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COMMENT

May 1, 2003

VIA E-MAIL

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 Ms. Webb:

We submit this letter in response to the Commission's request for comments on the proposed rule amendments relating to Commodity Pool Operators ("CPOs") and Commodity Trading Advisers ("CTAs") published in the Federal Register on March 17, 2003.

We commend the Commission's efforts to accommodate investment advisers that seek to invest in commodity interests through private investment vehicles and separately managed accounts. Our clients include numerous advisers of domestic and offshore hedge funds, private equity funds and separately managed accounts. The compliance burden associated with registering as a CPO or CTA has deterred most of these advisers from investing in commodity interests, even for purposes of limited hedging and even when alternative hedging strategies are significantly more expensive and less efficient. We believe that registration exemptions based on limited commodity interest trading and sophisticated investor requirements would encourage these advisers to participate in the futures markets, enabling them to better serve their investors and enhancing liquidity and volume for all market participants. We strongly support the rule changes proposed by the Commission on March 17, 2003. We have the following comment.

Proposed Rule 4.13(a)(4) Exemption from CPO Registration

Proposed Rule 4.13(a)(4) would exempt a person from CPO registration if interests in the pool for which it claims relief are exempt from registration under the Securities Act of 1933 and

offered and sold without marketing in the United States, and the CPO reasonably believes that all natural person participants in the pool are qualified eligible persons ("QEPs") as defined in Rule 4.7(a)(2) and that all non-natural person participants are either QEPs under Rule 4.7 or accredited investors.

We believe that the standard in Rule 4.7(a)(2) is overly restrictive for natural person pool participants, and that the Rule 4.13(a)(4) test should be broadened (as originally proposed by the Managed Funds Association) to include all natural persons who are QEPs under any provision of Rule 4.7. Applying the Rule 4.7(a)(2) test – essentially, the "qualified purchaser" test under the Investment Company Act of 1940 – to individuals while applying the accredited investor test or the broader QEP test to entities creates a needlessly complex and inconsistent scheme. It is not clear, for example, why an individual pool participant (other than a person registered as or affiliated with a securities or futures professional) should need $5 million in investments (under Rule 4.7(a)(2)(vi)) to demonstrate sophistication, while certain partnerships and other entities investing in the same pool would need more than $5 million in total assets but an investment portfolio of only $2 million (the QEP test), or even just total assets greater than $5 million (the accredited investor test).

The Commission's rules have long recognized that an investor who is a QEP is sufficiently sophisticated to assess the risks of participating in a commodity pool. Accordingly, e see no reason for Rule 4.13(a)(4) to compartmentalize the QEP test in a way that imports from the Investment Company Act a more stringent standard for individual pool participants. Incorporating the general QEP standard for natural persons into proposed Rule 4.13(a)(4) would simplify and rationalize the exemption and reduce regulatory burdens on CPOs without adversely affecting investors.

We appreciate the opportunity to comment on the proposed rules. If you have any questions about this letter, please contact Carolyn Reiser.

Very truly yours,

Shartsis, Friese & Ginsburg LLP

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