October 7, 2004

<u>By E-Mail: rule-comments@sec.gov</u>

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 Implementation Date of Notice to Members 04-50 (Treatment of Commodity Pool Trail Commissions Under Rule 2810); Release No. 34-50335; File No. SR-NASD-2004-136 (the "Release")**

Dear Mr. Katz:

Citigroup Managed Futures LLC ("CMF") appreciates this opportunity to comment on the Release concerning the NASD's proposal to rescind its long-standing policy with respect to commodity trail commissions paid to brokers regulated by the Commodity Futures Trading Commission ("CFTC") who place interests in a publicly offered commodity pool and provide ongoing services to investors in the pool. "Commodity trail commissions" for purposes of this letter are the amounts paid by Citigroup Global Markets, Inc. ("CGMI") to its CFTC-registered associated persons as compensation for services to investors, which amounts are a portion of the commodity brokerage commissions paid by a publicly offered commodity pool to CGMI. Since 1982, commodity trail commissions have been excluded from the limitations on sales compensation in NASD Rule 2810.

CMF is a commodity pool operator and commodity trading advisor registered with the CFTC in order to operate commodity pools. Currently, CMF operates 7 publicly offered commodity pools ("Pools") and 16 privately offered pools. Over the last 25 years, CMF (or a predecessor firm) has operated approximately 50 publicly and privately offered pools. CGMI (or a predecessor firm) acts or acted as futures commission merchant ("FCM") and selling agent for each of the Pools and privately offered pools operated by CMF.

CMF has addressed the NASD's proposed rescission of the policy of trail commission twice before. In its comment letter dated March 11, 2004 to the NASD on Notice to Members 04-07 (the "NASD Comment"), CMF demonstrated that the NASD's policy on trail commissions should be codified and provided an explanation of the history and structure of commodity trail commissions as well as the justifications for them. In its comment letter to the Securities and Exchange Commission ("Commission") dated August 20, 2004 (the "CMF SEC Comment"), CMF supported the arguments and analysis in the comment letter of the Managed Funds Association ("MFA") dated August 20, 2004 (the "MFA SEC Comment") which concluded that (i) the NASD's proposal to rescind its policy constitutes a significant rule change that should have been accorded the required notice and comment period prior to its effectiveness under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), and (ii) the Commission should either abrogate the effectiveness of the proposal or permit the NASD to withdraw and revise it because it is inconsistent with the provisions of the Exchange Act applicable to the NASD. CMF also demonstrated its particularly aggrieved status as a result of a commodity pool in the registration process on July 13, 2004[1]. Copies of the NASD Comment and the CMF SEC Comment are attached.

By extending the effective date of the proposal, the NASD has addressed CMF's specific issue with respect to a commodity pool in registration on July 13, 2004. CMF is thankful for that relief. However, the NASD has not adequately addressed the substantive or procedural arguments set forth in the NASD Comment and in the MFA SEC Comment. CMF seconds the MFA's letter dated October 7, 2004, to the Commission in response to the Release, which letter aptly sets out the issues left unaddressed from the MFA SEC Comment.

Finally, CMF wishes to emphasize its position, described in further detail in the NASD Comment, that trail commissions paid by CGMI with respect to pools operated by CMF are a portion of the commodity commissions paid by the pools, and not a separate fee assessed for selling units in a pool. The amounts of commodity commissions paid by CMF pools to CGMI are consistent with commodity commissions paid by other publicly offered commodity pools. The amount of trail commissions paid by CGMI to its associated persons for ongoing services in connection with commodity pools is consistent with the amount of commodity commissions paid by CGMI to its associated persons for ongoing services with respect to individual managed commodity accounts. The payment of commodity commissions for commodity related services is subject to review and regulation by the Commodity Futures Trading Commission and the National Futures Association, and CMF believes that those payments should continue to be excluded from the limitation on sales compensation in Rule 2810, as they have been for over 20 years .

Therefore, we respectfully submit that the Exchange Act and equity require the Commission to assess carefully the NASD's actions and the rescission of its policy on commodity trail commissions.

