Financial Industry Regulatory Authority

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June 20, 2008

Ms. Florence Harmon
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Regulation of Compensation, Fees and Expenses in Public Offerings of REITs and DPPs (SR-NASD-2005-114)

Dear Ms. Harmon:

This submission responds to the letter from the Managed Funds Association ("MFA") to the SEC.[1] The issues raised in the MFA letter are not germane to the subject of the above-referenced rule filing. The comment letter seeks to undo the application of NASD Rule 2810 to commodity pool DPPs, which was settled by an SEC Order in 2004, and is not at issue in this filing.[2] The MFA's letter concedes that issuers of commodity pool DPPs have been complying with the underwriting compensation limits of NASD Rule 2810 since October 12, 2004.[3] Thus, even if the SEC were to invalidate FINRA's proposed rule change, commodity pool DPP issuers would still be required to treat trail commissions paid to brokers as underwriting compensation. In short, the approval of the proposed rule change has no bearing on the issues raised in the MFA's letter.

It also is worth noting that the MFA's "jurisdictional" argument does not have any merit. The MFA, at various points in its letter, acknowledges that commodity pools are both DPPs and securities. The MFA rests its jurisdictional argument on the premise that the remuneration we are regulating comes from commission rebates rather than investor funds and, therefore, exceeds our jurisdiction. The notion that commission rebates are the funds of the either the commodity pool operator or the futures commission merchant that rebates them is, of course, a canard. Customer funds are used to pay commissions and the fact that funds are rebated by an FCM does not transform the source of such funds (one must presume that commodity pools are paying more than the lowest available commission for the execution of transactions and have negotiated rebates that go toward paying

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1 Letter to Nancy M. Morris, the SEC, from Richard H. Baker, MFA, dated June 4, 2008.

2 See Securities Exchange Act Release No. 50335 (September 9, 2004), 69 FR 55855 (September 16, 2004) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Implementation Date of Notice to Members 04-50 (Treatment of Commodity Pool Trail Commissions Under Rule 2810), SR-NASD-2004-136).

3 The MFA letter's section on "Public Interest Considerations" purports to show the harm to the commodity pool industry from the SEC's 2004 decision limiting trail fees, which is completely at odds with its argument that the proposed rule change has any effect on trail fees.

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distribution expenses rather than lower commissions, which would leave more funds in the corpus of the pool). The jurisdiction over the sale of a security cannot be limited by dissecting the security into its constituent parts and claiming another party has exclusive jurisdiction over one such part.[4] Moreover, we reject the notion that the source of the underwriting compensation, however described or contrived, limits the application of FINRA's rules that govern reasonable underwriting compensation.

Finally, the MFA's argument that the SEC's approval of FINRA's rule filing in 2004 was harmful to the commodity pool industry is misdirected and uses the term "harm" without the proper context of the regulatory underpinning of the rule. The MFA's use of the word "harm" means nothing more than the fact that as FINRA has limited underwriting compensation to reasonable levels, the "harm" is the resulting effect that distribution cannot be fueled by excessive underwriting payments. In sum, the MFA's argument turns NASD Rule 2810 on its head by saying that the protections realized by the public through the application of the Rule injure those trying to sell to the public.

In conclusion, we respectfully submit that the MFA comment letter has no bearing on the SEC's approval of SR-NASD-2005-114. This submission also responds to the issues raised in the National Futures Association letter regarding the above-referenced rule filing.[5]

Sincerely yours,

Gary L. Goldsholle

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[4] See SEC v. Variable Annuity Life Insurance Company of America, 359 U.S. 65 (1959).

[5] Letter to Nancy M. Morris, the SEC, from Daniel A. Driscoll, National Futures Association, dated June 19, 2008.