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

September 24, 2004

Re: File No. SR-NASD-2004-108
File No. SR-NASD-2004-136

Ladies and Gentlemen:

Exchange Analytics Inc. appreciates this opportunity to comment on the Release concerning the NASD's proposal, which applies the compensation limits in Rule 2810 to commodity pool direct participation programs. Specifically, we address comments made in a NASD comment letter dated August 30, 2004 concerning the public policy implications of recession of this long-term policy. We are concerned that a very important, well-received and functional policy is being eliminated to the detriment of the public, the industry, and the marketplace.

Exchange Analytics is a leading provider of educational programs to registrants in the futures industry. To date we have provided over 80,000 continuing education courses and our customers include many of the largest financial service companies in the world.

NASD argues that commenters have not demonstrated that persons who have passed the Series 3 or 31 (and thus met the exclusion) provide a higher level of service than those who have not (and thus remained subject to the compensation limits of the DPP Rule). It appears that NASD is seeking proof of something that is intangible. We strongly believe that the public interest is served best when customers deal with those who have demonstrated proficiency and knowledge about the products they sell. This is one of the basic rationales for requiring proficiency examinations for any registrant.

NASD further argues that even if it is true that commodity pool investors receive a significantly higher level of service than investors in other DPPs, commodity pools can also be sold by people who are not subject to compensation limitations in Rule 2810, and therefore a contradiction. We believe this logic does not address the argument that investors in commodity pools receive a higher level of service from registrants who have demonstrated proficiency and market knowledge about the underlying products.

20 years ago NASD excluded registrants who passed either the Series 3 or 31 exams from compensation limits in Rule 2810. This created a strong financial incentive for registrants to obtain proficiency and knowledge about these products, and over 10,000 people took advantage of this policy. It is our view that this greatly enhanced the ability of these registrants to service their customers and was one of the main reasons commodity pool direct participation programs have greatly expanded, offering the investing public the benefits of new diversification tools. Also of great significance is the fact that there has been no customer litigation or governmental action taken regarding payment of trail commissions that we are aware of. We conclude from these facts that the financial incentives to pass a Series 3 or 31 exam has been of enormous benefit to the investing public and very much in the public interest and should be continued.

Registrants who have passed the Series 3 or 31 exams have demonstrated knowledge of the general marketplace, futures regulations, CPO and CTA regulations, CPO and CTA disclosure documents, "Know Your Customer Rule", disclosure of upfront fees, and rules regarding promotional materials (NFA Compliance Rule 2-29).

Commodity pools differ significantly from other DPPs because their underlying product components making up the pools are regulated under an entirely different regulatory structure. Their underlying product makeup often changes on a daily basis and there might be well over 100 different futures positions at any given time. Commodity pools are more complex investment vehicles than most other DPPs, and require significantly more services and product knowledge if registrants are to do the best job for their customers.

Because futures and securities products are significantly different, registrants who have knowledge of futures product concepts and regulations are in a much better position to service their customers. An example is the issue of suitability. In the securities industry suitability is generally viewed on a transactional basis, while in the futures industry it many times is viewed more on a customer basis. For example, a customer may be found suitable to trade a blue chip stock but unsuitable to trade a highly volatile, speculative security. In the futures industry it would be hard to argue that a speculative customer who is suitable to trade soybean futures would be unsuitable to trade bond futures. Similarly, managed commodity pools have different risk parameters, trading methodologies, and goals, and it is very much in the customer's interest to be made aware of these factors. A registrant who has demonstrated proficiency in general market knowledge and regulations governing these products is in a much better position to provide more value (and thus service) to their customers.

In 1992 Congress took the unprecedented step of mandating ongoing training for the futures industry. It did so in recognition of the importance of the futures industry to the well being of the economy and the necessity of governmental involvement to maintain the integrity of the marketplace (Commodity Exchange Act 1992 sec 4p.(b)). Specifically the Act requires that all registrants take ongoing training to ensure that they understand their responsibilities to the public, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the CFTC, any rule of any

appropriate contract market, derivatives transaction execution facility, registered futures association, or other self-regulatory organization, or any other applicable Federal or state law, rule or regulation.

Registrants who have passed the Series 3 or 31 exams are also obligated to participate in ongoing training to ensure that they remain fit and to adequately supervise the handling of customer accounts. Congress specifically mandated ongoing training in these products recognizing that the futures markets have unique characteristics, leverage, and regulations which differentiate them from other DPPs.

The NASD correctly recognized 20 years ago that it was in the best interest of the investing public to exclude registrants who passed either the Series 3 or 31 exams from compensation limits in Rule 2810, which served as a strong incentive for registrants to obtain proficiency in those products. We believe this policy is correct and very much in the public interest, and should be codified rather than rescinded.

Therefore, we respectfully ask the SEC to carefully weigh the impact of the proposed NASD action and urge the Commission to either abrogate the proposal or permit the NASD to withdraw it.

Sincerely,

Lawrence D. Israel
President