R.J. O'Brien Fund Management, LLC

April 28, 2008

Ms. Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE.
Washington, D.C. 20549-1090

Re: FILE Number SR-NASD-2005-114

Dear Ms. Morris,

R.J. O'Brien Fund Management, LLC ("RJOFM") appreciates the opportunity to comment on the above referenced notice soliciting comments to the proposed rule change to Financial Industry Regulatory Authority ("FINRA") Rule 2810 ("Rule 2810"). Of particular concern is the current limitation on underwriting expenses, which are not to exceed ten percent of the gross proceeds of the offering and the restraint this places on adequately compensating financial advisors for their selling efforts..

RJOFM is a commodity pool operator registered with the National Futures Association ("NFA") and the managing owner of a publicly-offered commodity pool registered with the Securities and Exchange Commission (the "Commission"). The author of this letter personally has more than 25 years' experience with the commodity pool industry.

Background: The Commission may recall that Finra adopted an exemption to Rule 2810 for commodity pools offering interests registered with the Commission with respect to trail commissions in 1984. The reasons for this action were multi-fold: 1) Commodity pools represented a nascent though rapidly expanding industry. It was estimated that $2 billion was invested in commodity pools at the time, with an ever-increasing participation from retail investors; 2) It was recognized that, although technically required to comply with Rule 2810 as Direct Participation Programs ("DPPs") by definition, these pools had very little in common with DPPs; 3) The underlying structures, capital flows, underwriting processes and continuous nature of client servicing are very different for commodity pools than for other DPPs. This last reason is the most significant.

With the exemption, the industry was able to better align the compensation programs with the underwriting and client servicing efforts afforded to clients. Even though commission levels have been declining over the years, the greatest benefit achieved was that financial service providers were compensated for their ongoing efforts required to service existing investments. Further, because of the client servicing received, investors maintained an appropriate investment horizon of 5-7 years rather than withdrawing within months or a year. Commodity pool investments are an alternative asset class that requires investors to understand and maintain a long-term perspective in order to

appreciate the diversification benefits of a managed futures asset class. As such, financial advisors must remain in constant communication with investors and educate them by sharing empirical data, run allocation models, and provide other market information that supports the long-term diversification benefits of maintaining futures as a component to a traditional portfolio of stocks and bonds. Previously, financial advisors were compensated only at the point of sale and this fee arrangement did not provide the necessary incentive to compensate the financial advisor for the additional work involved in advising a client about the benefits. Unlike more traditional investments where the majority of work involved for the financial adviser takes place around the time of sale, managed futures requires more constant communications and effort.

Over the 20 year period beginning in 1984, the industry grew to an estimated $140 billion. Commodity pools gained institutional acceptance and proved to be valuable diversifiers when included in a traditional stock and bond portfolio as earlier economic studies had suggested[1]. With public commodity pools, individual investors were finally able to diversify their portfolios the same way institutional investors did.

Current environment: As you know the Rule 2810 exemption with respect to "trail" commissions for commodity pools expired in October of 2004. Since that time there has been a significant drop in the registration of new ("post 10/04") funds and/or units. There are still a number of "grandfathered" units for sale in the market place that do not carry the capped compensation. Thus, pre- 10/04 funds/units have a competitive advantage to any newly registered public commodity pools and will continue to have an advantage for as long as an investment is held.

Further, it will be extremely difficult to sell post 10/04 units when the service providers are not compensated for the life of the managed futures investment because there are other products to sell that don't require as much effort and pay a proportionately greater sum when weighed against the work involved with maintaining an investors focus in a managed futures investment. This would deprive the investor of an opportunity to gain the diversification benefits associated with a futures-related investment. The only other means for an investor to invest in the futures market is to open a managed account and thereby be subject to the heightened risk of margin calls. A managed futures product, such as a publicly-offered commodity pool, mitigates this risk as an investor will never be subject to a margin call or risk losing more than his/her investment.

[1] A research paper presented May 16, 1983 by Dr. John Lintner of Harvard University: "The potential role of Managed Commodity-Financial Futures Accounts (and/or funds) in portfolios of Stocks and Bonds"

Additionally, the ten percent total underwriting limit puts the pool sponsors in conflict with the sales people as certain items of a sponsor's overhead reduce the sales commission paid. Pool sponsors need to maintain a margin of financial health and compensate the sales people fairly and for ongoing servicing. For commodity pools, the underwriting limit of Rule 2810 currently requires a trade-off. In light of this, current sponsors of commodity pools with grandfathered units will be reluctant – and unlikely- to register new units. Within the next 1-2 years, it is possible that the entire middle retail market will not have access to these important portfolio diversifiers. As long as there is economic inequity between pre-10/04 units and post 10/04 units, the public commodity pool industry will continue to slowly disappear.

Finra has exhibited some confusion as to the meaning of "offering proceeds" in applying the 10 percent limitation and it would be helpful to lend some guidance and explain that offering proceeds cannot be definitively determined at the time of registration, but only when and as interests are sold at the current net asset value at the time of the sale. As such, offering proceeds will not be determinative until all interests have in fact been sold for a realized sum.

The sponsors of pools with post 10/04 units also have no accounting guidelines as to how underwriting expenses should be treated or allocated. For example: selling commissions aside, do other underwriting expenses get applied to each provider equally even if a provider requires a disproportionate level of support?

An equitable solution: The Commission currently has an opportunity to: 1) Treat all commodity pools with economic parity; 2) Create permanent sub-definitions for commodity pools within the broader DPP classification; 3) Eliminate the patch-work landscape of pre and post 10/04 units; and 4) Once again align compensation with the underlying structure, underwriting processes and client servicing.

We respectfully request that the commission consider the following proposal with respect to the fees and expenses of commodity pools as soon as practicable:

All existing and new pools and units, regardless of when registered/issued:
1) will have selling and trail commissions capped at a maximum of an annualized 2%. Such selling commission, however, will be paid for as long as the assets remain invested in the fund.
2) There will be up to 0.50% of average annual assets available for other underwriting expenses such as sales training, investor education, seminars, etc.
3) There will be up to 0.25% of average annual assets for bona-fide due diligence efforts.
4) Ongoing & Offering costs should not exceed 1% of average annual assets.
5) Sponsors' overhead and employees' compensation will not be allocated to the percentages above.

R.J. O'Brien Fund Management, LLC

The author appreciates the Commission's serious consideration of the above proposal.

Kind regards,

Annette A Cazenave
Sr. Vice President
R.J. O'Brien Fund Management, LLC