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April 12, 2011

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581
Attention: David A. Stawick Secretary

Re: RIN – 3033-AD30

Dear Mr. