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CFTC

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April 29, 1998

**COMMENT**

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

COMMODITY FUTURES  
TRADING COMMISSION  
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Re: Two Part Disclosure Document for Commodity Pools: 63 FR 15112

Dear Ms. Webb:

We appreciate the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") Federal Register release (the "Release") publishing proposed rule amendments to its regulations to implement the National Futures Association's ("NFA") proposed Compliance Rule 2-35 regarding adoption of a two part disclosure document format for public pool documents. We applaud the Commission for its efforts to continue to advance initiatives that would improve the products and services the futures industry provides to investors and the initiative reflected by this Release may be an important step in reducing the cost and enhancing disclosure to investors.

As a member of the private bar with a financial services practice representing commodity pool operators, commodity trading advisors, investment advisers, hedge funds and other private domestic and international offerings and having focused my work in this field for seventeen years, my experience provides me with a background and my clients have a vital interest in the proposed rule amendments. In addition, as an active member of the NFA's Special Committee for the Review of CTA/CPO Disclosure Issues which played a major role in shaping the NFA's proposal, I am aware of the considerable time, research and effort expended by NFA staff as well as committee members in considering the most effective means of providing clear, concise and understandable disclosure to investors.

The industry as a whole has a vital interest in producing the most cost effective, concise and clear disclosure possible to potential investors. However, through the years, as a result of differing requirements of the Securities and Exchange Commission, the Commodity Futures Trading Commission, the blue sky administrators and issuer's counsel, public pool disclosure documents have become so voluminous in size with technical and redundant language that it is unlikely that many investors, if any, even read a portion of the document, much less the entire document prior, or even subsequent to making an investment. Rather, daunted by the size and incomprehensible mass of information, many investors simply rely on whatever representations are made to them by persons involved in the solicitation process. At the same time, there is useful information in the documents in which some investors may have an interest, especially if the information was readily identifiable, clearly communicated and appropriately labeled. However, even for these investors, the information will be of varying degrees of interest according to their particular sophistication and interests. The adoption of a "plain english" guideline in conjunction with bifurcation of the document into two parts is an essential step to providing clear, concise and cost effective disclosure to investors. By segregating the document into two parts, the first of which concisely presents material information and the second part of which may contain material

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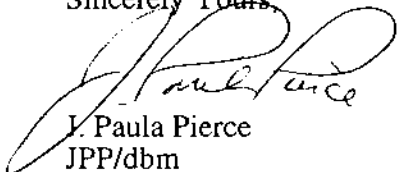
agreements, support tables and other information expanding on information summarized or disclosures made in the first part of the document, a potential investor is able to easily find the material points of the offering. For the bifurcation to be also cost efficient to investors, the second part should only be required to be made available upon request or even upon receipt of a subscription, a process that would significantly narrow the field to the number of recipients and ensure that the expense incurred by a pool in distributing such information is only incurred on behalf of serious investors. What issuers save on printing and distribution costs in the typical pool structure, is a cost savings ultimately passed on to the investor.

The second step is coordination between the regulators so that registrants are not faced with conflicting and redundant requirements and are saved the cost of attempting to negotiate the language preferences of the different regulators to obtain document clearance. In the process of finalizing the proposed rule changes, it would be most productive if the CFTC could obtain SEC agreement to the prescribed format including an understanding that the SEC review should focus only on securities law matters and defer to the CFTC regarding specific disclosure requirements and otherwise agree on a process that would streamline document review. In this regard, we continue to support CFTC delegation of the review process for public pools to the NFA.

We appreciate the need for the CFTC and SEC to agree on the material elements that should be contained in Part I of the document. In this regard, we are aware of the time consuming process by which the NFA arrived at its recommendation by exploring the CFTC requirements for pool documents and the SEC requirements for not only pools but also for mutual funds which currently utilize the two part format. We believe as recommended, the NFA proposal for the two part document for public pools is sound and would achieve the objectives of clear, concise and cost effective disclosure. However, we do not believe identification of material information and the requirement that it be contained in the first part of the document, a requirement we support, necessarily requires that the order in which that information appears in the first part of the document be mandated. Rather, we support the view that the issuer should have flexibility in determining the sequence of appearance of material items. Accordingly, we support the proposed CFTC rule changes, including those that relate to moving certain performance information into the second part of the document as this is frequently adds length to the document without any real benefit as the information is summarized by the information contained in the required performance summaries.

While we understand the SEC will ultimately need to agree to the format for commodity pool disclosure, we encourage implementation of the NFA's proposed rules to reflect the CFTC's and NFA's strong commitment to clear, concise and cost efficient disclosure. We also encourage the CFTC to aggressively seek SEC support of two part disclosure for pool documents without the requirement that such documents be bound together, consistent with the SEC's new focus on clear, concise and plain english disclosure.

Sincerely Yours,



J. Paula Pierce  
JPP/dbm

By Facsimile and By Mail