August 20, 2004

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609
Attention: Mr. Jonathan G. Katz, Secretary

Re: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Treatment of Commodity Pool Trail Commissions; Release No. 34-50065; File No. SR-NASD-2004-108.

Ladies and Gentlemen:

Campbell & Company, Inc. ("Campbell & Company") appreciates the opportunity to comment upon the above-referenced Release and the proposals set forth therein. Since 1982, the NASD has had a policy of excluding ongoing compensation ("trail commissions") from the 10 percent limitation as it applies to commodity direct participation programs ("commodity pools") if: (i) the member is registered with the Commodity Futures Trading Commission ("CFTC") as a Futures Commission Merchant ("FCM"); (ii) the associated person receiving the trail commissions has passed the Series 3 or the Series 31 examination; and (iii) the associated person receiving the trail commissions provides ongoing investor relations services to investors.

NASD now proposes to rescind this long-standing policy, but for the reasons set forth below, Campbell & Company respectfully disagrees with the proposed rescission and favors either: (i) the codification of NASD's present policy; or, in the alternative, (ii) the establishment of a perpetual ***annual*** maximum commodity pool trail commission that is not to exceed 2.5% per annum, to be paid in lieu of the aforementioned 10 percent limitation.

Campbell & Company believes that the continued exclusion of commodity pools from the 10 percent limitation will benefit the investing public by: (i) contributing to the orderly operation of public commodity pools and the futures, forwards, and options markets in general; (ii) justly compensating associated persons for providing important commodity-related brokerage services to public commodity pool investors throughout the life of the investment; and (iii) ensuring the continuing availability of non-correlated managed futures investment products to the investing public.

Campbell & Company.

Campbell & Company is a member of the National Futures Association ("NFA"), and has been registered as a commodity pool operator ("CPO") since September of 1982 and as a commodity trading advisor ("CTA") since May of 1978. Since its inception in 1972, Campbell & Company has been a pioneer in the field of managed futures investment management. The firm applies systematic trading strategies to diverse portfolios of global futures, forwards, and options markets with the primary objective of achieving attractive risk-adjusted rates of return. In our capacity as a CPO and/or CTA, the firm currently manages assets in excess of $8 billion and maintains a client base in excess of 60,000 retail and institutional investors.

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Campbell & Company believes it has done a very good job for its investors over the years, and since the firm's founding it has delivered a composite compound annual rate of return of approximately 17%, net of all fees and expenses. On the strength of this performance, and within the framework of prevailing regulatory policies, Campbell & Company has built a substantial and successful business in the managing and marketing of public commodity pools to investors throughout the world, but particularly in the United States. Campbell & Company currently has a staff of approximately 100 persons, many of whom are dedicated exclusively to this important area of our business, and the firm is very concerned that the proposed "rule" change will seriously disrupt its business by disturbing the critical economic relationships that exist between our firm as manager, the broker-dealers through whom our products are sold, and the licensed securities brokers who in turn sell the product to the end investors.

<u>*Summary of Conclusions*</u>.

- It is incorrect to equate trail commissions with selling commissions. Commodity pools pay trail commissions to associated persons as compensation for providing commodity-related brokerage services to investors. Such trail commissions are paid from a portion of the flat rate or round-turn commodity brokerage commissions charged to the pool, and are not charged as an upfront sales charge or deducted from an investor's initial subscription amount.

- The proposed rescission of the NASD's current policy represents a significant departure from long-standing precedent, as evidenced by the fact that certain regulatory associations and agencies, such as the North American Securities Administrators Association ("NASAA") and the state securities commissions, explicitly permit the payment of ongoing trail commissions to associated persons as compensation for providing commodity-related brokerage services to investors.

- Public commodity pools are subject to considerably more regulatory oversight than other direct participation programs, which is a testament to the more complex nature of the product and the additional burdens experienced by associated persons in providing commodity-related brokerage services to investors; services for which associated persons should be justly compensated.

- The complete termination of ongoing trail commissions would unfairly deprive associated persons of reasonable compensation and financial incentive to provide commodity-related brokerage services to investors throughout the life of the investment, and may result in a decrease in the number or distribution of public commodity pools available to investors, a more rigid cost structure, and potentially deprive investors of an associated person's expert advice necessary to make investment decisions on a continuing basis.

