Salient

March 25, 2016

Mr. Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

RE: Comments on SEC Proposal File Number S7-24-15 (*Use of Derivatives by Registered Investment Companies and Business development Companies*)

Dear Mr. Fields:

I. Introduction and Summary

Salient Partners, L.P. and its subsidiaries ("Salient") provide asset management and advisory services and have assets under management of $12.7 billion as of December 31, 2015. We invest on behalf of our clients across a broad spectrum of traditional and alternative investments. We manage registered open-end funds and closed-end funds, as well as private funds and commodity pools and also provide clients separately managed accounts. We offer our investment services to retail investors, institutional investors, family offices and high net worth individuals. The unifying elements of our approach are an emphasis on risk management, employing a research-driven investment process, and a focus on cost-efficient investment implementations. We believe that our clients should be compensated for the risks they take and the fees and expenses they incur. We are committed to helping our clients achieve their financial objectives.

We thank the Commission for this opportunity to comment on S7-24-15 (the "Proposal"). We strongly support the stated objectives of the Proposal, namely, "to address the investor protection purposes and concerns underlying section 18 and to provide an updated and more comprehensive approach to the regulation of funds' use of derivatives transactions and other transactions that implicate section 18 in light of the dramatic growth in volume and complexity of the derivatives markets over the past two decades and the increased use of derivatives by certain funds."

In the context of such general support, however, we wish to note significant concerns with respect to the Proposal, specifically regarding investment companies using a managed futures strategy (as well as similar types of investment companies that use derivatives, including currency and commodities strategy investment companies). In particular, we believe that the Proposal's overly prescriptive limits ultimately would materially damage the ability of retail investors to manage risk in their investment portfolios by, in practical effect, removing access to diversifying investment strategies through elimination of an entire category of existing investment companies. This will have the undesirable effect of increasing risks for such investors because any alternatives available differ significantly and present greater risks.

A superior approach to the Proposal would focus on measuring and monitoring fund downside risk (risk of loss) in conjunction with a risk-based margining requirement that assures adequate asset coverage of derivatives positons. Managed futures and similar investment companies have existed for a significant amount of time without cited operational or regulatory problems. However, the Proposal would in practice eliminate retail investors' ability to access such risk diversifying investment strategies by eliminating these entire categories of investment companies.

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As detailed below, we believe the Commission has articulated no appropriate basis under the Investment Company Act of 1940 (the "1940 Act") or the requirements for rulemaking to, in effect, limit investment in managed futures strategies and similar strategies to high net worth investors and institutions. Indeed, as we discuss below in response to a request for comment, there are no investment vehicles equivalent to investment companies available to retail investors for these strategies. We firmly believe there is no basis to restrict investment access to such diversifying investment strategies only to high net worth investors and institutions.

II. Need for a Principles-Based Approach as Opposed to the Overly-Prescriptive Limits in the Proposal, Which Ultimately Will Harm Investors by Limiting Investors' Ability to Diversify Effectively.

