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COMMENT

May 1, 2003

RECORDS SECTION

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Via E-mail

Ms. Jean A. Webb,
Secretary,
Commodity Futures Trading Commission,
Three Lafayette Centre,
1155 21st Street, N.W.,
Washington, DC 20581.

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

Dear Ms. Webb:

We are pleased to submit this letter in response to the Commission's request for comments on its proposed rules for CPO and CTA registration and other regulatory relief, published on March 17, 2003 at 68 Federal Register 12622.

As we noted in our letter to the Commission dated January 23, 2003 regarding the Advance Notice of Proposed Rulemaking (67 Fed. Reg. 68785 (Nov. 13, 2002)), our clients include onshore and offshore private investment funds, mutual funds and closed-end investment companies registered under the Investment Company Act of 1940 and other collective investment vehicles, many of which are marketed only to highly sophisticated and/or experienced investors. We also represent the advisors of these vehicles. Our experience has been that many clients have refrained from trading in the commodity interest markets because of the perceived burden of CPO or CTA registration.

We support the adoption of the proposed rules. We generally support the Commission's efforts to modernize the regulatory scheme applicable to participants in the commodity interest markets, and we commend the Commission for recognizing that certain of the current requirements could be revised without sacrificing necessary and appropriate investor protections.

The proposed rules provide regulatory relief for the operators of a variety of investment vehicles that do not require the extensive regulation currently required under the Commission's rules, either because the vehicles are otherwise regulated, are composed of only sophisticated investors or would engage in very limited commodity interest trading. These considerations support the proposed CTA registration relief as well. We believe the proposed rules will encourage and facilitate participation in the commodity interest markets, as the Commission intends. We endorse the adoption of the rules as proposed.

Funds of Funds

Proposed Rule 4.13(a)(3)

The Commission requested comment on how funds of funds should be treated in the context of CPO registration and the exemptions afforded under Rule 4.13. In our view, the CPO of a fund of funds (an "Investor Fund") should be eligible for the relief from CPO registration provided in Rule 4.13(a)(3) if the following conditions are met:

- the CPO of each fund in which the Investor Fund invests (each, an "Investee Fund") either:
 - has claimed registration relief in accordance with Rule 4.13(a)(3) and represents to the Investor Fund CPO that it operates the Investee Fund in compliance with the commodity interest trading restrictions of Rule 4.13(a)(3), or
 - is registered as a CPO and represents to the Investor Fund CPO that it operates the Investee Fund in compliance with the commodity interest trading restrictions of Rule 4.13(a)(3),
- the portion of the Investor Fund that is used to directly trade commodity interests (if any) complies with one of the Rule 4.13(a)(3)(i) tests, and
- the Investor Fund meets the criteria of Rule 4.13(a)(3)(ii) and (iii).

The Investor Fund should be able to invest simultaneously in Investee Funds that use different trading limitation tests from one another to comply with Rule 4.13(a)(3) (*i.e.*, the Rule 4.13(a)(3)(i)(A) test or the 4.13(a)(3)(i)(B) test). Similarly, an

Investor Fund should be able to comply with the Rule by meeting either test irrespective of the test or tests the Investee Funds use.

Proposed Rule 4.13(a)(4)

A fund organized and operated outside the United States may include non-U.S. investors and a limited number of U.S. investors. If such a fund was comprised solely of non-U.S. investors, its operator and advisor would not be subject to registration with the Commission. We believe that such a fund should be able to rely on proposed Rule 4.13(a)(4) if all of the U.S. investors satisfy the criteria set forth in that proposed Rule, regardless of whether the non-U.S. investors satisfy these criteria. Accordingly, we request that the Commission confirm this point in the final rules or in the accompanying release.

Proposed Rule 4.5

It is our understanding that if the proposed amendment to Rule 4.5 is adopted, operators of Investor Funds that are excluded from the definition of the term "commodity pool operator" with respect to their operation of qualifying entities pursuant to Rule 4.5 could invest in any type of Investee Funds (including commodity pools that engage in unlimited commodity interest trading). This is consistent with the proposed treatment of operators of Rule 4.5-qualifying entities since those persons and entities would not need to satisfy any commodity interest trading criteria to qualify for exclusion from the definition of CPO under Rule 4.5 (as proposed to be amended). We request that the Commission confirm this understanding in the release accompanying the final rules.

* * *

We appreciate the opportunity to comment to the Commission on the proposed rules and we would be pleased to discuss any questions the Commission may have with respect to this letter. Any questions about this letter may be directed to Kenneth M. Raisler (212-558-4675).

Sincerely,

Sullivan & Cromwell LLP

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