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April 25, 2012

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Rule 4.5 Harmonization

Dear Mr. Stawick:

We appreciate the opportunity to comment on the Part 4 amendments recently proposed by the Commodity Futures Trading Commission (CFTC or the Commission). These amendments would, if adopted, alter Part 4's disclosure, reporting and recordkeeping requirements that would otherwise apply to registered investment companies no longer eligible to rely on Rule 4.5 for an exclusion from commodity pool operator (CPO) status. The proposed amendments are founded on the Commission's recognition that investment companies required to comply with Part 4 may be subject to "duplicative, inconsistent and possible conflicting disclosure and reporting requirements." We support the Commission's goal of ensuring "more congruent and consistent regulation of similarly-situated entities among federal financial regulatory agencies," and submit the following thoughts and comments on the Commission's proposal (the Proposal).

1. Delivery of Disclosure Documents and Periodic Reports:

The Proposal would amend sub-paragraph (c) of Rule 4.12 to permit the CPO for a pool that is registered as an investment company under the Investment Company Act of 1940, to enjoy limited relief from the delivery and acknowledgement requirements found in CFTC Rule 4.21, the periodic financial reporting obligations found in Rule 4.22 and the recordkeeping requirements set forth in Rule 4.23. The Commission's Proposal would make this same relief available to the CPO of any pool the units of participation in which are offered and sold pursuant to an effective registration statement under the Securities Act of 1933 (Public Commodity Pools).

We support the Commission's proposed changes to Rule 4.12, particularly inasmuch they would eliminate various requirements both for registered investment companies as well as Public Commodity Pools. Given the recent enactment of the Jumpstart Our Business Startups Act, however, which included a provision directing the Securities and Exchange Commission (SEC) to amend Regulation D to eliminate restrictions on solicitation by issuers relying on Rule 506, the CFTC should consider extending the proposed relief to all commodity pools. In our view, since the JOBS Act

will likely allow issuers relying on Regulation D to provide prospective investors with disclosure documents through their websites and other electronic means, CPOs of non-Securities Act registered pools should be eligible to use the same web-based means of meeting their disclosure and document delivery obligations as those accorded to Public Commodity Pools.

2. Disclosure Documents – Content; Timing

A. Content of Disclosure Document

In considering how to harmonize the different disclosure requirements imposed by the CFTC's disclosure rules and those adopted by the SEC, the CFTC started with the principle that "CFTC-required disclosures can be presented concomitant with SEC-required information in a registered investment company's prospectus." The Commission acknowledged, however, that there are several areas where the requirements of the SEC's and CFTC's disclosure regimes are in seeming conflict, and proposed specific items of relief from the CFTC's requirements to address those conflicts. The Proposal and the Commission's accompanying release (the Release), identify several such areas, including disclosure of information regarding other pools and accounts (Rule 4.25), and disclosure of fees and expenses not otherwise required to be set forth in the fee table mandated by the SEC.

Other Pools and Accounts Disclosure

In the Release, the Commission takes the position that the other pools and accounts performance information required by Regulation 4.25(c)(2) – (5) can and should be part of an investment company's disclosure document. Under the Commission's Proposal, the information could appear in the investment company's statement of additional information (SAI). While we understand the Commission's desire to avoid insisting that investment companies include this significant disclosure in their already-crowded prospectuses, we also believe that investment company SAIs are read much less frequently and disclosure placed therein is much less closely scrutinized than disclosure placed in the part A prospectus. The CFTC's willingness to allow investment companies to place the required other pool disclosure in their SAIs at a minimum should be tempered by a requirement that such disclosure be placed in a prominent manner in the SAI, perhaps with a cover page reference or legend.

In the Release, the Commission acknowledges that there may be conflicts in how past performance can be presented for SEC and CFTC purposes and requests comment on whether its approach to performance information disclosure strikes an appropriate balance between "providing material information to pool participants, and reducing duplicative or conflicting disclosure." The Release solicits comment on the question of whether the CFTC should harmonize its past performance disclosure requirements with those of the SEC, or even take a different approach altogether, including with respect to operators of pools that are not registered investment companies. Generally speaking, potential investors in newly-formed pooled vehicles are interested in information about

past performance that may assist them in evaluating the offering. The CFTC's approach, reflected in Rule 4.25(c), focuses on pools and accounts currently managed by the pool's operator, irrespective of whether or not such pools use the same (or similar) strategies, or the same (or different) trading advisors. The SEC's approach to the inclusion of prior performance, as reflected in various SEC staff no-action letters to registrants, has permitted funds to include: (i) performance of the new fund's investment adviser (or sub-adviser), where all accounts (including funds) that are managed in the same or a similar style are represented in a composite format; or (ii) the performance information of a fund or funds managed by the investment adviser (or sponsor) of the new vehicle, but only if such fund is managed by substantially the same personnel using the same methodologies and strategies, etc.