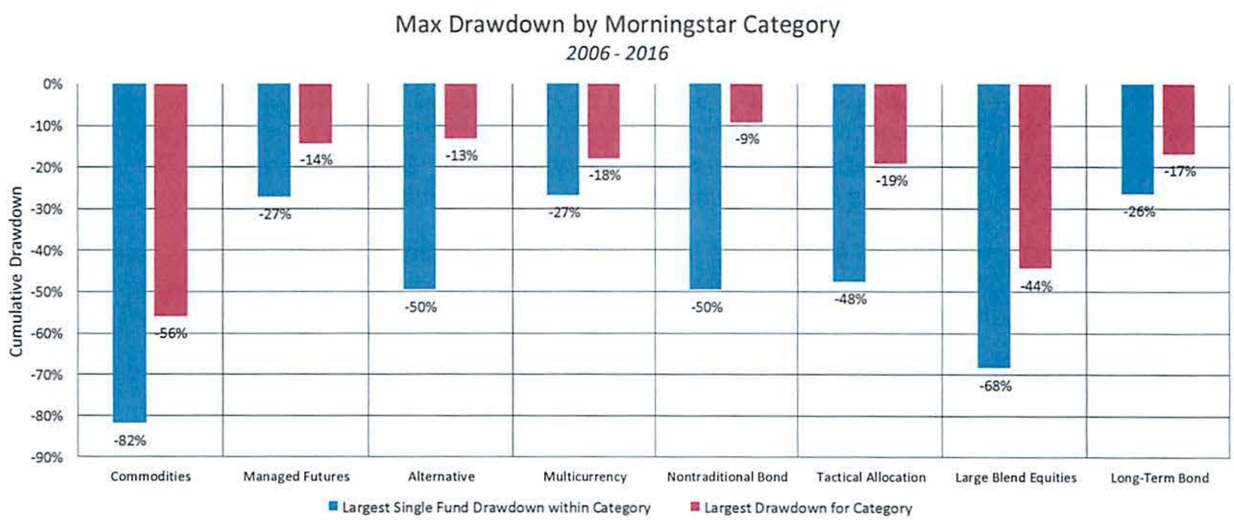
We agree with the Commission's observation that, as the size and scope of the derivatives market expanded and investment companies increased their use of derivatives, the previous guidance with respect to the meaning of segregated accounts as well as the issuance of no action letters in association with Investment Company Act Release 10666 ("Release 10666") and section 18 of the 1940 Act has evolved in a manner that has led to inconsistent applications of these rules and the lack of a uniform standard. The Commission observed that, "Under the current approach, different funds may treat the same kind of derivative differently, based on their own application of our staff's guidance and observation of industry practice, which at least one commenter noted 'may unfairly disadvantage some funds.'"

The use of both exchange traded and over-the-counter derivatives by registered investment companies ("funds") introduces various potential risks to fund shareholders and to the purchasers of senior securities, including Congressional concerns identified in section 1(b) of the 1940 Act, which include, as identified by the SEC, "(1) excessive borrowing and the issuance of excessive amounts of senior securities by funds which increased unduly the speculative character of their junior securities; (2) funds operating without adequate assets and reserves; and (3) potential abuse of the purchasers of senior securities." Accordingly, we believe it is in the best interest of all stakeholders to address those risks in a direct but comprehensive manner that extends beyond the current Proposal.

As the Commission acknowledged, the Proposal's prescriptive approach to limitations on derivatives usage would have the likely effect, possibly unprecedented on such a scale, of eliminating certain types of investment companies. In light of this, we believe a different approach is needed. Specifically, as a number of other commenters have already asserted, we agree that a more comprehensive, principles-based approach would prevent individual managers from attempting to circumvent the intent of the proposed rule through a structure that had not been contemplated or by inappropriately speculating with fund assets while remaining within the parameters of the proposed rule. Further, we recognize that the single most prevalent systematic risk that permeates investor portfolios is the risk associated with the returns of the global equity market. The application of certain derivative strategies allows managers to create portfolios with lower correlation to equity markets but managed to a volatility target that can complement or offset the risk of equity market declines. According to Morningstar data, many of the fund categories that the Commission identified as more extensive users of derivative instruments offer significant diversification benefits with respect to publicly traded equity markets and often have historically managed downside risk better than traditional funds that don't use derivative instruments.

The following chart (FIGURE 1) displays the worst drawdowns for eight Morningstar categories (two traditional and six alternative categories) along with the largest individual fund drawdown (as the term is defined below) within each category. We find it interesting that, outside of commodity funds, the "Large Blend Equities" category represents both the worst individual fund drawdown as well as the worst category drawdown in relation to the other seven categories. Furthermore, despite the "Managed Futures" category's greater use of derivative instruments (as noted in the Division of Economic Risk Analysis' ("DERA") white paper[1]), we find that the realized downside risk is significantly less than the more traditional Large Blend Equities category and is virtually no greater than the other alternative strategies that are less reliant on derivative instruments. In fact, we find that the average correlation between the leverage levels cited in the DERA paper and the drawdowns we observed using Morningstar data ranges from -0.5 based on the worst fund drawdown in each fund category to -0.3 based on the drawdown of the entire fund category itself. Stated another way, *those funds that had the greatest derivative notional exposure, as cited in the DERA paper, tended to have* lower *drawdowns.* Conversely, those funds that had the lowest derivative notional exposure also tended to have the highest drawdowns amongst the categories.

