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COMMENT

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Jean A. Webb, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Proposed Rules for CPO and CTA Registration and Other Regulatory Relief

Dear Ms. Webb:

Tannenbaum Helpern Syracuse & Hirschtritt LLP ("Tannenbaum") appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") proposed rules to amend the commodity pool operator ("CPO") and commodity trading advisor ("CTA") registration rules by exempting pool operators and pool advisers of hedge funds from registration provided that certain criteria is satisfied.[1] Tannenbaum represents numerous hedge funds and commodity pools. As such, our letter focuses on our concerns on behalf of the hedge fund and commodity pool industry.

We commend the Commission's decision to liberalize the CPO and CTA registration rules for pool operators who offer interests in their pools through private placements to only sophisticated or institutional investors and for advisers that advise such pools, respectively. Due to the sophistication, knowledge, and financial resources of such investors, the protections afforded by CPO and/or CTA registration is unnecessary. We believe that the Proposed Rules, if adopted, will likely promote greater participation

[1] Commodity Futures Trading Commission; Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; proposed rules. 68 Fed. Reg. 12622-12639 (March 17, 2003) (referred to in our comment letter as the "Proposed Rules").

in the futures market by hedge fund managers and thus will likely result in greater market liquidity.

We are concerned with how operators of fund-of-funds will be treated under the new regulatory regime. Our letter addresses these concerns and provides suggested solutions. Furthermore, we respectfully request the Commission to clarify outstanding issues with respect to the treatment of fund-of-fund operators.

In response to industry comments seeking clarification as to how operators of fund-of-funds can qualify for the No-Action Relief currently available to CPOs, the Commission confirmed that:

> (1) the CPO of a fund-of-funds may file for the No-Action Relief provided that the CPO of each of the underlying pools (the "Investee Funds") into which the fund-of-funds operator invests either has registered with the CFTC as a CPO or has claimed the No-Action Relief with respect to the Investee Fund, and
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> (2) regardless of whether the CPO of the Investee Fund has filed for the No-Action Relief of is a registered CPO, in each case the operator of the fund-of funds is entitled to rely upon a representation by the Investee Fund's CPO that the CPO is operating the Investee Fund in compliance with the requirements of the No-Action Relief.[2]

We applaud the Commission for easing the burdens for operators of fund-of-funds to qualify for the No-Action Relief. Previously, in the Advanced Notice of Proposed Rulemaking[3], operators of fund-of-funds could qualify for the No-Action Relief only if each of the pool operators of the underlying pools, i.e. the Investee Funds, has itself claimed the No-Action Relief.[4] As such, an operator of a fund-of-funds would have been precluded from obtaining No-Action Relief if an underlying pool operator maintained its registration status.

By expanding the criteria to include "registered CPOs," the Commission is including within this category registered CPOs that operate pursuant to Rules 4.7 or 4.12 relief which is typically how hedge fund pool operators operate. As a result of this liberalization, an operator of a fund-of-funds that invests in a pool managed by a registered CPO or a registered CPO operating pursuant to Rules 4.7 or 4.12 relief, may still claim the No-Action Relief. We respectfully urge the Commission to adopt this provision as part of the final rules applicable to operators of fund-of-funds.

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[2] See 68 Fed. Reg. at 12631.

[3] Commodity Futures Trading Commission; Commodity Pool Operators and Commodity Trading Advisors; Exemptions from Requirement to Register for CPOs of Certain Pools and CTAs Advising Such Pools; advance notice of proposed rulemaking; 67 Fed. Reg. 68785-68790 (November 13, 2002).

[4] See 67 Fed. Reg. at 68788, note 15.

However, the second condition raises certain questions. The Commission is permitting fund-of-funds operators to rely on a representation from an underlying pool operator that the underlying pool operator is operating its pool in compliance with the requirements of the No-Action Relief regardless of whether the underlying pool operator has filed for the No-Action Relief.[5] As such, implicitly, fund-of-fund operators are limited to investing in pools that operate within the restrictions of the No-Action Relief, even if the underlying pool operator has not formally filed for the No-Action Relief. If this second condition is adopted in the final rules applicable to operators of fund-of-funds, then operators of fund-of-funds seeking to avail themselves to registration relief would be limited to investing in underlying pools operated by sub-pool operators that are in compliance with (proposed) Rules 4.13(a) or 4.13(a)(4). We respectfully request the Commission to clarify whether it is the Commission's intent that registration relief is conditioned on such operators of fund-of-funds being limited to the universe of pools whose pool operators are Rule 4.13(a)(3) or 4.13(a)(4) compliant or whether such compliance is not relevant with respect to sub-pool operators registered as CPOs as such CPOs are already subject to regulatory oversight.