- In the event associated persons choose not to provide such commodity-related brokerage services to investors, the commodity pool's CPO would incur significant, if not prohibitive, costs to develop an alternative mechanism for providing such services to investors.

- Public commodity pools are often the safest, most inexpensive, and most attractive alternative investment (if not the only alternative investment) available to retail investors. Any decrease in the number or distribution of public commodity pools would only impede, or perhaps even foreclose, investor access to this important alternative investment, thereby effectively depriving investors of a number of significant benefits.

- A decline in total assets invested in public commodity pools could not only disrupt the orderly operation of such pools, as existing investors suffer the consequences of a reduction in assets under management, but of the futures, forwards, and options markets in general, as certain markets experience a material decrease in participation, and thereby a decrease in the efficiency of the price discovery and risk transfer process.

The Present State of Industry Oversight & Regulation.

The United States futures markets and related market participants are presently regulated under the Commodity Exchange Act ("CEAct"), which is administered by the CFTC. The CFTC regulates the activities of CPOs and CTAs, and has adopted regulations with respect to certain of such persons' activities. The CEAct also gives the states certain powers to enforce certain provisions and regulations of the CFTC. Pursuant to authority in the CEAct, the National Futures Association ("NFA") has been formed and registered with the CFTC as a "registered futures association." At the present time, the NFA is the only non-exchange self-regulatory organization for commodities professionals. NFA members are subject to NFA standards relating to fair trade practices, financial condition, and consumer protection. As the self-regulatory body of the commodities industry, the NFA promulgates rules governing the conduct of commodity professionals who do not comply with such standards. The CFTC has delegated to the NFA responsibility for the registration of CPOs, CTAs, FCMs, introducing brokers, associated persons, and floor brokers. The CFTC has also authorized the NFA to create written proficiency examinations and ethics training requirements to ensure that individuals demonstrate "*the degree of proficiency and skill necessary to protect the interests of customers, clients, pool participants, or other members of the public with whom such individuals deal.*"[1]

With regard to public commodity pools, each pool's prospectus and any related offering materials are subject to review by the Securities & Exchange Commission, the NASD, the CFTC, the NFA, and the fifty state securities commissions. Many state securities commissions substantively review such materials and impose specific suitability standards upon prospective investors. The Guidelines for the Registration of Commodity Pool Programs, as promulgated by NASAA and adopted by many of the state securities commissions, explicitly allow for the payment of trail commissions and define maximum aggregate fees allowed to be charged ***annually*** (which includes the payment of trail commissions). Furthermore, the prospectus and any related offering materials prominently disclose to prospective investors the fact that trail commissions are paid, the amount and frequency of such payments, the conflicts of interest associated with such payments, and the commodity-related brokerage services to be provided in return for such payments. In this regard, it is worth noting that there is no history of abuse concerning either public commodity pools or the payment of trail commissions.

The Role of Commodity Pools.

Commodity pools provide both retail and institutional investors with the opportunity to invest in futures, forwards, and options markets under the direction of one or more experienced professional commodity trading advisors. Typically, a commodity pool raises capital through the sale of pool interests, such as shares or units of limited partnership, through either a public offering or a private placement of securities. The commodity pool's capital is thereafter invested in a variety of futures-related interests, though a significant portion of capital may be invested in Treasury bills and/or maintained in cash or cash equivalents. The futures-related interests traded by a commodity pool may include futures and options contracts on agricultural and "soft" commodities, energy products, industrial goods, metals, and a variety of financial instruments, as well as futures, forwards, and options contracts on global currencies. Generally, commodity pool

[1] 7 U.S.C. §6p, CCH Rep. ¶1191.

ownership permits an individual investor to participate in the profits and losses attributed to the pool's investing activities while simultaneously limiting that investor's personal liability to the amount invested.

Public commodity pools provide significant benefits to the retail investing public and are generally considered to be the most efficient method by which the public can access the futures, forwards, and options markets. The principal benefits provided by such pools include limited liability for investors, access to professional management at a greatly reduced minimum investment amount, transparency of investment activities (*e.g.* independent daily settlement prices), monthly investment liquidity, and an environment of strong, multi-agency regulatory oversight through disclosure requirements, suitability standards, solicitation restrictions, etc. Alternative means of accessing the futures and forwards markets, such as individual managed accounts and private placement offerings, often fail to provide similar benefits to investors, and may result in unlimited liability for investors, restricted access to professional management, less regulatory oversight and higher fees.