FIGURE 1



Source: Morningstar (March 2006 – February 2016)

Notes: The dataset for this analysis uses all US Open End Funds found in Morningstar universe, filtered for funds that are at least one year old and that are at least $25 million in size. The analysis relies on the Morningstar categorization scheme and utilizes monthly data. A drawdown is defined as the peak to trough total return loss of the fund. The "Largest Single Fund Drawdown within Category" refers to the maximum drawdown of any fund in the filtered category. The 'Largest Drawdown for Category' refers to the average of each fund's maximum drawdown.

Furthermore, as displayed in the table below (FIGURE 2), Managed Futures have the lowest correlation (as defined below) to the other five alternative fund categories as well as the lowest correlation to both the Large Blend Equities and Long-Term Bond categories, which makes them an important source of diversification for asset allocation and portfolio construction purposes.

[1] Deli, Daniel; Hanouna, Paul Hanouna; Stahel, Christof W.; Tang, Yue and Yost, William. United States. Division of Economic Risk Analysis. *Use of Derivatives by Registered Investment Companies.* Washington D.C. December 7, 2015.

Correlation by Morningstar Category
2006 - 2016

	Commodities	Managed Futures	Alternative	Multicurrency	Nontraditional Bond	Tactical Allocation	Large Blend Equities	Long-Term Bond
Commodities	1.00	(0.12)	0.64	0.66	0.13	0.63	0.55	0.13
Managed Futures	(0.12)	1.00	(0.06)	(0.10)	(0.11)	(0.09)	(0.12)	(0.11)
Alternative	0.64	(0.06)	1.00	0.68	0.40	0.96	0.93	0.40
Multicurrency	0.66	(0.10)	0.68	1.00	0.40	0.74	0.60	0.40
Nontraditional Bond	0.13	(0.11)	0.40	0.40	1.00	0.47	0.24	1.00
Tactical Allocation	0.63	(0.09)	0.96	0.74	0.47	1.00	0.93	0.47
Large Blend Equities	0.55	(0.12)	0.93	0.60	0.24	0.93	1.00	0.24
Long-Term Bond	0.13	(0.11)	0.40	0.40	1.00	0.47	0.24	1.00

Source: Morningstar (March 2006 – February 2016)

Note: The dataset for this analysis uses all US Open End Funds found in the Morningstar universe, filtered for funds that are at least one year old and that are at least $25 million in size. The analysis relies on the Morningstar categorization scheme and utilizes monthly data. Correlation refers to the linear correlation of the average returns of all the funds in a category with that of other categories.

Based on these observations we find that the standalone risk of Managed Futures funds in particular, as well as that of other alternative investment strategies that rely on the greater use of derivatives more generally, is no higher than that of traditional equity or fixed income strategies. Further, the lower correlation of these strategies to more traditional equity and interest rate risk represents a meaningful source of diversification for investors that reduces both the likelihood and severity of portfolio drawdowns.

Recommendations for Changes in the Overall Approach of the Proposal to Derivatives Use by Funds

We do not believe that the Proposal's use of notional amounts as the basis for calculating a fund's exposure under derivatives transaction is appropriate nor do we agree with the use of notional limits as a proxy for the risk introduced by senior securities transactions. The conceptual underpinnings of the 150% asset coverage for senior obligations prescribed in section 18 and Release 10666 are not comparable to the 150% notional exposure limit included in the Proposal. We believe that a better construction of the proposed rule would be based on limiting total fund risk, inclusive of all instruments, derivative and non-derivative alike, and standardized margining requirements, based on the risk of individual instruments, for asset coverage purposes.

We therefore recommend that the SEC develop a more comprehensive approach that contemplates the following risk parameters:

1. Rely upon Standardized Measures of Risk. We believe that the application of a standardized measure of downside risk or loss would be superior to the application of discrete notional limits. Those downside risk or loss estimates should be complemented with standardized stress testing of critical risk factors such as liquidity, volatility, yield curve shifts, sector movements, changes in the price of the underlying reference security or asset, etc.

   We believe these more comprehensive measures of risk better address the Commission's stated objectives while providing the public access to important tools that can help diversify the equity risk that dominates most investors' portfolios. In conjunction with these more comprehensive measures of risk, we recommend the Commission remove all references to notional value limits.

2. Standardize Asset Coverage. In our opinion, most of the intended objectives of Release 10666 would be accomplished through a standardized, risk-based asset coverage framework where the amount of segregated, unencumbered assets required to be set aside/earmarked to support a particular derivative holding would be based upon the risk of the derivative contract itself. This framework is consistent with the approach taken by other regulatory agencies, self-regulatory organizations, exchanges and derivative clearinghouses. The required amount of segregated, unencumbered assets required to support the derivative instrument would be based on the volatility of the instrument and the quality/liquidity of the coverage asset itself.

   This approach is superior to notional limits due to its explicit focus on the volatility of the instrument as well as the liquidity of the coverage asset/collateral. This approach not only reduces risk to fund shareholders but also reduces systemic risk as each counterparty participant would be required to post a standardized coverage/collateral amount, helping to ensure that the entirety of the derivative marketplace is adequately collateralized.

3. Ensure adequate infrastructure and personnel expertise. We believe the fund industry would greatly benefit from a certification program that ensures that each market participant maintain a working knowledge of both market and operational risk factors affecting derivatives in addition to the regulatory requirements for managing those instruments.

4. Evaluate risk at a fund level. We believe the Proposal's second portfolio limitation (the "risk-based portfolio limit") requirement—to reduce market risk through the use of derivatives in order to obtain exposure in excess of that permitted under the exposure-based portfolio limit—is unnecessarily cumbersome. Instead of examining the marginal impact of the derivative allocation on portfolio risk, we strongly believe that a comprehensive threshold of risk is a more relevant lens through which to view the risk of derivatives applied in the context of an entire investment program. A portfolio manager may wish to use derivative instruments as the principal means through which he or she generates portfolio risk, which may create a superior risk/reward profile for the entire fund compared to what could be achieved using fully funded securities alone.

   In many managed futures and similar (commodities, currencies) strategies, funds hold short-term fixed income instruments as the primary assets in the portfolios and then intentionally add risk levels to the portfolio in an efficient manner using derivatives. In this context, the derivative portfolio always increases the risk of the assets of the portfolio but offers a tool that allows the manager to better manage the targeted volatility of the overall portfolio. The motivation for using derivative in lieu of cash instruments may relate to liquidity, the ability to create less correlated return streams, accessibility, or explicitly to the risk contribution of individual portfolio components.

Taken together, we believe that these four parameters create a more robust risk management framework that better protects fund shareholders while reducing systemic risk.

III. There are no Equivalents to Managed Futures Strategy Open-End Funds (and Similar Strategy Funds) and Restricting These Types of Funds Would Preclude Access to Diversifying Forms of Alternative Investment Strategies for the Vast Majority of Investors Without a Clear Benefit For Doing So and With a Cost of Increased Risks.

The Proposal appears to be intended to eliminate the ability of retail investors to obtain exposure to useful and seasoned strategies currently provided by investment companies using managed futures and similar strategies. This is a draconian, unnecessary and unsupported result. Retail investors already have demonstrated significant desire for such funds, as evidenced by the sums invested in the strategies. Nothing in the Proposal indicates by means of evidence that retail investors currently invested in these types of funds fail to understand the risks and other aspects of their investments. Moreover, as discussed below, implementation of the Proposal would have the consequence of denying most retail investors access to the strategies, and forcing others into more lightly regulated products which, in addition to not being equivalent to investment companies, do not have any protections similar to those provided by the 1940 Act. This would be a most unfortunate result of a Commission action taken for the "protection of investors."

The Commission has articulated no appropriate basis under the 1940 Act or the requirements for rulemaking to, in effect, limit investment in managed futures strategies and similar strategies to high net worth investors and institutions. Indeed, as follows in response to the Commission's request for comment, eliminating managed futures strategy open-end funds leaves retail investors without any equivalent investment choice. There are no investment vehicles equivalent to investment companies available to retail investors for these strategies. We firmly believe the Commission has no basis to restrict investment access to such diversifying investment strategies only to high net worth investors and institutions.

The Commission requested Comment on the following:

> Do commenters agree that it may be feasible . . . for funds that do not wish to rely on the proposed rule to deregister under the Investment Company Act and for the fund's sponsor to offer the fund's strategy as a private fund (which can be offered solely to a limited range of investors) or as a public or private commodity pool? Are these alternatives, which do not have statutory limitations on the use of leverage, feasible vehicles for these types of strategies? Conversely, should we permit managed futures or currency funds (or other specified fund categories) to obtain exposure in excess of 150% of the funds' net assets under the exposure-based portfolio limit? If so, what limit and what other restrictions or limitations on their use of derivatives would be appropriate? Are there ways that we could permit such funds to obtain additional exposure while still addressing the undue speculation concern expressed in section 1(b)(7) and the asset sufficiency concern expressed in section 1(b)(8)? How could we permit such funds to obtain additional exposure while also imposing an effective limit on leverage and on the speculative nature of such funds?