Very truly yours,

David J. Vogel
President
Citigroup Managed Futures LLC

Attachments: CMF's Letter dated March 11, 2004
CMF's Letter dated August 20, 2004

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[1] Notwithstanding footnote 4 of the NASD's response to industry comments, including the CMF SEC Comment, the registration statement was filed on Friday, July 9, 2004 with the Commission and with the NASD through its COBRADesk on Monday, July 12, 2004, as required by NASD rules. The filing was "accepted" by the NASD Corporate Financing Department on July 13, 2004.

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 (the "Release")**

Dear Mr. Katz:

Citigroup Managed Futures LLC ("CMF") appreciates this opportunity to comment on the Release concerning the NASD's proposal to rescind its long-standing policy with respect to commodity trail commissions paid to CFTC-regulated brokers who place interests in a publicly offered commodity pool and provide ongoing services to investors in the pool. "Commodity trail commissions" for purposes of this letter are the amounts paid by Citigroup Global Markets, Inc. ("CGMI") to its CFTC-registered associated persons as compensation for services to investors, which amounts are a portion of the commodity brokerage commissions paid by a publicly offered commodity pool to CGMI. Since 1982, commodity trail commissions have been excluded from the limitations on sales compensation in NASD Rule 2810.

CMF is a commodity pool operator and commodity trading advisor registered with the Commodity Futures Trading Commission ("CFTC") in order to operate commodity pools. Currently, CMF operates 7 publicly offered commodity pools ("Pools") and 16 privately offered pools. Over the last 25 years, CMF (or a predecessor firm) has operated approximately 50 publicly and privately offered pools. CGMI (or a predecessor firm) acts or acted as futures commission merchant ("FCM") and selling agent for each of the Pools and privately offered pools operated by CMF. Among the publicly offered pools operated by CMF is one which filed a registration statement with the Commission on July 8, 2004 to increase the number of units registered.

CMF believes that the NASD's policy of excluding commodity trail commissions from the limitations in Rule 2810 should be codified rather than rescinded. CMF's reasons for its belief and an explanation of the history and structure of commodity trail commissions as well as the justifications for them are included in CMF's comment letter dated March 11, 2004 to the NASD on Notice to Members 04-07, a copy of which is attached. Moreover, CMF agrees with the analysis and conclusions of the Managed Funds Association in its letter to the Commission on the Release. CMF and MFA believe that (i) the NASD's proposal to rescind its policy constitutes a significant rule change that should have been accorded the required notice and comment period prior to its effectiveness under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), and (ii) the Commission should abrogate the effectiveness of the proposal or permit the NASD to withdraw and revise it because it is inconsistent with the provisions of the Exchange Act applicable to the NASD.

Moreover, CMF is among those particularly aggrieved by the action of the NASD in declaring the rescission of its policy on commodity trail commissions to be effective upon filing with the Commission. CMF, as general partner to a publicly offered commodity pool (the “Fund”), caused the Fund to file a registration statement on Form S-1 with the Commission on July 8, 2004, in order to register additional units of limited partnership interest of the Fund (the “New Registration”). The filing fees for this filing and the legal and accounting costs for preparation of the registration statement were substantial.

The Fund was formed in 2002 and prior to filing the New Registration on July 8, the Fund had an effective registration statement in place with the Commission, the NASD and the states (the “Effective Registration”). The selling arrangements for the Effective Registration were reviewed and approved by the NASD and permit the payment of commodity trail commissions without the limitations of NASD Rule 2810, consistent with the NASD’s policy prior to its filing with the Commission on July 13, 2004. That filing purports to rescind the NASD’s policy on trail commissions effective immediately.

As a result of the NASD’s action, the Fund must file a Pre-Effective Amendment to the New Registration to change the selling arrangements for the Fund’s units or withdraw the New Registration. If the Fund files a Pre-Effective Amendment, it will incur additional legal costs and be adopting different compensation arrangements with respect to different tranches of units. Alternatively, if the Fund withdraws the New Registration, the Fund will stop growing and become a wasting asset because no new units will be available to the public and all units are redeemable on a monthly basis. Neither option is beneficial to the Fund or its investors.

