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VIA ELECTRONIC MAIL: Secretary@CFTC.gov

April 30, 2003

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

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Re: Additional Registration and Other Regulatory Relief for CPOs and CTAs
(68 FR 12622, March 17, 2003)

Dear Ms. Webb:

Dechert LLP respectfully submits this comment letter to the Commodity Futures Trading Commission (the "CFTC") in response to its request for comments on proposed rules and rule amendments concerning commodity pool operators (CPOs) and commodity trading advisors (CTAs) (the "Proposed Rules"), which were published in the Federal Register on March 17, 2003 (68 Fed. Reg. 12622).

Dechert LLP is an international law firm that represents many investment managers that will benefit from the relief afforded by the Proposed Rules.

Dechert LLP strongly supports the Proposed Rules and believes the CFTC's adoption of the Proposed Rules as final rules will allow many new entrants into investment management activity involving futures transactions while maintaining an appropriate level of customer protection. As a result of enhanced pool operator participation, the commodity interests market overall will progress and grow stronger.

We represent many managers of unregistered funds that invest primarily in securities, but who would like to use futures both for hedging purposes and on an opportunistic basis for speculative purposes. Currently, many of these managers invest in options and other derivative products that are not subject to CFTC regulation. The Proposed Rules will facilitate the ability of these managers to use futures products, providing greater depth and liquidity to the market.

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In other cases, managers have registered, but because the use of futures products by these managers is sporadic and incidental, the costs and regulatory burdens associated with registration, outweigh any benefits derived. The Proposed Rules will result in significant cost savings for these managers.

Furthermore, another result of the current CFTC registration requirements is to prevent non-US managers from permitting US persons into offshore funds, notwithstanding consideration of the sophistication or net worth of such US-investors. The Proposed Rules will permit US investors a greater range of investment opportunities by opening up some of these offshore funds to US persons.

The CFTC also continues to provide temporary no-action relief, exempting a CPO from registration if certain criteria are met.¹ Dechert LLP approves of the modification of the Proposed Rules to conform to the standards set forth in the temporary no-action relief.

In the Proposed Rules, the CFTC clarifies the application of temporary no-action relief to the operators of "fund-of-funds." The CPO of a fund-of-funds may claim the no-action relief if (i) the CPO of each of the investee funds into which the fund-of-funds invests has registered with the CFTC as a CPO or has claimed no-action relief with respect to that investee fund; and (ii) regardless of the exempt status of the CPO, the investee fund represents that it is operated in compliance with the requirements for no-action relief (i.e., the proposed two percent test or fifty percent notional value standard).

We commend the CFTC for easing the "direct knowledge of" and "immediate access to" requirement with respect to the notional value of the commodity interest positions of each investee fund. However, we still believe that the approach being taken in the case of a fund-of-funds is too narrow, as it only affords CPOs of fund-of-funds no-action relief if the CPOs of each of the investee funds abide by the

¹ Commodity Pool Operators and Commodity Trading Advisors; Exemption from Requirement to Register for CPOs of Certain Pools and CTAs Advising Such Pools, 67 Fed. Reg. 68785 (Nov. 13, 2002). According to this release, a CPO can claim temporary no-action relief if (1) participation in the pool is restricted to accredited investors, knowledgeable persons or foreign persons; and (2) the aggregate net notional value of the pool's commodity interest trading does not exceed fifty percent of the liquidation value of the portfolio. *Id.* In addition to the fifty percent notional value test, the temporary no-action relief can now also be claimed by a pool whose aggregate initial margin and premiums to establish commodity interest positions does not exceed two percent of the liquidation value of its portfolio.

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percentage limitations set forth in the rule. Instead, we submit that provided that the fund-of-funds does not directly trade futures, the test should be applied at the fund-of-funds level. In other words, if on an overall portfolio basis the fund-of-funds meets the two percent test or fifty percent notional value standard when taking into consideration all of the underlying investee funds, then the pool operator of the fund-of-funds should be able to claim the no-action relief regardless of whether each underlying investee fund agrees to limit its futures trading activities.

Dechert LLP appreciates the opportunity to comment on the Proposed Rules and stands ready to assist the CFTC and its staff if further clarification is required on any of the points raised in this letter. If we can be of any further assistance in this regard, please do not hesitate to contact George Mazin at 212.698.3570 or Susan Ervin at 202.261.3325.

Sincerely yours,

/s/ George Mazin
George Mazin, Esq.

cc: Susan Ervin, Esq.