As the Commission notes, and as we agree, managed futures strategy investment companies and similar strategies would be unable to continue under the Proposal. Forcing managed futures strategy and similar funds to deregister would have a devastating impact on retail investors – effectively removing access to such diversifying investment strategies from all but high net worth and institutional investors.[2]

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[2] In addition to not allowing retail access in the future, the process of deregistration itself would by regulatory fiat pro-actively deprive existing investors in such funds of their intentional choice of investments, which was made, as

Indeed, there are presently tens of billions of dollars invested in managed futures strategy and similar commodity and currency strategy investment companies.[3] Such a costly result as the elimination of these funds arising from adoption of the Proposal has no articulated support within the Proposal – the Commission points merely to the vague prevention of "speculation" as a broad basis for support yet, as we have explained above and documented, managed futures strategy funds cannot be deemed more "speculative" than many types of broadly-owned retail equity funds and other fund categories, such as the category of large blend equities funds, viewed in terms of fund drawdown history. Indeed, despite the Commission's limited examples in the Proposal noting three investment companies (which did not pursue managed futures or similar strategies) that suffered losses prior to or during the financial crisis, managed futures strategies, including at least one investment company, were one of the few positive-performing retail investment strategies available during the financial crisis in 2008.[4]

In response to its request for comment, we note that private funds using managed futures and similar strategies already exist. Most and perhaps nearly all, advisers or sponsors of managed futures strategy and similar investment companies already manage and sell in private placement transactions private funds using similar strategies. Such private commodity pools are mainly limited to high net worth and institutional investors by federal and state law and regulation and retail investors are prevented from investing in such vehicles. Publicly-offered commodity pools are available, to a certain degree, to retail investors but the structural complexities of such vehicles often precludes retail investor participation. These circumstances result in the impact of the elimination of registered funds with managed futures and similar strategies falling entirely on retail investors because the various federal and state securities and commodities laws and regulations in practical effect require that private funds be restricted to high net worth and institutional investors.[5] Ultimately, the Proposal would completely deny much of the public access to useful strategies, and force everyone else away from the substantial protections provided by the 1940 Act into lightly regulated or even unprotected investments – a most unfortunate result, given the goal of "protecting investors."

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with all other investment companies, based on transparent disclosure of any risks and fees involved in the investment.

[3] Morningstar. The Commission attempts to downplay the impact (through forcing funds to close) that the Proposal would have by reference to the overall percentage of the industry represented by such funds and ignoring the billions of dollars of investors' capital represented by such percentage of the industry.

[4] For example, an early open-end managed futures strategy fund, Rydex Managed Futures Strategy Fund (since renamed following an adviser acquisition) returned in excess of 7% in 2008, while the general equity markets measured by the S&P500 Index declined precipitously, returning approximately -37%.

[5] For example: the Securities Act of 1933 and Regulation D thereunder require in practical effect that private placements be limited to "accredited investors" (high net worth individuals having $1 million in assets excluding residence, or meeting high income standards); the 1940 Act requires that all private funds be at a minimum privately placed (requiring an "accredited investor" standard under the 1933 Act and Regulation D) and, for a private fund of more than 100 investors, also restricted to "qualified purchasers," which further restricts investors to ultra-high net worth individuals ($5 million or more in assets) and institutions ($25 million or more in assets); these laws and regulations in conjunction with the rules and regulations of the Commodities Futures Trading Commission ("CFTC") and National Futures Association ("NFA") also mandate (because all such private funds are also commodity pools) restrictions for investment to "accredited investors" as well as "qualified eligible persons," yet another high net worth standard.

Non-Equivalence of Public Commodity Pools to Investment Companies.