Commodity pools generally provide investors with the potential to enhance portfolio returns and reduce overall portfolio volatility by diversifying beyond traditional investments, such as stocks and bonds, into historically non-correlated managed futures. Consequently, the diversification benefits of managed futures have made commodity pools an important element of an individual investor's overall portfolio diversification strategy.

Commodity pools also perform a critical role with regard to the efficient operation of the futures, forwards, and options markets. The economic rationale for such markets is to provide a forum for efficient price discovery and the transfer of risk from hedgers who seek to avoid risk to speculators who seek to acquire it. Commodity pools represent a significant source of speculative capital, provide liquidity to the futures markets, and facilitate transparent price discovery and efficient risk transference.

Public commodity pools have become increasingly popular in recent years, as interest in the benefits provided by managed futures and other alternative investments has grown among the retail investing public. In response to this increased interest and the resulting competitive pressures, the number of public commodity pools in the United States has increased and the fees paid by such pools have decreased; two trends of obvious benefit to investors.

Discussion of Trail Commissions.

The payment of trail commissions with respect to commodity pool offerings is entirely consistent with the current practice of FCMs with respect to individual customer futures accounts. In both instances, an associated person may share in the commodity-related brokerage commissions generated by an account as compensation for providing certain commodity-related brokerage services. Regardless of whether an individual client accesses the futures markets through an individual customer futures account or through an investment in a commodity pool, the commodity-related brokerage services to be provided by the associated person are essentially identical. This point is underscored by the fact that the requisite registration and proficiency examination necessary to receive compensation in either instance is substantively similar; both must register as an associated person under the CEAct, both must demonstrate competency in commodity-related matters (as evidenced by having passed either the Series 3 or the Series 31 examination), and both remain subject to CFTC and NFA sanctions and ethics requirements.

[2] 7 U.S.C. §6p, CCH Rep. ¶1191.

Investors in commodity pools require significantly more services than investors in other types of investments, including other direct participation programs. Associated persons must possess specialized knowledge of a product specific nature (*e.g.*, product structure, trading strategy, investor suitability, offering restrictions, use of leverage, tax implications, legal concerns, etc.) and general knowledge of the futures, forwards, and options markets (*i.e.*, as evidenced by having passed either the Series 3 or the Series 31 examination). The commodity-related brokerage services provided by associated persons include: (a) inquiring of the CPO, at the request of an investor, as to the net asset value of a unit; (b) inquiring of the CPO, at the request of an investor, regarding the futures, forwards, and options markets generally, and the trading activities of the commodity pool, specifically; (c) responding to investors' questions with respect to monthly account statements, annual reports, financial statements, and annual tax information furnished periodically to investors; (d) providing advice to investors as to when to make additional investments or to redeem units; (e) assisting investors in the redemption of units; and (f) providing such other services as investors may reasonably request from time to time.

Public commodity pools may also be distinguished from other direct participation programs and closed-end investment companies in significant structural and operational ways. Among the distinguishing features of commodity pools are the breadth of futures-related interests traded, the rapid turnover of a managed futures portfolio's holdings, the frequency of daily net asset valuations and monthly investment liquidity, and the continuous nature of the offering. Thus, investors in commodity pools may require different information and more specialized professional advice relative to investors in other direct participation programs and closed-end investment companies.

Conclusion.

For the reasons outlined above, rescission of the NASD's present policy regarding the payment of trail commissions would drastically alter the managed futures industry landscape to the significant detriment of both the investing public and the industry's legitimate participants, including Campbell & Company. For this reason, Campbell & Company respectfully urges the Commission to abrogate the proposed "rule" change in favor of either: (i) the codification of NASD's present policy; or, in the alternative, (ii) the establishment of a perpetual ***annual*** maximum commodity pool trail commission that is not to exceed 2.5% per annum, to be paid in lieu of the aforementioned 10 percent limitation.

In this manner, the Commission will benefit the investing public by: (i) contributing to the orderly operation of public commodity pools and the futures, forwards, and options markets in general; (ii) justly compensating associated persons for providing important commodity-related brokerage services to public commodity pool investors throughout the life of the investment; and (iii) ensuring the continuing availability of non-correlated managed futures investment products to the investing public.

Please do not hesitate to contact me should you wish to further discuss the comments set forth above.

Sincerely,

Bruce Cleland

Bruce L. Cleland
President & Chief Executive Officer