



March 12, 2004

By E-mail (pubcom@nasd.com)

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

Re: 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:

I am writing this letter on behalf of National Futures Association (NFA), a registered futures association under the Commodity Exchange Act and a self-regulatory organization for the United States futures industry. As part of its self-regulatory responsibilities, NFA oversees the regulatory requirements of commodity pool operators. NFA appreciates the opportunity to comment on the above referenced NASD proposal. NFA will limit its comments to the portion of the proposal that relates to rescinding NASD's interpretive policy that exempts from NASD Rule 2810's limitations compensation paid by public commodity pools to broker-dealers and their registered employees who place interests in public pools and provide ongoing services to investors.

Public commodity pools are subject to extensive regulation in both the securities industry (as a public distribution of securities) and the futures industry (through commodity pool operators). The SEC, NASD, Commodity Futures Trading Commission and NFA have various requirements that are imposed on the distribution of interests in public commodity pools and many of these requirements focus on ensuring that public investors receive full disclosure regarding an investment in a public commodity pool.

Among other things, CFTC and NFA rules prohibit a CPO from accepting an investment in a public commodity pool prior to providing the participant with a disclosure document. This document must contain a complete description of fees, including trailing commissions that may be paid or accrue. Before a CPO may use this

disclosure document, it must submit the document to NFA for review.<sup>1</sup> If the document is deficient in any manner, including an incomplete or inaccurate disclosure of fees, the CPO may not use the document, and therefore may not accept investments in the public pool, until the deficiencies are corrected.

As you know, general securities representatives that sell interests in public commodity pools are not required to be registered as commodity brokers. However, because many broker-dealer/FCMs believe that selling and providing ongoing commodity services relating to these products require a certain level of understanding of the futures industry, NFA developed over ten years ago the Series 31 proficiency examination to license those general securities representatives that engage in these activities. The NASD in fact administers this exam, which is strictly tailored to issues relating to the sale of commodity pool interests. Currently, over 10,000 of the 50,000 or so active associated persons in the futures industry have a Series 31 license.

In exchange for receiving trails, associated persons provide services that require knowledge of both the product and the commodity markets. Services generally described in the prospectuses of publicly offered commodity pools include: (a) responding to investor inquiries about the value of units; (b) providing information about the futures and forward markets and the fund's trading in those markets; (c) responding to investor inquiries about monthly statements, annual reports, and tax information provided to them; and (d) providing information to investors about redemption rights and procedures and assisting investors in redeeming units.

As NASD considers rescinding its longstanding policy that exempts public commodity pools from NASD Rule 2810's limitation, NFA strongly encourages NASD to consider the material fact that there is no history of customer abuse relating to the sale of interests in public commodity pools. This is true both with respect to the sale of public pools in general and trailing commissions in particular.

Lastly, NFA encourages NASD to carefully consider the comments received by industry participants on this issue. Thank you for your consideration of NFA's comments on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (312)781-1320 or by e-mail at [ddriscoll@nfa.futures.org](mailto:ddriscoll@nfa.futures.org).

Sincerely,

Daniel A. Driscoll  
Executive Vice President

(caw:nasdcomment-trailingcommissions)

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<sup>1</sup> NFA has been responsible for reviewing disclosure documents of publicly offered commodity pools since March 2003. Prior to that time, the CFTC performed a similar review.