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August 19, 2003

Re: Commodity Futures Trading Commission ("CFTC") -- Registration Relief

To Our Clients and Other Friends:

On August 4, 2003, the CFTC adopted new rules providing relief from registration as a Commodity Pool Operator ("CPO") or Commodity Trading Adviser ("CTA"). The full text of the CFTC adopting release is available at http://www.cftc.gov/files/opa/opareg_bsg_cpo-cta_part_4_rulemaking_final.pdf. These new rules supercede the temporary no-action relief described in our letter of November 19, 2002.

Exemptions from CPO Registration. The rules add two new CPO registration exemptions, both of which are intended to allow investment advisers of hedge funds to invest in commodity interests. One exemption is based on a hedge fund's limited commodity interest trading and the other is based on the sophistication of a fund's investors.

The operator of a privately offered fund is eligible for the new limited trading exemption from CPO registration if (1) all investors in the fund are accredited investors or knowledgeable employees and principals of the pool's operator, and (2) either the fund commits no more than five percent of its assets to establish commodity interest positions, or the aggregate net notional value of the fund's commodity interest positions does not exceed the fund's liquidation value.

Alternatively, the operator of a privately offered fund may rely on the new sophisticated participant exemption from CPO registration. This exemption requires that all natural person investors in the fund be "qualified purchasers" as defined in the Investment Company Act of 1940, as amended, certain securities professionals, knowledgeable employees, or other principals and family members of the pool's operator, and all institutional and entity investors in the fund be either accredited investors or "qualified eligible participants" as defined in CFTC rules. This exemption imposes no limits on the fund's investments in commodity interests.

A person claiming either exemption must provide each prospective investor in the fund with written disclosure about the exemption and file a notice with the National Futures Association claiming the exemption.

The rules clarify how a fund of funds may use the new limited trading exemption. For example, the operator of a fund of funds can claim relief from CPO registration if the fund of funds does not trade commodity interests directly and allocates no more than half of its assets to investee funds that trade commodity interests (regardless of the amount of commodity interest trading by those investee funds).

Exemptions from CTA Registration. The rules provide parallel exemptions from CTA registration for an adviser to a hedge fund that qualifies for either of the new CPO exemptions. The rules also expand the existing exemption from CTA registration under section 4m(1) of the Commodity Exchange Act, which exempts from CTA registration an adviser that during the preceding twelve months did not provide commodity trading advice to more than fifteen persons or hold itself out to the public as a CTA. Previously, the CFTC counted each investor in a hedge fund towards the fifteen-person limit. The rules specify that, consistent with SEC interpretations under the Investment Advisers Act of 1940, a hedge fund and certain other legal entities each count as a single person for the purpose of the fifteen-person limit.

Effect on Prior Claimants. A person who previously claimed relief from CPO or CTA registration under the temporary no-action procedure described in our November 19, 2002, letter does not need to re-file its claim to maintain that relief. In addition, where the person continues to comply with the trading limitations applicable to the previously claimed relief, the person does not need to take any other action to take advantage of the new exemptions.

Amendments to Rule 4.5. Rule 4.5 excludes mutual funds, banks, insurance companies, and fiduciaries, trustees and sponsors of ERISA plans from the definition of CPO with respect to certain accounts that they manage, if certain requirements are met, including limitations on the amount of the accounts' commodity interest trading and prohibitions on marketing. The rules broaden this exclusion by eliminating the trading and marketing restrictions.

This letter only briefly summarizes the highlights of the new rules, which are complex and subject to interpretation. If you have any questions regarding the new rules, 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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