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CITY BAR**

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November 13, 2006

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**Re: Direct Participation Programs Policy Project – Proposed Revisions of NASAA
Guidelines for Commodity Pool Programs**

The Committee on Futures Regulation (the “Committee”) of the New York City Bar Association (the “Association”) is pleased to provide comments on the Direct Participation Programs Policy Project Group’s proposed revisions to the Guidelines for Commodity Pool Programs of the North American Securities Administrators Association, dated September 26, 2006, and the relevant portions of the introductory interpretive release and Statement of Policy (together, the “Proposal”).

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 commodity pool operators and commodity trading advisors. The Committee appreciates the opportunity to comment on the Proposal.

Our suggestions are intended to clarify the proposals concerning the definition of Net Worth in the Guidelines and portfolio diversification. We direct our comments to a number of issues that we see as creating difficulties in advising our clients on requirements of the Guidelines as proposed to be revised. First, in the definition of Net Worth in Section I.B.10, we suggest that “home” be changed to “primary residence” to

make it clear that second homes, vacation properties and the like, which are often held for investment purposes, are assets to be included in the calculation of Net Worth.

Second, the proposal would add "any and all retirement or pension plan accounts or *benefits*" to the Net Worth definition. [Proposed Section I.B.10] The Policy Statement describes the purpose of the proposed revisions as to "exclude retirement *assets* from the computation of a security holder's Net Worth." Section I of the introductory narrative refers to the desire to "limit the retirement *proceeds* at risk in the DPP programs" and does not refer to "benefits." We believe that consistent references to the scope of this restriction will make it easier to apply the standard. We suggest that the exclusion be limited to retirement or pension plan accounts that are directed by the investor, in order to exclude pension plan accounts that are controlled and invested by the employer, such as defined benefit plans. We would delete "benefits" from the exclusion in proposed Section I.B.10, since that term generally means programs such as health insurance, which would normally not be part of the calculation of Net Worth for investment purposes and would be difficult for investors to value in any case. Similarly we would eliminate the use of the term "proceeds" from the explanatory release, since its coverage is not clear, and use instead a term such as "assets."¹

Section III.F as proposed for revision would limit the maximum investment in the Program and Affiliates and other funds with similar investment objectives to 10% of the participant's Net Worth. This standard also is likely to pose problems in its practical application. What are "investments with similar investment objectives?" The introductory narrative explains this part of the proposal in terms of "one issuer and asset class", and also as being applicable to "an issuer and its affiliates" and to "multiple affiliated programs.". It is not clear if the affiliation of program sponsors or the investment class is intended to be the primary focus of the proposal. The former standard is relatively straightforward and would be easy to apply, while the second standard is complex and difficult to apply. The definition of "asset class" is applied in various ways in the investment literature and by analysts and investment advisers. We recommend that if grouping of investments is the subject of the restriction, "asset class" or any similar concept be defined clearly. The introductory Narrative [Part I] refers to the proposed limitation as applicable to "10% of the purchaser's liquid net worth." Given the proposed revision to the Net Worth definition, the concept of liquidity is already addressed, and that term should therefore be deleted from any explanatory text in order to avoid the suggestion that another adjustment is required to determine the 10% level. We also recommend that a date for calculation of the 10% standard be stated. This is particularly important since the standard is to be applied to more than one investment vehicle, with investments made at different times. This could also apply to multiple investment opportunities in a single pool that offers units or interests on a continuous basis. We believe that this standard would be most readily applied if it is to be calculated at the time when an investment (initial or subsequent) is made.

¹ We urge the Policy Project Group to consider the fact that other investor eligibility or qualification standards, such as those for accredited investors, qualified clients, and qualified purchasers are straightforward measures of an investor's assets. They do not exclude retirement assets. Introducing the requirement for reduction of net worth by retirement assets will complicate the process of determining suitability by investors and their brokers.

Please contact us if you have questions or if there is any assistance we can provide in connection with the Proposal.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael Sackheim".

Michael Sackheim
Chairman

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* Members of Subcommittee that drafted this comment letter.

** Chair of Subcommittee that drafted this comment letter.

¶ These Adjunct Members did not participant in this comment letter.