In our opinion, allowing investment adviser/CPO firms to show only the results of reasonably similar pools would lessen the burden on such firms, but would also create interpretive questions and increase the potential for firms to exclude the performance of other, otherwise-relevant pools on the ground that they are not similar enough to the registered investment company to warrant inclusion under that standard. Unless a firm can show that its presentation of other pool performance presents the potential to mislead investors, investment advisers to registered investment companies that are required to register as CPOs should be required to show the performance of all other pools sponsored or managed by the investment adviser.[1]

Other Disclosure Issues: Controlled Foreign Corporations

We support the Commission's position, set forth in the Release, that the break-even table required under its Part 4 regulations should be included in a prominent place in the prospectus of an investment company subject to CFTC regulation. We believe, moreover, that the CFTC should require extensive, particularized disclosure regarding controlled foreign corporations (CFCs), used by investment companies to generate returns from investments in commodities and commodity derivatives. Registered investment companies that operate as *de facto* commodity pools are, by necessity, structured so as to place much of the commodities-related trading and related risk in a relatively non-transparent CFC. The use of these controlled entities – which have been characterized by Senator Carl Levin (D – MI), as "sham entities" that allow investment companies to do an "end-run" around applicable tax laws - is necessitated by the limits on commodity-related income found in Subchapter M of the Internal Revenue Code.[2]

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[1] In the Release, the CFTC indicated that it has had preliminary discussions with the SEC staff on the issue of including CFTC required performance disclosures that may conflict with SEC requirements. We understand that the SEC staff has stated that it would consider requests for no action relief. Since it appears that this relief would be necessary for any registered investment company to be able to include the CFTC required past performance disclosures, we believes that the SEC staff should issue this relief on an industry-wide basis.

[2] In simplest terms, investment companies must find a way to transmogrify the ineligible "commodity" income generated by their use of commodity futures and other derivatives into qualifying income for purposes of the Code. They have used the CFC structure because it allows them to effectively convert commodity (non-qualifying) income into securities-related (qualifying) income.

Leaving aside the current legal and regulatory dispute surrounding the formation and operation of such entities by investment companies, it is undoubtedly true that their use has resulted in a general masking of risks, expenses, operating approaches and even investment strategies carried out by the investment companies through theses CFCs. While the CFTC has made clear that is not going to restrict the use of these off-shore subsidiaries by investment companies to trade commodity interests, the CFTC is in a unique position to mandate that there be full and transparency in the disclosure documents used by these investment companies regarding their CFCs. Even if it does not bar the use of such entities by investment companies subject to CFTC jurisdiction, the Commission can and should require complete, detailed information regarding the purpose, expense, operation and risk (including leverage and notional funding), associated with CFCs. Such information is needed, in our opinion, to help investors and regulators identify and understand the expenses associated with these vehicles, as well as the actual techniques utilized by the managers thereof and the risks associated with them.[3]

B. Timing of Disclosure Document Updates

The Proposal acknowledges that the CFTC's updating requirements for pools managed by CPOs differ from those applicable to registered investment companies. Under the federal securities laws, registered investment companies effectively must update their prospectuses on an annual cycle, while Regulation 4.26 requires CPOs to update their pool documents every nine months. Acknowledging this conflict, the Proposal provides for CPOs to file updates to their pools' disclosure documents twelve months from the date of their last document. We support this aspect of the Proposal, especially insofar as it would apply to all pools, not just to Public Commodity Pools. .

3. Reports – Timing and Certification

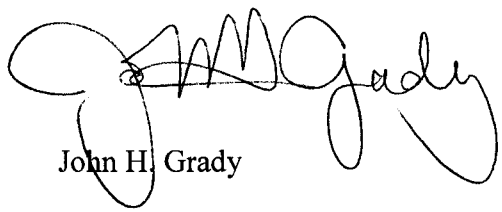
Pursuant to CFTC regulation, CPOs generally must provide monthly account statements to investors in the pools that they manage. Investment companies registered under the 1940 Act, on the other hand, are required to prepare, file and disseminate reports to shareholders on a semi-annual basis, and to file holdings reports with the SEC on a quarterly basis. In the Release, the CFTC stated that there was no reason to provide relief to investment companies that come under CFTC jurisdiction, as the information required to prepare the account statement should be "readily available" to the operators of these investment vehicles. The Release goes on to point out that CPOs of pools registered as investment companies should be able to satisfy the requirement to deliver account statements to participants "by making such statements available on their internet Web sites, thereby substantially reducing any burden under Rule 4.22(a)." We support the use of electronic means to disseminate as much required information to investors as possible,

[3] Under the Commission's regulations, a CFC constitutes a major investee pool. As a result, an investment company's disclosure document will have to include certain disclosures regarding the CFC as outlined in Rule 4.24. Given the central nature of the CFC to the return stream of many investment companies that are pursuing managed futures investment strategies, and given the opaque nature of the CFC model, however, we believe that the types of additional disclosures listed above are absolutely vital.

and believe that the CFTC should consider making this approach to meeting the account statement requirements of Rule 4.22 available to as broad a swath of CPOs as possible, even where an investment company registrant is not involved.

Steben & Company, Inc. has been registered as a CPO since 1989, and currently manages pools with assets in excess of $1.5 billion. As we have stated consistently throughout this process, we support the CFTC's efforts to require the relatively new investment companies that are functioning as *de facto* commodity pools to bring their operations, disclosure, etc., up to the level applicable to registered commodity pools operated by CPOs rather than let them default to a less exacting regime. The Commission's Proposal, in attempting to do so while guarding against unnecessary duplication and/or conflicting requirements, is another appropriate step in the right direction. We laud the CFTC and its staff for their thoughtful and well-reasoned efforts, and hope that the CFTC and SEC can continue to work together to generate a result that brings increased clarity and protection for investors.

Sincerely,



John H. Grady