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COMMENT

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April 28, 1998

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

COMMODITY FUTURES
TRADING COMMISSION
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Re: Two-Part Documents for Commodity Pools

Dear Ms. Webb:

The Committee on Futures Regulation of the Association of the Bar of the City of New York (the "Committee") respectfully submits this comment letter to the Commodity Futures Trading Commission (the "Commission") in response to the Commission's request for comments, in its notice published on March 30, 1998 in the Federal Register (the "Notice"), with respect to the Commission's review of National Futures Association ("NFA") proposed Compliance Rule 2-35 (the "Rule") and the related Interpretive Notice regarding commodity pool disclosure documents. The Association of the Bar is an organization of over 21,000 lawyers. While most of the members practice in the New York area, the Association has members in 48 states and 51 countries. The Committee, which is comprised of attorneys knowledgeable in the field of futures and over-the counter derivatives regulation, has a long history of commenting with respect to critical regulatory issues which affect the futures industry and related activities. The Committee appreciates the Commission's desire to receive commentary from market participants with respect to the Rule before modifying Commission rules affected thereby.

While the Committee very much supports the concept of a two part Disclosure Document for public and private commodity pools (and applauds the NFA for its work in formulating the Rule), the Committee believes that two significant issues should be addressed in connection with the adoption of (i) the Rule and (ii) any modification of Commission rules required thereby.

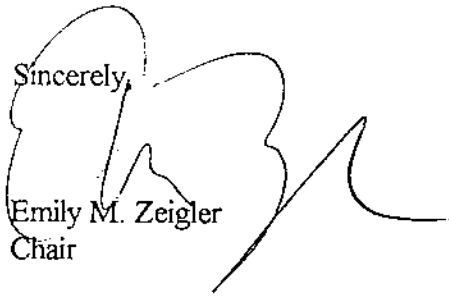
First, the Rule, as adopted in final form, should be flexible enough with respect to sequencing, "Plain English" and other requirements (particularly those requirements applicable to the Disclosure Document, but also in respect of the presentation of information in the Statement of Additional Information) in order to accommodate regulatory requirements imposed by the Securities and Exchange Commission (the "SEC"), state securities law administrators and other regulatory bodies with jurisdiction, now or in the future, over pool sponsors or offerings of pool interests. The Committee notes that SEC disclosure requirements for publicly offered securities, including commodity

pools, are indirectly applicable to private pools offered to unaccredited investors.¹ Accordingly, the Committee recommends that the Commission, through its staff, coordinate with the SEC regarding the use of a two-part Disclosure Document in respect of public commodity pool offerings generally, as well as with regard to any specific sequencing and "Plain English" requirements, prior to finalization of the Rule and adoption of any amendments to Commission Rules.

Second, the Rule, as adopted in final form, should not require particular information to be excluded from the Disclosure Document. As the Commission is no doubt aware, commodity pools are far from uniform in respect of their material terms (e.g., structures include total and partial principal assurance pools, including both sponsor and third-party credit enhancement, single advisor and multiple advisor pools, specialized "sector" and broadly diversified pools, etc.). The Committee believes that the Rule should provide the discretion to pool operators to include in the Disclosure Document certain information that might, in many cases, be more appropriate for inclusion in the Statement of Additional Information. In addition, the Committee notes that the Limited Partnership Agreement (or other agreement entered into by pool participants) is not required by Rule 4.21 to be in a Disclosure Document. Nonetheless, most attorneys would advise their clients to include this agreement. Attorneys and accountants should be able to counsel their clients with respect to the information which ought to be presented in the Disclosure Document under the particular facts and circumstances relating to the pool being offered.

The Committee respectfully requests that the Commission take these comments into consideration as it reviews the Rule and any amendments to its rules required in connection with the adoption thereof.

Sincerely,



Emily M. Zeigler
Chair

¹See SEC Rule 502(b)

**Association of the Bar the City of New York
Committee on Futures Regulations**

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Rita M. Molesworth, Secretary**

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Lan Cao (intern)

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- * Members of CPO/CTA Subcommittee who drafted this letter of comments.
** Chair of Subcommittee.
Mr. Hickson did not participate in the comment letter.