September 12, 2002

Statement of Jack Rigney For September 19, 2002 CFTC Roundtable

I am a partner of the New York law firm of Seward & Kissel LLP and practice in its Investment Management group, where I have spent my entire career. For several years, we have been involved in advising our clients on CFTC regulatory matters applicable to commodity pool operators and commodity trading advisors.

Seward & Kissel represents numerous private investment partnerships and related offshore funds managed by U.S. investment managers. These funds invest primarily in securities (generally equity securities) and typically invest in commodity futures contracts to a very limited degree. Generally, these funds limit commodity futures trades to financial futures transactions. Under current CFTC Regulations, the managers of these funds are generally required to register with the CFTC as commodity pool operators.

I expect to address issues presented at the Roundtable that are relevant to the types of investment funds described in the preceding paragraph. In particular, I expect to discuss the following three matters:

1. Proposed CFTC Regulation 4.9
   We are supportive of proposed Rule 4.9 as proposed by the Managed Futures Association. This proposal would provide an exemption for registration as a commodity pool operator for operators of pools that are privately offered and sold only to sophisticated investors (investors who are accredited investors and "qualified eligible persons" under CFTC Regulation 4.7). Alternatively, we would suggest that an exemption from commodity pool operator registration be made available to operators of privately offered pools whose investments are primarily securities, but who may invest in financial futures contracts to a limited degree or in a manner that is incidental to the pool's securities transactions. The adoption of proposed Rule 4.9 (or a similar rule) would be a major step in harmonizing the federal securities and commodity futures regulations applicable to private investment funds.

2. Counting of Investment Funds For Purposes of Determining 15 or Fewer Client Exemption For Commodity Trading Advisors
   We propose that the CFTC adopt the approach of the Securities and Exchange Commission (specifically the treatment afforded by Rule 203(b)3-1 under the Investment Advisers Act of 1940) in counting a pooled investment entity as one client for purposes of applying the 15 or fewer client exemption from registration as a commodity trading advisor (Section 4m(1) of the Commodity Exchange Act). The CFTC's current position (to "look through" a pooled investment entity to count each client separately) is not contained in any regulation and is not well-

understood in the industry. The adoption of the approach suggested would harmonize federal securities and commodity futures regulations on this issue.

3. Funds of Funds

We propose that the CFTC reconsider its position with respect to funds of funds. We believe that a fund of funds that may invest in unaffiliated commodity pools (or with unaffiliated commodity trading advisors) should not be deemed to be a commodity pool itself because we do not believe that the "operator" of that fund of funds is operating "for the purpose" of trading in commodity interests, which is a necessary element to determine commodity pool status. Because the operators of funds of funds are not directly transacting in commodity futures, it would seem that no useful purpose is served by causing them to become registered with the CFTC.

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