



August 20, 2004

Via E-Mail ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

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

Re: File No. SR-NASD-2004-108

Dear Mr. Katz:

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.<sup>1</sup> 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 NASD proposal.

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 SEC, NASD, 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 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.

---

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

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 NASD. Currently, over 10,000 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 NASD's rule change, NFA encourages the SEC 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 urge the Commission to carefully consider the comments from the industry on this proposal. If NASD does not withdraw the rule change or the SEC does not take action to abrogate the rule, then we urge the Commission to delay the effective date of the rule. The immediate effectiveness of the NASD rule creates undue hardship for commodity pools that are in the middle of the registration process, particularly those that have already expended substantial costs associated with these offerings. Those pools should be allowed to complete the registration process and be included in the grandfathering provisions for previously approved offerings.

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](mailto:ddriscoll@nfa.futures.org).

Sincerely,

Daniel A. Driscoll  
Executive Vice President