This unfortunate result could have been avoided if the NASD had codified its long-established policy of excluding commodity trail commissions from the limitations in Rule 2810, as requested and justified by substantially all of the commenters on the NASD’s proposal. The adverse effects could have been minimized by “grandfathering” the selling arrangements of commodity pools in registration as of July 13, 2004, or, at a minimum, by extending the effective date of the rescission for a reasonable period. The NASD did neither.

Therefore, we respectfully submit that the Exchange Act and equity require the SEC to assess carefully the NASD’s actions and the rescission of its policy on commodity trail commissions.

Very truly yours,

David J Vogel

David J. Vogel
President
Citigroup Managed Futures LLC

March 11, 2004

Ms. Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, N.W.
Washington, D.C. 20006-1500

Re: NASD Notice 04-07: Regulation of Compensation, Fees, and Expenses in Public Offerings of Real Estate Investment Trusts; Direct Participation Programs, including Commodity Pools and Closed-End Funds

Dear Ms. Sweeney:

Citigroup Managed Futures LLC ("CMF") and Citigroup Global Markets Inc. ("CGMI") are pleased to provide these comments with regard to commodity trail commissions paid by commodity pools as requested in NASD Notice 04-07 (February 2004) (the "Notice"). In the Notice, the NASD proposes rescinding its interpretation of NASD Rule 2810 with respect to payments of "commodity trail commissions" by publicly offered commodity pools. "Commodity trail commissions" for purposes of this letter are the amounts paid by CGMI to its CFTC-registered associated persons as compensation for services to investors, which amounts are a portion of the commodity brokerage commissions paid by a publicly offered commodity pool to CGMI. Since 1982, commodity trail commissions have been excluded from the limitations on sales compensation in NASD Rule 2810.

CMF is a commodity pool operator ("CPO") and commodity trading advisor ("CTA") registered with the Commodity Futures Trading Commission ("CFTC") in order to operate commodity pools. Currently, CMF operates 7 publicly offered commodity pools ("Pools") and 16 privately offered pools. Over the last 25 years, CMF (or a predecessor firm) has operated approximately 50 publicly and privately offered pools. CGMI (or a predecessor firm) acts or acted as futures commission merchant ("FCM") and selling agent for each of the Pools and privately offered pools operated by CMF. As of February 29, 2004, CMF Pools in the aggregate have approximately 28,000 investors and net assets of approximately $939,000,000.

This letter (i) demonstrates that payment of commodity trail commissions by CGMI is justified by the quality and level of service provided to investors and that rescinding the NASD's trail commission policy could have adverse effects on the Pools and their investors and (ii) concludes that commodity trail commissions are not sales compensation and so, consistent with the NASD's policy of over 20 years, should not be limited by NASD Rule 2810.

Commodity pools in the United States grew out of a need to provide retail investors with access to the commodities markets in a vehicle that limits potential liability (e.g., a limited partnership) and provides professional management. Over their history, commodity pools have evolved from total absolute return vehicles into alternative investments designed not only to achieve total absolute return, but also to provide diversification from traditional portfolios of stocks and bonds. Today, commodity pools are among the few alternative investments available to retail investors that provide a diversified asset class to complement an existing traditional portfolio. It should be noted that during the entire history of commodity pools in the United States, the National Futures Association ("NFA"), self-regulatory organization for the commodities industry, has found no instances of abuse related to publicly offered commodity pools generally or commodity trail commissions specifically.

A. Justifying Commodity Trail Commissions.

1. *Trails paid by CGMI are a portion of commodity brokerage commissions paid for commodity-related services; trails are not sales compensation within NASD Rule 2810.* The structures in which commodity trail commissions are paid vary among commodity pools and CPOs. With respect to pools operated by CMF, each Pool deposits its funds in commodity brokerage accounts at CGMI, its FCM, for execution and clearing of futures and options on futures transactions. Pools pay CGMI a monthly brokerage commission based on month-end net assets of the Pool in return for the services provided by a full service commodity broker. These commodity brokerage commissions are the only fees paid to CGMI or CMF by the Pool. Commodity trail commissions are a portion of these commodity brokerage commissions paid by CGMI as FCM to its associated persons who provide ongoing services to commodity pool participants related to the operation of the Pool. Those services are described below in item 3. Thus, neither the commodity brokerage commissions paid by a Pool nor the portion of those commissions paid to associated persons are sales compensation within NASD Rule 2810.

