencement of solicitation.

The Documents that will qualify for "instant" filing relief are: (1) Amended pool and CTA Documents that contain no material changes from the last filing; (2) Documents for new pool offerings that are substantially similar to Documents which previously have been filed with and accepted by the Division and which contain no material changes from the previously filed Document; and (3) Documents for pools that will be operated pursuant to an exemption under §4.12(b)[2/] of the Commission's regulations and which invest in futures contracts and commodity options exclusively through investments in other §4.12(b) pools.

"Instant" filing relief will be available to registrants who file amended Documents in connection with existing pools and CTA programs; and to registrants who submit filings for new pools that are substantially similar to pool Documents previously filed by the registrant, which have been reviewed and accepted by staff. The relief will only be available to CPOs and CTAs who file Documents under cover of a transmittal letter that states that there have been no material changes from the prior filing. The letter should further specify whether the filing is an updated Document for an existing pool or a Document for a pool being offered for the first time. The transmittal letter, examples of which may be found at the conclusion of this Advisory, must accompany any Document for which "instant" filing relief is being sought, otherwise, the Document will be processed in the ordinary manner. Any change in the Document should be red-lined to facilitate its acceptance for "instant filing".

"Instant" filing relief also will be available for pools operating under a §4.12(b) exemption that invest in futures contracts and commodity options solely through investment in other §4.12(b) exempt pools. In order to qualify for relief, the Document must be filed under cover of a transmittal letter that includes the following representations: (1) the fund will be operated pursuant to an exemption under §4.12(b) and will invest

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2/ A pool qualifies for an exemption under §4.12(b) of the Commission's regulations if it will: be offered and sold pursuant to the Securities Act of 1933 or to an exemption from such Act; generally and routinely engage in the buying and selling of securities and securities derived instruments; comply with the requirement that it will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 10 percent of the fair market value of the pool's assets; and trade such commodity interests in a manner solely incidental to its securities trading activities. See §§4.12(b)(i)(A)-(D).

in futures contracts and commodity options exclusively through its investment in other §4.12(b) funds; (2) a claim of exemption has been filed by the CPO contemporaneously with or prior to the §4.12(b) instant relief letter in the case of a new §4.12(b) offering[3/]; and (3) the person claiming relief is registered as a CPO, or, has applied for such registration. The Division believes this relief is appropriate for §4.12(b) pools that invest in futures contracts and commodity options only through other §4.12(b) pools because of the limited and indirect nature of the investment.

Based upon a review of the transmittal letter, the Division will either accept the Document on filing or issue a notice of rejection, generally within two calendar days of the filing date.

The "instant" filing relief granted by this Advisory does not excuse a CPO or CTA from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act or the Commission's regulations thereunder. For example, it remains subject to the antifraud provisions of §4o of the Act, to the recordkeeping and reporting requirements of the Commission's regulations, and to all other relevant provisions of Part 4. Further, staff may deny "instant" filing relief to registrants who have had past compliance problems or for other appropriate reasons.

Commission staff will review this process periodically to determine if any modifications are appropriate. If the process is abused the program may be withdrawn.

3/ Filing a Document under cover of a §4.12(b) instant relief letter does not excuse a CPO from the requirement that a separate claim for relief under §4.12(b) must be filed with the Commission in accordance with §4.12(b)(3) of the Commission's regulations.

EXAMPLE TRANSMITTAL LETTERS

Amended Documents:

Enclosed please find an amended Document for X pool, which is operated by Y, a registered commodity pool operator. The CPO is seeking "instant" filing treatment under CFTC Advisory No. _____. The Document contains no material changes from prior filings. The changes that have been made to the Document have been red-lined. This filing updates the CPO's previous Document which was dated _____.

New Pool offerings:

Enclosed please find a Disclosure Document for A, a newly formed pool which is operated by Y, the commodity pool operator. This filing is substantially similar to the X pool Disclosure Document, which was previously reviewed and accepted by staff. Y is the commodity pool operator of both pools. This filing contains no material changes from the X pool Document and has been red-lined to indicate the changes from the Document filed by Y.

Division's Notice that "Instant" Filing
Has not been Accepted

Re:

Dear _____:

You are hereby notified that the above-referenced Disclosure Document has not been accepted by the Commission as filed. Accordingly, staff will review the Disclosure Document by _____(date 21 days after filing). You should know that you may receive further correspondence from the Commission regarding this filing.

If you have any questions, please call the Division's Managed Funds Unit at (202) 254-6112.

Sincerely,

Kevin P. Walek

cc: NFA

Division's Notice of Acceptance
of "Instant" Filing

Re:

Dear _____:

You are hereby notified that the above-referenced Disclosure Document has been accepted by the Commission as filed. Accordingly, you will receive no further correspondence from the Commission regarding a review of this filing.

This notice will not preclude the Commission and the National Futures Association ("NFA") from raising compliance issues at some future time, should it be deemed appropriate. In this connection, the Commission and the NFA operate ongoing compliance programs which include desk reviews of Disclosure Documents as well as on-site audits of all registrants.

Timely amendment of your Disclosure Document, as required by the rules for continuous offerings, is your responsibility. If you have any questions, please call the Division's Managed Funds Unit at (202) 254-6112.

Sincerely,

Kevin P. Walek

cc: NFA