Retail investors do not have access to private funds, including private commodity pools. The sole alternative to a professionally-managed registered investment company using managed futures and similar strategies would be a publicly-offered commodity pool. Certain pools are available to retail investors because they have registered their interests for public offer and sale under the Securities Act of 1933 ("1933 Act"). Such pools, however, are not equivalent to registered funds. Indeed, publicly-offered commodity pools pose higher complexity and risk to retail investors. Further, their differences from investment companies, and their comparatively significantly increased operational costs and complexity, are such that few sponsors of managed futures strategies have historically undertaken to provide publicly-offered commodity pools to retail investors. Among the material differences of such pools from investment companies are the following:

Taxation as Partnerships as Compared to RICs.

Operation of a collective investment vehicle requires, in nearly all instances, pass-through taxation so that investors are not subject to taxation both at an entity level and the investor level. An investment fund, unlike an operating company, does not carry on a business other than investment for the benefit of passive investors, and cannot be taxed like an operating company at two levels (that is, at the investment fund/pool level and then at the investor level). In plain English, most mutual funds and closed-end funds are "regulated investment companies" ("RICs") and pass income and gains to investors, who are taxed thereon. RICs are not taxed at the fund level.[6] Further, RICs provide timely reporting to investors on Form 1099 each year in time for investors to submit straightforward tax return information, without extra expense or delay.

In complete contrast, public commodity pools, which cannot meet the requirements of RIC status, must be structured and treated as tax partnerships and not RICs. This partnership tax treatment introduces a high level of complexity and risk for the retail investor. Partnerships are far more complicated for retail investors and not equivalent to RICs in terms of expense, difficulty and timeliness relating to taxation. Retail investors rarely if ever invest in partnerships for these reasons. For example, rather than a straightforward Form 1099 from a RIC, investors in public commodity pools receive Schedule K-1 reporting from their partnership investment. A Schedule K-1 reflects the partnership passing through to the investor their share of partnership operating expense, loss and gain, which must be reflected into the investors' own tax return. Investors also may receive income, and be required to make filings, in multiple states, depending on investments in the fund. Such complications inevitably complicate tax filings, resulting in the expense of tax professionals, and oftentimes require delay in fling of investor annual returns, as well as a practical increased risk of a tax audit due to complication of a return. The differing taxation of pools and RICs, alone, shows that public commodity pools are far riskier for a retail investor than investment companies pursuing similar strategies. In particular, the hidden tax costs of public commodity pools will consistently cause such pools to fail the performance expectations of retail investors. No consistent, tailored understanding or disclosure of commodity pool tax risks is possible to fully inform retail investors. The very structure and tax posture of investment companies has eliminated this risk for the benefit and protection of retail investors.

Redemptions.

Open-end investment companies must offer daily redeemability under the 1940 Act. Apart from a few exchange traded products ("ETPs" as discussed below), public commodity pools, as partnerships,

[6] Most Investment companies, and all investment companies pursuing managed futures and similar strategies, operate so as to qualify as "regulated investment companies," or RICs, under Subchapter M of the Internal Revenue Code of 1986.

typically offer at best monthly redeemability, accepting investment and offering redemption on a fixed periodic basis rather than daily. This reduced investor liquidity of non-ETP commodity pools is a serious risk to retail investors, who may be forced into these products or left with no strategy alternatives, if the Proposal were to be finalized as proposed.

Regulation and Expenses/Costs.

A public commodity pool is operated under Commodity Futures Trading Commission ("CFTC") and National Futures Association ("NFA") regulations, which differ significantly from requirements under the 1940 Act. Such law and regulations establish significantly differing investor protections and safeguards. For example, there is no equivalent under the Commodities Exchange Act ("CEA") to 1940 Act section 15(a) requiring an adviser to provide significant and material information to the board of a fund concerning the advisory agreement, or requiring approvals by the board and independent directors of advisory and underwriting agreements. Nor is there an equivalent under the CEA to section 15(c) of the 1940 Act, governing the consideration and review of investment advisory agreements by a majority of independent board members. In fact, there are no commodity pool governance provisions under the CEA that seek to provide investor protection from conflicts of interest between a pool and its operator or adviser. Numerous other substantive regulatory differences exist regarding investor protections between commodity pools and investment companies. For purposes of this comment letter, it should be sufficient to note that regulation of commodity pools, including significant investor protection provisions, is materially different from the 1940 Act.

