



PACIFIC WEST
FINANCIAL GROUP

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PACIFIC WEST SECURITIES, INC., Member NASD/SIPC
PACIFIC WEST FINANCIAL CONSULTANTS, INC., Registered Investment Advisor
PACIFIC WEST INSURANCE AGENCY, INC.

March 8, 2004

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

RE: Notice to Members 04-07: Regulation of Compensation, Fees, and Expenses in Public Offerings of Real Estate Investments Trusts; Direct Participation Programs, including Commodity Pools; and Closed-End Funds

Dear Ms. Sweeney:

In the above referenced Notice to Members (NTM) 04-07, the NASD has requested comments. Please accept the following comments in your evaluation of this proposal.

Introduction

Pacific West Securities, Inc., is an NASD member broker/dealer since 1/18/73. The firm has approximately 250 associated persons. The firm is also a member of the National Futures Association (NFA) since 11/20/2000. With the NFA, the firm is registered as an Introducing Broker. I am the firm's President and CEO. I also function as the firm's principal over its NFA business. I was first approved as an associate member with the NFA on 3/28/94. I have the following licenses: Series 3,4,7,24,27,53,55,63,65. I also carry the Chartered Financial Analyst designation (CFA).

Commodity Pool Trail Commissions

Throughout the discussion on this topic, the NASD refers only to the Series 31. I would suggest that the language say, "the Series 3 or Series 31."

In response to the NASD proposal to rescind the policy of excluding trail commissions from the 10 percent limitation as it applies to commodity DPPs (relative to the three requisites); Pacific West Securities, Inc. is opposed to this proposal. Specifically,

- **Do Series 31 associated persons who provide commodity-related services to securities accounts that hold commodity DPPs provide services that are significantly different than those provided by associated persons who are not Series 31 registered? For example, in some commodity DPPs, Series 31 associated persons receive "uncapped" trail commissions, while associated persons who have not passed the examination receive trail commissions that are subject to the 10 percent limitation. What additional services are provided by the Series 31 associated persons? If these are necessary services, why are non-Series 31 associated persons permitted to sell shares in such programs?**

We believe that all associated persons that solicit commodity DPPs should be required to pass either the Series 3 or Series 31. The services that are different and/or additional that Series 3/31 representatives provide relative to representatives who do not have these qualifications include: 1) Because of the complexity of the Managed Futures Funds (Commodity Pools) we find that representatives who have studied for and passed either the Series 3 or Series 31 are more qualified to provide on-going service to their clients. 2) Because of the limited industry information and research (as opposed to Mutual Funds and other trail commission products) representatives possessing a Series 3 or Series 31 are better equipped to explain to their clients on-going return performance, specific risk attributes, and portfolio evaluation using Managed Futures Funds (Commodity Pools) and to conduct research about these investments. 3) Representatives who possess a Series 3 or Series 31 have more educational training to assist their clients in on-going buy/sell/hold decisions regarding their Managed Futures Funds (Commodity Pools) investments. 4) Those who possess a Series 3 or Series 31 are also required to comply with additional compliance and supervision requirements initiated by the firm in working with the National Futures Association (NFA). This provides another level of preparation and training to allow them to provide the best service to their clients.

- **Trail commissions in commodity DPPs often are significantly higher than the trail commissions in any other DPPs, including real estate, oil and gas, and equipment leasing partnerships. The Department has reviewed commodity DPPs with trail commissions as high as four percent. By contrast, Rule 12b-1 fees permitted for mutual funds under NASD Rule 2830 (the Investment Company Rule) may not exceed one percent. Are the higher trail commissions in commodity DPPs justified by the quality and level of service provided to accounts that hold these investments?**

Yes. We as a firm, deal in all the DPPs that you mention above. I have personally performed due diligence in most of these categories and others in our firm have

covered every category. We believe that the level of complexity, volatility, unique return characteristics (often not correlated with the equity markets), service required, liability, additional compliance requirements, and lack of public research, put the Managed Futures Funds (Commodity Pools) investments in a category that is much more expensive than the other DPPs listed above.

Another interesting fact is that we as firm have not had one client complaint about commodity DPPs in the approximate 3½ years that we have offered them. During this time we have had hundreds of sales involving several million dollars. We have every indication to believe that the higher trail commissions in commodity DPPs is justified by the quality and level of service provided to accounts that hold these investments.

- **The 10 percent limitation terminates trail commissions in connection with securities sold in all DPP offerings, except commodity DPPs, after the limitation is reached. For example, in a \$500 million DPP offering, \$40 million (eight percent) may initially be paid out of the offering proceeds, leaving an additional \$10 million (two percent) that may be paid as trail commissions. What effect would this trail commission termination feature have on a commodity DPP?**

Because the 10 percent limitation applies only to public programs, the first impact would likely be a shift of business (for those clients who are suitable, i.e. accredited) from public programs to private programs. Other impacts could be less on-going service and lower quality of service and portfolio management.

Loads on Reinvested Dividends

The NASD requests comment on whether less liquid DPP and REIT programs may require members to provide more ongoing services in connection with dividend reinvestment programs than those required for a mutual fund and whether these services justify a sales load on reinvested dividends. NASD requests comment on the extent to which any such services are financed by commissions on reinvested dividends and whether it is appropriate to charge sales commissions in programs in which investors choose to have their dividends automatically reinvested. NASD also requests comment on whether it is appropriate to charge a commission on a dividend reinvestment when the dividend is a return or partial return of the investor's capital.

We believe that less liquid DPP and REIT programs do require members to provide more ongoing services in connection with dividend reinvestment programs than those required for a mutual fund. The due diligence is much more expensive and time consuming. There is less resources readily available to assist in the due diligence process. They are also more client service intensive.

We do believe that these services justify a sales load on reinvested dividends. Ongoing due diligence is expensive and justified for these programs that often have no or limited public information in terms of due diligence research.

To finance the above mentioned due diligence, client servicing, and program monitoring, we believe it is appropriate that such services are financed by commissions on reinvested dividends. For the same reasons we think it is appropriate to charge sales commissions in programs in which investors choose to have their dividends automatically reinvested.

We do not think it is appropriate to charge a commission on a dividend reinvestment when the dividend is a return or partial return of the investor's capital.

Non-Cash Compensation

A. Location of Training and Education Meetings

NASD requests comment on how difficult it typically is to determine whether an asset is "significant" to a program and whether this determination might complicate the ability of a member's legal and compliance staff to decide whether associated persons should attend a particular meeting.

We do not believe it would be difficult to determine whether an asset is "significant" to a program. Furthermore, we do not believe this determination will complicate the ability of a member's legal and compliance staff to decide whether associated persons should attend a particular meeting.

In addition, commenters should address whether such an amendment would provide a significant risk that locations would be chosen in order to provide incentives or rewards to associated persons for selling the issuer's products.

We do not see this as a significant risk. Our due diligence efforts would identify the asset on its own merit/value and not on its travel appeal. Any rational program sponsor/issuer should do the same.

B. Total Production and Equal Weighting Requirements

NASD requests comment on these limitations. Would they better ensure that improper sales incentives do not favor certain securities, such as proprietary securities of the member or its affiliates?

Yes. We agree that these limitations would better ensure that improper sales incentives do not favor certain securities, such as proprietary securities.

It is my hope that these comments have helped in your assessment of these proposals. I am very open to discussing any of these items in more detail by phone (888-236-7979) or e-mail.

Most Sincerely,

Philip Anthony (Tony) Pizelo
President, CEO



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