March 11, 2004

Barbara Z. Sweeney
National Association of Securities Dealers
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500

Re: NASD Notice to Members 04-07: Policy on Trail Commissions for Managed Futures Funds

To the NASD Corporate Financing Department:

While we recognize and do not disagree with the NASD's position that there is a need to update and formally adopt regulations regarding compensation and fees charged for investment in certain Direct Participation Plans—such as Managed Futures Funds—we feel that the NASD's proposal capping trail commissions is unsound as it will unnecessarily operate to the detriment of the customer. Additionally, while we welcome the idea of reducing the investing public's long-term cost of owning such funds, we feel there are alternative means to achieve this result that do not negatively impact the customer.

The NASD's proposal will have the following negative unintended consequences:

- *The proposed cap could provide an incentive for improper fund switching.* Under the NASD's proposal, the broker will stop receiving the trail commission once the cap limit has been reached. This result could motivate brokers to recommend a fund switch in order to revive receipt of the trail. While we understand that it is the responsibility of the broker-dealer to take appropriate measures to prevent such improper acts, we have strong objections to any regulations that hinder the ability to do so by virtue of the fact that the regulation provides an incentive to engage in improper activity.
- *The proposed cap could have a detrimental effect on ongoing customer service for customers who hold capped commission funds*. As the NASD is aware, managed futures funds are complex derivative products that are not tied to the direction of the market like securities and securities based funds. In order for brokers to adequately educate and continually advise and inform their clients regarding the performance of these products, a high degree of customer service is necessary. Where the broker's compensation ceases past a certain point, the incentive to provide the same high degree of ongoing customer service beyond that point could be substantially diminished. Additionally, if a customer feels that an asset is being "under-serviced," especially an asset that the customer does not entirely understand, they may feel the need to switch to another product and will then be subject to the costs of the switch.
- *The proposed cap will create a suitability paradox for managed futures funds*. In the current environment, there exist two managed futures fund classes: private funds and public funds. Generally, private funds require a high initial minimum investment but generally charge lower fees and trail commissions, whereas public funds have low

minimum investment requirements but charge higher fees and trail commissions. Under the NASD's proposal only the public funds would be subject to the fees/commissions cap. Therefore, given this cap, the fees/commissions charged by the public funds will over a time be substantially less that those charged by the private funds. Such a fee/cost disparity makes it unclear whether a broker could ever recommend a hold strategy in private fund from a suitability standpoint.

We recommend the NASD abandon the proposed trail commission cap and instead consider formally adopting an acceptable trail-commission range (as a percentage of the NAV of the investment) that would be earned by and paid to the broker indefinitely. Such a policy will just as effectively reduce trail commissions and reduce the costs owning managed futures funds without encouraging switching, diminishing the incentive to provide ongoing customer service, or creating a problematic suitability issue with regard to recommending private managed futures funds.

We feel that managed futures funds are unique and exceptional products that can provide great benefits for our clients. Further, we are excited by the growth in this area, as managed futures funds are becoming more widely recognized and accepted investment instruments. For this reason, we welcome regulatory action that will ensure that fees/commissions are reasonable and equitable. Such action will not only increase the attractiveness of the product to the investing public from a cost standpoint, but will also allow investors to be more confident that brokers are not recommending these products for improper reasons. However, we cannot support the NASD's proposed regulation as its negative unintended consequences discussed above outweigh any benefit for investors. Moreover, we feel that the potentially injurious effects of the NASD's proposal on the investing public may damage the growth and viability of the managed futures fund product. For these reasons, we sincerely hope that the NASD will instead adopt the alternative approach of setting an acceptable range for fees and trail commissions, as this approach achieves the NASD's aim of insuring that managed futures fees are reasonable and equitable, while also promoting the appropriate sale and service of this product.

Sincerely,

A.G. Edwards & Sons, Inc.
by Peter Biebel
Vice President & Manager Managed Futures Department