In addition, public commodity pool disclosure regulation, which is an amalgam of applicable provisions of the CEA, the 1933 Act and the Securities Exchange Act of 1934 ("Exchange Act"), is characterized by no entirely uniform format, over-complexity, mandates extraneous to investor understanding and, in particular, Commission disclosure forms designed for operating companies and not investment vehicles. In effect, a public commodity pool is treated identically to a corporate operating company in terms of disclosure, periodic filings and Sarbanes-Oxley Act ("SOX") accounting (auditor attestation) standards. All of which differ materially from the compact and "purpose built" disclosure (and other substantive) regulation of investment companies.[7] The ultimate impact of these regulatory and auditing differences, while a burden for the issuer and commodity pool adviser/operator, falls on investors in the form of significantly higher expense ratios compared to investment companies using managed futures and similar strategies. Public commodity pools are simply far more expensive to operate in comparison to investment companies.[8]

[7] Among numerous other items: public commodity pools under the 1933 Act must file required disclosures in a cumbersome and expensive manner under the 1933 Act, and may not rely on purpose built rules regarding updates and amendments to registration statements designed for continual offer of securities of investment companies; public pools are required under the Exchange Act to make all periodic filings like a corporate issuer, which are designed not for investment funds but operating companies, including 10-K annual reports, 10-Q quarterly reports and 8-K material development flings; public pools are also subject to full SOX auditor requirements regarding review of internal control of financial reporting like an operating company.

[8] In addition, numerous other operating differences impacting investor protections exist between public commodity pools and investment companies. Among these is that there are no prohibitions on performance fees on such pools, with which retail investors typically are not experienced.

Complex Distribution and Ease of Investor Experience.

Public commodity pools, as partnerships, typically are too complex to be distributed broadly or listed on an exchange for trading. Not being exchange listed, such pools in practice may be subject to a patchwork of state regulation, and the non-uniform treatment by regulators of an otherwise uniform offering of securities.[9] These differences add highly significant expenses, as well as oftentimes delay, for such pools, which further complicates uniformity of disclosure, pool expense ratios and ultimately increases complexity and diminishes accessibility for investors.

There are no other equivalent products to replicate professional management in an investment company, and any product available offers less protection to investors.

We also note that there are no other products available as alternatives to investment companies for a retail investor seeking the benefits of a managed futures strategy, or similarly diversified strategies involving commodities and currencies. Although a few ETPs exist, they offer typically exposure only to a commodity index or exposures to single a commodity through futures or physical ownership, and typically cannot be managed as tracking an index or for tax reasons.[10] Such non-investment company ETPs are not intended as an equivalent to a professional managed futures strategy or a commodity strategy, and exist for entirely different investment purposes. This results in a total lack of equivalence to diversified, actively managed strategies. Such ETPs also present risks for investors of investment in a single commodity that are completely different from a managed strategy. If investment companies providing managed futures strategies and similar strategies are eliminated by adoption of the Proposal, retail investors will not have equivalent investments and will have only riskier alternative choices available.

IV. Conclusion

The Commission has established no basis, and cannot establish any meaningful basis, to restrict investment in managed futures strategies and similar strategies only to high net worth and institutional investors. Implementation of the Proposal would have the consequence of denying most retail investors access to the strategies, and forcing others into more lightly regulated products which, in addition to not being equivalent to investment companies, do not have any protections similar to those provided by the 1940 Act. This result on investors and their freedom of choice is not justified by any meaningful analysis of costs and benefits and would be a truly unfortunate result of a Commission action supposedly taken for the "protection of investors." The result can only increase risks for retail investors.

As we have described above, the Commission should seek an alternative to the prescriptive and overreaching limitations in the Proposal by proposing a principles-based approach to derivative usage through a focus on measurement and monitoring of fund downside risk (risk of loss) in conjunction with a risk-based margining requirement that assures adequate asset coverage of derivatives positons.

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[9] Pools are subject to a variety of state laws, many modeled on NASAA standards although not in many cases uniform, which differ significantly from regulation applicable to investment companies.

[10] Exchange listed products, such as GLD and other vehicles providing exposure to a commodity, are structured for pass-through tax purposes as grantor trusts, which must not be managed. The only alternative would be a tax partnership, with problems for retail investors outlined above.

We would be pleased to discuss our comment letter. Follow-up questions may be coordinated through the undersigned, who may be reached at [redacted] or at [redacted]. Thank you again for the opportunity to share our observations with you.

Sincerely,

Jonathan W. DePriest
Executive Vice President & General Counsel