Morgan Keegan & Company, Inc.
50 North Front Street
Memphis, Tennessee 38103
901-524-4100

Members New York Stock Exchange, Inc.

March 12, 2004

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street NW
Washington DC 20006-1500

Re: NASD Notice to Members 04-07: Policy on Trail Commissions in Publicly Offered Commodity Pools

To the NASD Corporate Financing Department:

On behalf of Morgan Keegan & Company, Inc. ("Morgan Keegan"), I am pleased to comment on the NASD's proposal ("Proposal") to rescind its long-standing policy with respect to compensation paid by publicly offered commodity pools to associated persons that are Series 3 or Series 31 licensed.

Morgan Keegan is an NASD member broker dealer, is registered with the Commodity Futures Trading Commission ("CFTC") as a Futures Commission Merchant ("FCM") and is a member of the National Futures Association ("NFA"). Morgan Keegan Fund Management Inc. ("Fund Management"), an affiliate of Morgan Keegan, is also an NFA member and is registered with the CFTC as a commodity pool operator and commodity trading advisor. Fund Management is also registered with the Securities Exchange Commission as an Investment Adviser. I have been employed by Morgan Keegan since 1984 where I currently serve as the Managing Director for the Alternative Investments Group as well as the President of Fund Management. Morgan Keegan has participated in commodity pool offerings since 1984 and Fund Management has conducted business as a commodity pool operator since 1990. As requested in Notice to Members 04-07, the following comments address the primary issues in question in the Proposal.

Are the higher trail commissions associated with commodity pools justified versus other DPP programs ("DPP Programs") such as real estate, oil and gas, and equipment leasing partnerships?

The regulatory and customer service requirements associated with publicly offered commodity pools greatly exceed those relating to DPP Programs.

Regulatory and Structural Differences

Commodity pools are subject to regulation by the CFTC and NFA under the Commodity Exchange Act ("CEA"). Commodity pool trail commissions are service fees paid for commodity-related services under this separate regulatory framework. DPP Programs are not subject to this additional regulation.

Publicly offered commodity pools also differ from DPP Programs in significant structural and operational ways. For example, real estate and oil and gas programs typically purchase properties or other assets at the outset of operations and then hold those properties or assets until the termination of the programs. Although these programs provide annual financial statements, they do not provide daily net asset values and typically do not permit regular redemptions. Commodity pools, on the other hand, engage in daily trading of multiple futures contracts on multiple markets worldwide. Commodity pools are required to provide daily net asset values. Commodity pools provide redemption opportunities on at least a monthly basis. In addition, most commodity pools engage in continuous offerings of interests. As a result of these differences, investors require more and different information than investors in DPP Programs. Finally, commodity pool fees and expenses as a percentage of pool total asset market values are significantly less than DPP Programs because of the substantial leverage available in commodity futures and forward contracts. Thus, fee/expense to asset comparisons between commodity pools and DPP Programs are not like kind comparisons.

Customer Service Requirements

Trail commissions are service fees paid for commodity-related services. Trail commissions developed from and are consistent with practices of FCMs with respect to individual customer futures accounts. Associated persons of FCMs who service those futures accounts typically share in the commodity brokerage commissions generated by the accounts.

The services provided by associated persons in return for the trails require knowledge of both the product and the commodity markets. The services generally described in the prospectuses of publicly offered commodity pools are: (a) responding to inquiries from investors about the value of units; (b) providing information and responding to inquiries about the futures and forward markets and the fund'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; (d) assisting investors in redeeming units; and (e) providing other services requested from time to time by investors.

In our experience, commodity pool investments involve much more hand holding by associated persons than traditional investments. Investors have numerous sources of information and reference points in their decisions with DPP Programs and other more traditional investments, while there are few, if any, independent sources available to them for commodity pools. To assist the investor properly, associated persons need to spend more time learning about how commodity pools work. On an ongoing basis they need to keep track of how the trading advisors systems are interacting with the various markets being traded. Associated persons are motivated to do this if they continue to be compensated on an ongoing basis. Uninformed purchase and liquidation decisions can be far more costly to investors than the ongoing compensation paid to associated persons.

What are the differences between the services provided by Series 31 associated persons and non-Series 31 associated persons?

As previously indicated, the customer service requirements for commodity pool investments are extensive and the investor's likelihood of success in such an investment is greatly enhanced by an ongoing commitment to fulfill these requirements. Series 31 associated persons, have a demonstrated commitment and opportunity to become more knowledgeable about commodity pool investments. Additionally, Series 31 associated persons are subject to additional regulatory requirements including periodic ethics training requirements. Associated persons who fulfill these requirements receive uncapped ongoing trail commissions. It is our belief that greater product knowledge and additional regulatory oversight motivated by ongoing compensation greatly enhances the quality of customer service and the opportunity for a successful investment.

What effect would the termination of trail commissions have on commodity pools?

Morgan Keegan's experience in publicly offered commodity pools is consistent with that of the overall industry which in over twenty years has had no history of abuses. And, more specifically, there is no history of abuses connected with the payment of trail commissions. In addition, over this period, advisory and brokerage fees paid by commodity pools have been substantially reduced, presumably as the result of competition. While it is not possible to foresee the consequences of rescission of the NASD's trail policy on future offerings of commodity pools, it is possible that the result would be a decrease in the number of pools offered to the public and an increase in the number of less thoroughly regulated products. Reduction in the number of publicly offered pools could lead to reduced competition and more rigid pricing. In addition, capping compensation could promote higher turnover rates in commodity pool investments resulting in more frequent front-end charges that could cumulatively exceed the trail commission associated with the long term successful programs.

Conclusion

Commodity pools and the service provided in return for trail commissions derive from and are regulated by the futures industry and are clearly distinguishable from DPP Programs. The quality of customer service is of critical importance to successful investing and we believe the Series 31 requirement for trailing commissions in excess of 10% is a policy directed towards that end. Applying the 10% limitation to publicly offered commodity pools is likely to reduce competitive forces in the market place that historically have driven costs down while encouraging higher investment turnover and the corresponding negative consequences. For these reasons and in consideration of the significant industry commitments that have been made in reliance upon the long-standing NASD policy, we believe the NASD policy excluding the trail commissions from the 10% limitation should be codified rather than rescinded.

Sincerely,

Thomas J. McQuiston
Managing Director