2. *Trails are not up-front selling commissions.* Commodity trail commissions are a portion of the commodity brokerage commissions generated by a Pool. Commodity trail commissions are not an up-front charge subtracted from an investor's subscription amount. 100% of an investor's subscription amount is deposited in the Pool's commodity brokerage accounts at CGMI. Commodity brokerage commissions charged by CGMI are in a "customary" range (i.e. between institutional rates and "published public customer rates") and are competitive with rates charged to comparable pools by other FCMs. For example, in the most recently offered CGMI Pool, commodity brokerage commissions equal 5.5% of net assets per year, which equates to $22 per round-turn transaction based on the Pool's trading history. Approximately 32% of the commodity brokerage commissions paid by the Pool (or 1.76% of net assets) are paid as net trail commission to associated persons. Therefore, the payment of commodity trail commissions adds no additional cost to the brokerage commissions charged to the Pool; the commission rate charged to a Pool would be the same whether CGMI retains 100% of the brokerage commissions charged to the Pool or pays a portion of them to its associated persons.

3. *Commodity trail commissions are payment for commodity-related services*. Associated Persons of CGMI provide a variety of ongoing services to investors in return for commodity trail commissions. The services include (a) responding to inquiries from investors about the value of units; (b) providing information and responding to inquiries about the commodities markets and the pool's trading in those markets; (c) responding to limited partners' inquiries about monthly statements and annual reports and tax information provided to them; (d) providing information to investors about redemption rights and procedures because pools

generally have monthly liquidity; (d) assisting investors in redeeming units; and (f) providing other services requested from time to time by investors.

These services differ from and are more complex than services provided by a registered representative in connection with an exchange-listed stock offering, investment companies or various other limited partnership offerings as a result of the nature of commodity pools and the commodity markets in which they invest.

- Pools offer monthly redemptions over the life of the Pool as well as monthly subscriptions until maximum offering amounts are reached.
- Pools are required to maintain daily net asset values and to report specific financial information to investors at least monthly.
- Pools often hold positions in over 100 different commodity futures markets.
- Those positions may turn over on a daily basis.
- Commodity markets may not move in parallel with each other or with the stock and bond markets.
- Commodity market trends are not regularly highlighted on the nightly news or in other generic media.
- CTAs have varying trading strategies and styles, and Pools often have multiple CTAs.

As a result of all of these facts, in order to service Pool investors, associated persons must have significant knowledge with respect to the commodity markets in general and the CTAs in a Pool, as well as access and the ability to interpret daily data related to the Pool.

Thus, commodity trail commissions are a portion of the commodity brokerage commissions paid by Pools for commodity-related services. Those services are different and more complex than those provided by registered representatives with respect to other products. Consequently, commodity trail commissions should not be considered as sales compensation under NASD Rule 2810.

4. *Trails Derive from Commodities Industry*. Commodity trail commissions developed from and are consistent with practices in the commodity futures industry related to servicing commodity customer accounts. Thus, the qualification requirements applicable to recipients of commodity trail commissions are similar to those applicable to individuals who limit their activities to commodity brokerage services. These practices have been recognized by the regulatory frame-work created under the Commodity Exchange Act.

5. *Regulatory Requirements for Associated Persons*. Commodity trail commissions are commodity-related compensation. This conclusion is underscored by the fact that those who receive trails must qualify to receive them by registering as associated persons

under the Commodity Exchange Act and must first pass either the Series 3 or the Series 31 examination. In addition to the testing requirement, as registrants under the Commodity Exchange Act, these individuals are subject to sanctions under the Act and related rules (including those of the NFA). Registrants are uniquely subject to periodic ethics training requirements.

