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MANAGED FUNDS ASSOCIATION APR 29 1 31 PM '98

April 29, 1998

**COMMENT**

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

Re: Two-Part Documents for Commodity Pools

Dear Ms. Webb:

We welcome the opportunity to comment on proposed National Futures Association ("NFA") Compliance Rule 2-35 and the related Commodity Futures Trading Commission ("CFTC") rule changes (collectively, the "Proposed Rule").

MFA is a national trade association of more than 600 members. MFA's membership is made up of a diverse group of alternative investment professionals, including hedge fund and commodity trading managers, commodity pool operators and fund of funds managers. These fund managers are responsible for a significant portion of the nearly \$250 billion invested in hedge funds and the vast majority of the over \$35 billion invested in managed futures funds. MFA members also include brokers, exchanges, cash managers, foreign exchange dealers, banks and other professionals who provide support services such as accountants, lawyers, consultants, and academics. Accordingly, MFA and its members have a vital interest in this Proposed Rule.

The MFA strongly supports the concept of a two-part Disclosure Document for both public and private pools. A significant portion of each pool Disclosure Document may be substantially unchanged from one transaction to another. This raises the possibility of commodity pool operators ("CPOs") being able to produce a Part Two containing general information — tax, limited partnership or limited liability company law overview, description of commodity markets and strategies, role of a non-traditional investment in a portfolio, etc. — which is less frequently reprinted, with only a much shorter Part One, specific to each pool and containing time-sensitive information such as required performance data, etc., having to be kept current.

In order for the two-part format to serve its purpose, however, sponsors must be given flexibility as to what material is to be included in Parts One and Two. If certain material is

required to be in Part Two, that may well lead certain registrants to abandon the two-part format altogether. For example, most attorneys would counsel their clients that they need to deliver the Limited Partnership Agreement to prospective investors. Consequently, if the Limited Partnership Agreement is required to be in Part Two, CPOs will effectively be required to deliver both Parts to all investors. In general, MFA believes that the rigid sequencing of disclosures established by the Part Four rules is counterproductive. Commodity pools are so different in their structure and objectives that it is inevitable that any rigidly prescribed ordering of Disclosure Document presentation will result in a diminution of disclosure quality in many cases. The shortfalls of mandated disclosure sequencing become painfully obvious in the two-part format, as the sequencing results not just in certain material appearing before or with more prominence than other information, but in certain information not being in Plain English and not having to be delivered at all. MFA believes that the disclosure quality of pool offering materials would be significantly enhanced by allowing CPOs flexibility in arranging the disclosures in such manner as they believe appropriate while establishing certain general disclosure policies such as that "Risk Factors" must be prominent and certain performance information treated as "supplemental." We strongly advocate a general principle of prominent disclosure of material items but in such sequence as CPOs may deem most appropriate, subject, of course, to applicable NFA, CFTC and Securities and Exchange Commission ("SEC") review and comment. As a practical matter, the two-part disclosure document initiative will lose much of its value if disclosure sequencing is rigidly prescribed.

Another major issue raised by the Proposed Rule is CFTC/SEC coordination on the review of pool documents. Currently, the SEC requires that a Prospectus, if in two parts, be bound as a single volume. Furthermore, the SEC's disclosure sequencing requirements vitiate the utility of the two-part format by requiring detailed information "upfront" in the Prospectus concerning matters, such as tax consequences, which would otherwise be excellent candidates for Part Two disclosure. In addition, while the SEC requires "Plain English" in only specified portions of the prospectus — for example, "Risk Factors" — the Proposed Rule apparently requires that the entire Part One be written in Plain English. As the CFTC is aware, the "disharmony" between the SEC and CFTC disclosure requirements has been a recurring problem in the context of public pool offerings. This would be an excellent time for the Staffs of the two agencies to work out a uniform disclosure policy (a development which the industry has been eagerly awaiting for years). The industry should be able to have the applicable regulators speak with one voice on prescribed disclosures. Rather than forcing public pool sponsors to deal (with considerable expense and delay) first with one agency, then another, then back to the first agency, trying to accommodate potentially inconsistent disclosure recommendations from the two agencies, we urge the relevant Staff members to take this opportunity to develop a single uniform standard for pool disclosures. Unless this happens, the Proposed Rule will be meaningless in the public pool context because the SEC also must be satisfied before any public offering can proceed.

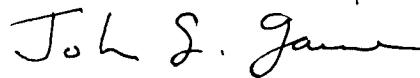
Ms. Jean A. Webb

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The MFA believes that the ultimate goal of the Plain English and two-part Disclosure Document initiatives should be to permit commodity pools to be marketed in much the same manner as mutual funds, with "vest pocket" prospectuses and Statements of Additional Information available upon request. Were this to become possible, it would provide better disclosure to investors and would reduce the imbedded costs to investors of preparing, printing and distributing public commodity pool disclosure documents. We understand that this objective may be a long way off — if, in fact, it is ever achieved. However, this would be an excellent time for the SEC and the CFTC mutually to address the issue of "rationalizing" commodity pool disclosure documents. The managed futures industry needs uniform and consistent disclosure regulation, and the MFA is anxious to do whatever it can to help accomplish that result.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. G. Gaine".

John G. Gaine  
President