

June 19, 2008

VIA Electronic Mail: rule-comments@sec.gov

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Regulation of Compensation, Fees and Expenses in Public Offerings of
Real Estate Investment Trusts and Direct Participation Programs;
SR-NASD-2005-114

Dear Ms. Morris:

I am writing this letter on behalf of National Futures Association (NFA), a registered futures association under the Commodity Exchange Act and a self-regulatory organization for the United States futures industry.¹ As part of its self-regulatory responsibilities, NFA oversees the regulatory requirements of commodity pool operators. NFA appreciates the opportunity to comment on the above referenced FINRA file number.

On May 14, 2008, the Securities and Exchange Commission ("Commission") approved Amendment No. 5 to Rule 2810 filed by the Financial Industry Regulatory Authority ("FINRA"). At the same time, the Commission requested public comment on the issues raised by FINRA's rule change. NFA's comments relating to FINRA's changes to Rule 2810 relate to one aspect of those changes—the inclusion of futures brokerage trail commissions on public commodity pools within Rule 2810's limits on underwriting compensation.

Public commodity pools are subject to extensive regulation in both the securities industry (as a public distribution of securities) and the futures industry (through commodity pool operators). The Commission, FINRA, Commodity Futures Trading Commission and NFA have various requirements that are imposed on the distribution of interests in public commodity pools, and many of these requirements

¹ NFA is also a limited purpose national securities association under Section 15A(k) of the Securities Exchange Act.



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focus on ensuring that public investors receive full disclosure regarding an investment in a public commodity pool.

Among other things, CFTC and NFA rules prohibit a CPO from accepting an investment in a public commodity pool prior to providing the participant with a disclosure document that has been reviewed by NFA. This document must contain a complete description of fees, including trailing commissions that may be paid or accrue. If the document is deficient in any way, including an incomplete or inaccurate disclosure of fees, the CPO is prohibited from using the document, and therefore may not accept investments in the public pool, until the deficiencies are corrected.

Although general securities representatives that sell interests in public commodity pools are not required to register as commodity brokers, many broker-dealer/FCMs believe that selling and providing ongoing commodity services related to these products requires a certain level of understanding of the futures industry. To address this need, over ten years ago NFA developed the Series 31 proficiency examination to license those general securities representatives that engage in these activities. This exam is strictly tailored to issues relating to the sale of commodity pool interests and is administered by FINRA. Currently, over 16,500 of the 50,000 or so active associated persons in the futures industry have a Series 31 license.

In exchange for receiving trailing commissions, the general securities representative provides services that require knowledge of both the product and the commodity markets. Services generally described in the prospectuses of publicly offered commodity pools include: (a) responding to investor inquiries about the value of units; (b) providing information about the futures and forward markets and the fund's trading in those markets; (c) responding to investor inquiries about monthly statements, annual reports, and tax information provided to them; and (d) providing information to investors about redemption rights and procedures and assisting investors in redeeming units.

In considering Amendment No. 5 to FINRA Rule 2810, NFA encourages the Commission to consider the material fact that there is no history of customer abuse relating to the sale of interests in public commodity pools. This is true both with respect to the sale of public pools in general and trailing commissions in particular.

We understand that by letter dated June 4, 2008, the Managed Funds Association ("MFA") also commented on Amendment No. 5 to FINRA Rule 2810. At this time, we urge the Commission to carefully consider the industry's comments on this



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rule filing and, in particular, MFA's comments relating to the CFTC's exclusive jurisdiction over futures brokerage trail commissions.

Thank you for your consideration of NFA's comments on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at 312-781-1320 or by e-mail at ddriscoll@nfa.futures.org.

Sincerely,

A handwritten signature in blue ink that reads "Daniel A. Driscoll". The signature is written in a cursive, flowing style.

Daniel A. Driscoll
Executive Vice President

CC: The Honorable Walter Lukken, Acting Chairman (CFTC)
The Honorable Michael Dunn, Commissioner (CFTC)
The Honorable Jill E. Sommers, Commissioner (CFTC)
The Honorable Bart Chilton, Commissioner (CFTC)

/tws:SEC Trails)