If the Commission adopts rules imposing limitations on the amount of assets an operator of a fund-of-funds seeking registration relief can devote to underlying pools, we respectfully request the Commission to clarify whether investments in non-U.S. pools would be included in the calculation to determine whether a fund-of-fund operator qualifies for registration relief. Hedge funds operate on an international scale. Sometimes U.S. pools that are fund-of-funds invest in non-U.S. pools that engage in only non-U.S. futures. These particular non-U.S. pools are generally outside the scope of U.S. regulatory jurisdiction because their pool operators invest in only non-U.S. futures markets.[6] It would be incongruous to require non-U.S. pools trading in non-U.S. futures to be included as a condition for registration relief when such non-U.S. pools are outside the jurisdiction of the CFTC and the NFA. Accordingly, if limitations on the amount of assets an operator of a fund-of-funds can invest in underlying pools are adopted, we respectfully request that the Commission exclude non-U.S. pools from such a calculation. Furthermore, for practical reasons, we respectfully urge the Commission to "carve out" non-U.S. pools from any such computation, if adopted, because of the uncertainties that might exist in non-U.S. markets as to valuation, accounting standards and the like.

If proposed Rule 4.13(a)(4) is adopted in its current form and is available to operators of fund-of-funds, in effect, operators of fund-of-funds that are 3(c)(7) funds would qualify for registration relief under (proposed) Rule 4.13(a)(4).[7] Given the

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[5] See 68 Fed. Reg. at 12631.

[6] It is noted that under certain circumstances, non-U.S. pool operators who engage in only the non-U.S. futures market file notice with the National Futures Association (the "NFA"). For example, in situations when such a non-U.S. pool operator operates a pool that accepts U.S. investors, the non-U.S. pool operator is to file a 30.5 notice with the NFA. See Part 30 of the CFTC Rules under the CEA.

[7] Proposed Rule 4.13(a)(4) would be available to CPOs of 3(c)(7) funds because as a condition for registration relief, natural person and self-directed employee benefit plans must be "qualified eligible persons" as defined in Rule 4.7(a)(2) and as such, must be a "qualified purchaser" as defined in Section 2(a)51 of the Investment Company Act of 1940 as amended (the "Company Act"), since "qualified eligible

sophisticated nature and high degree of wealth of such investors in a 3(c)(7) fund, regulatory protection for such investors is considered to be unwarranted while the pool operator exempt from registration under (proposed) Rule 4.13(a)(4) would be unrestricted as to the extent of futures activity. Since these particular investors do not need regulatory protection, operators of fund-of-funds that qualify for relief pursuant to (proposed) Rule 4.13(a)(4) should not be restricted to investing only in underlying pools that operate within the restrictions of (proposed) Rules 4.13(a)(3) or 4.13(a)(4). Just as a CPO that qualifies for (proposed) 4.13(a)(4) relief and directly trades futures would be unrestricted in its futures activity, a CPO of a fund-of-funds that qualifies for 4.13(a)(4) relief and engages in a fund-of-funds strategy should also be permitted to invest in underlying pools without restrictions. To constrict a 4.13(a)(4) compliant operator of a fund-of-fund to invest in only pools that operate within the parameters of (proposed) Rules 4.13(a)(3) or 4.13(a)(4) would not safeguard the interests of sophisticated investors in a 3(c)(7) fund. As such, we respectfully suggest that the Commission not impose the condition that pool operators of Investee Funds operate in compliance with the conditions for registration relief under Rules 4.13(a)(3) or 4.13(a)(4) with respect to a pool operator of an Investor Fund that qualifies for registration relief pursuant to Rule 4.13(a)(4). Rather, operators of fund-of funds that qualify for registration relief under Rule 4.13(a)(4) should be permitted to invest in underlying pools whose CPOs are registered with the Commission, are registered with the Commission and operate pursuant to 4.7 or 4.12 relief, or are exempt from registration without regard whether such underlying CPOs operate within the parameters of the final rules for registration relief.

Furthermore, sub-pool operators that are registered or operate pursuant to relief under Rules 4.7 or 4.12 are already subject to the oversight of the Commission and the NFA. We see no reason why requiring sub-pool operators of the Investee Funds that already are registered or operate pursuant to Rules 4.7 or 4.12 also operate within the restrictions of (proposed) Rules 4.13(a)(3) or 4.13(a)(4) would promote investor protection for sophisticated investors in a 3(c)(7) fund.

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person" as defined in Rule 4.7(a)(2) means any person, acting for its own account or for the account of a qualified eligible person, who the CPO reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, is *inter alia* a "qualified purchaser" as defined in Section 2(a)(51)(A) of the Company Act. See Proposed Rule 4.13(a)(4)(A). Under such conditions for registration relief, a commodity pool would be structured as a 3(c)(7) fund because Section 3(c)(7) of the Company Act imposes the requirement that persons acquiring securities of an investment company exempt from registration with the Securities and Exchange Commission are "qualified purchasers" at the time of acquisition of such securities of a non-public offering. See Section 3(c)(7)(A) of the Company Act.

We appreciate the time the Commission has given to consider our views. If you wish to discuss our comments and suggestions further whether by phone or in person, please feel free to contact Michael G. Tannenbaum, Esq. At (212) 508-6701 or via e-mail at tannenbaum@tanhelp.com, Ricardo W. Davidovich, Esq. at (212) 508-6710 or via e-mail at davidovich@tanhelp.com or Roderick J. Cruz, Esq. at (212) 702-3149 or via e-mail at cruz@tanhelp.com.

Respectfully yours,

Tannenbaum Helpern
Syracuse & Hirschtritt LLP