6. *Separate Federal Regulator*. The regulatory requirements that apply to publicly offered commodity pools exceed considerably those that apply to other limited partnerships and other alternatives to investment in a traditional portfolio composed of stocks and bonds. Those products are not subject to a separate federal regulatory framework, such as the Commodity Exchange Act, applicable to all aspects of the operation of the product. Under the Commodity Exchange Act, the CFTC licenses and regulates the commodity futures markets as well as CPOs, CTAs, FCMs and their associated persons.

7. *All Fees and Expenses Including Trails are Disclosed*. All of the fees and expenses to be incurred by a Pool, including commodity trail commissions, are disclosed in its prospectus as required by the SEC, NASD, CFTC/NFA and the states. Disclosure includes the amount of commodity brokerage commissions and the portion of that amount paid as commodity trail commissions. Investors are also provided with a "break-even" table showing the impact of commissions and other expenses on potential trading profits. Finally, the potential conflict of interest for associated persons arising from their receipt of commodity trail commissions is prominently disclosed.

8. *State Regulation.* Many states substantively review prospectuses for public pools by application of the Guidelines for the Registration of Commodity Pool Programs of the North American Securities Administrators Association. Commodity trail commissions are acceptable under the Guidelines. The Guidelines also limit brokerage commissions that a pool may pay through establishing a level of commissions presumed to be reasonable. Brokerage rates must be disclosed and competitive. CGMI's brokerage rates are well below the limitation in the Guidelines.

Many states also impose investor suitability requirements (income and/or net worth - exclusive of home, furnishings and automobiles) on public pool participants. In contrast, states do not review the prospectuses of registered investment companies and almost anyone can purchase shares in them.

9. *Commodity Pools vs. Other DPPs*.

a. *Liquidity*. Most other programs that are direct participation programs are relatively illiquid, whereas commodity pools typically provide monthly redemption opportunities.

b. *Trading Volume*. In other programs, investments are often made once, at the beginning of operations (e.g., real estate or oil and gas investments), whereas commodity pools trade hundreds of contracts each day. Other programs do not provide daily net asset values and monthly financial reports, whereas CGMI Pools do.

c. Non-Correlation. Commodity pools serve an economic function for investors that other direct participation programs may not. Academic studies have shown that the addition of a non-correlated asset, like managed futures, to a traditional portfolio of stocks and bonds decreases volatility and increases return, provided that the managed futures portion of the portfolio is successful. Managed futures products in the form of the Pools are among the few non-correlated assets available to retail investors via public offerings.

B. **Effect of Rescinding NASD Policy**.

1. *Trail Commissions are Paid for Necessary Services*. If associated persons did not provide the above-described services to Pool investors, CMF as the Pool's general partner and CPO might have to outsource those services or create a separate infrastructure to provide those services to investors. Such other sources of services might well add substantial expense to the Pool and be less effective than associated persons are at doing what they are trained and qualified to do.

2 *CGMI's Trail "Model" Works*. The structure of CMF's Pools, including the payment of commodity trail commissions by CGMI to its associated persons, is beneficial to investors as well as to the associated persons involved. Investors receive the benefit of a limited liability investment, portfolio diversification and potential profit, as well as ongoing professional, educated assistance and advice from associated persons. These benefits are paid for by commodity brokerage commissions at competitive rates. Further, over the many years that CMF and its predecessors have operated commodity pools, no actions or complaints have been brought with respect to commodity trail commissions. Thus, the CMF/CGMI model is working well. Changes such as limitation on commodity trail commissions could have adverse effects on all involved.

C. **Conclusion**

The NASD's long-standing policy with respect to commodity trail commissions has excluded trails from the limitations of Rule 2810 for the reasons outlined in this letter. Commodity trail commissions are a portion of commodity brokerage commissions generated by Pools and paid to associated persons who provide a wide array of ongoing commodity-related services to investors in connection with this complex, otherwise regulated product. Commodity trail commissions were not and should not be considered sales compensation.

Thank you for the opportunity to comment on this important topic. We would be happy to meet with NASD staff at any time to discuss further the matters addressed in this letter or other matters relating to commodity trail commissions.

Very truly yours,

David J Vogel

David J. Vogel
President and Director
Citigroup Managed Futures LLC