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To Our Clients and Other Friends:

Re: Commodity Futures Trading Commission ("CFTC") No-Action Relief

An investment adviser that invests even a negligible portion of its managed assets in futures or other commodity interests generally has been required to register with the CFTC as a commodity pool operator (a "CPO") or as a commodity trading adviser (a "CTA"). The compliance burden associated with CFTC registration has deterred many investment advisers from trading commodity interests. Over the past several years, many industry groups, including some in which our firm has participated, have urged the CFTC to create an exemption from CPO and CTA registration for advisers that trade small portions of their managed assets in commodity interests.

On November 6, 2002, the CFTC announced that it is considering two proposals for new exemptions from CPO and CTA registration.<sup>1</sup> The proposals would exempt from CPO and CTA registration (a) investment advisers managing investment funds that admit only accredited investors and commit only a limited amount of fund assets to investments in commodity interests, and (b) investment advisers that admit into their funds only "qualified eligible persons" as defined in Rule 4.7 under the Commodity Exchange Act and certain accredited investors (in this case, those funds would be able to invest any amounts in commodity interests).

While the CFTC considers the proposals, it is providing temporary relief from CPO and CTA registration ("No-Action Relief"). The No-Action Relief is available immediately. It exempts an investment adviser that manages investment funds that invest in commodity interests from CPO and CTA registration if (a) the adviser restricts participation in its funds to accredited investors, non-United States persons, "knowledgeable employees" as defined in Rule 3c-5 under the Investment Company Act of 1940, and certain principals and knowledgeable employees of the adviser, and (b) the aggregate notional value of each fund's commodity interest positions does not exceed 50% of the liquidation value of that fund's portfolio.

<sup>1</sup> The full text of the CFTC release is available at <http://www.cftc.gov/files/opa/press02/opa17cfrpart4.pdf>.

The No-Action Relief applies only with respect to investment funds. It does not apply to separately managed accounts. An investment adviser may not rely on the No-Action Relief until it files a claim with the CFTC and makes certain disclosures to prospective and existing fund participants. If the final rule adopted by the CFTC differs from the No-Action Relief, any adviser relying on the No-Action Relief will be required to comply with the new rule (which will also likely require regulatory filings and specific disclosures) to continue being exempt from registration.

Investment advisers that desire to take advantage of the No-Action Relief with respect to existing investment funds must first ensure that their fund documents grant the adviser authority to trade commodity interests. If an amendment is required, it will likely require the consent of the fund's existing investors.

If you have any questions regarding these proposals or the No-Action Relief, please contact Douglas Hammer, John Broadhurst, Carolyn Gorman, Geoff Haynes, Christopher Rupright, Carolyn Reiser, John Milani, Joan Grant, Ellyn Roberts, Neil Koren, Anthony Caldwell, Latisha Brown, James Frolik, Hannah Dunn or Christina Mickelson.

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