

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK, NY 10036-6689

COMMITTEE ON FUTURES REGULATION

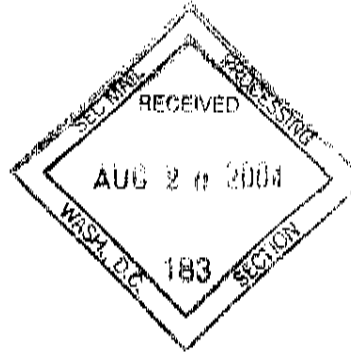
RITA M. MOLESWORTH
CHAIR
787 SEVENTH AVENUE
NEW YORK, NY 10019
(212) 728-8727
FAX: (212) 728-8111
rmolesworth@willkie.com

DEBORAH A. TUCHMAN
SECRETARY
787 SEVENTH AVENUE
NEW YORK, NY 10019
(212) 728-8491
FAX: (212) 728-8111
dtuchman@willkie.com

BY HAND DELIVERY

August 20, 2004

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")**

Ladies and Gentlemen:

The Committee on Futures Regulation (the "Committee") of the Association of the Bar of the City of New York (the "Association") is pleased to submit the following comments on the Release which was published in the Federal Register at *69 FR 45870* (July 30, 2004).

The Association is an organization of over 22,000 lawyers. Most of its members practice in the New York City area. However, the Association also has members in nearly every state and over 50 countries. The Committee consists of attorneys knowledgeable in the regulation of futures contracts and other derivative instruments and it has a history of publishing reports analyzing regulatory issues critical to the futures industry and related activities, including those affecting the sponsors and operators of publicly offered funds, their advisors and brokers. The Committee appreciates the opportunity to comment on the Release and stands ready to assist the Commission and its staff if further clarification is required on any of the points raised in this letter.

The Release seeks comments on the NASD's rescission of its "policy" that permitted the payment of trail commissions in publicly offered commodity pools without treating them as selling compensation subject to the 10% cap on underwriting compensation in NASD Rule 2810. That policy has been in effect since 1982. We believe that the proposed change in policy is tantamount to a rule change. Prior to its becoming effective, therefore, the proposed change should have been subject to the notice and comment

Securities and Exchange Commission

August 20, 2004

Page 2


period requirements of Section 19(b)(1) of the Securities Exchange Act of 1934 with respect to self-regulatory organization rule changes. The Committee submitted a letter to the NASD on March 12, 2004 in response to its request for comments on this matter. That letter, a copy of which is attached, included questions and requested clarification so that the consequences of any change could be adequately assessed. Without addressing several of the points raised in our letter, the NASD announced the rescission of its policy in Notice to Members 04-50 on July 13, 2004.

The change in the treatment of trail commissions was made with immediate effect when it was published by the NASD. Immediate effectiveness meant that pools did not have any opportunity to plan for and adjust to the change. The fact that no transition period was incorporated into the change in policy resulted in the disruption of at least two public commodity pool offerings that were in registration at the time Notice to Members 04-50 was published. Such offerings will either have to be revised at additional expense to comply with the new rule or be abandoned.

As the Commission knows, operators of commodity pools are subject to substantial regulation by the Commodity Futures Trading Commission under the Commodity Exchange Act. Each investor in a public commodity pool must acknowledge receipt of a prospectus that discloses, among other things, all of the fees to which the pool will be subject. As we noted in our earlier letter, public commodity pools provide access to futures and other derivatives markets to investors who often would not have access to those markets because they would not be eligible for individually managed accounts. The change in the treatment of trail commissions in public commodity pools may, in effect, result in unnecessarily different treatment of investors in the commodity futures markets.

The Committee stands ready to assist the Commission with further information or other assistance regarding this important matter.

Very truly yours,



Rita M. Molesworth

Association of the Bar of the City of New York
 Committee on Futures Regulation
 Rita M. Molesworth, Chair*
 Deborah A. Tuchman, Secretary

Samuel F. Abernethy
 Joao Lauro Amaral
 Conrad Bahlke
 Maryann Canfield*
 Gregory Collett
 DeAna Dow Φ
 Lawrence Eckert*
 Shirin Emami
 Daniel Feit
 Garrett Filler
 Peter Funk
 Marvin Goldstein
 Alison Gregory*
 Michael F. Griffin*
 Joyce M. Hansen
 David Harris
 Howard R. Hawkins, Jr.
 Audrey Hirschfeld
 Donald Horwitz
 Robert F. Klein

Dennis Klejna
 David Kozak**
 Michelle Yale MacDougall
 Richard Miller
 Frank Ochsenfeld
 Ronald Oppenheimer
 Nikki Poulos
 Brian Regan
 Michael Sackheim
 James Sanders
 Edmund Schroeder
 Stephen Selig
 Gary Stumpp
 Michael Watkins
 Adam Wernow
 Barbara Wierzynski
 Mark Woodall
 David Yeres
 Edward Zabrocki

* Member of Subcommittee that drafted this letter of comments.

** Chair of Subcommittee that drafted this letter of comments.

Adjunct Members

Carla Colone
 Cindy Ma
 Stephen J. Obie
 Michael Piracci

Φ Ms. Dow abstained from participating in this letter of comments.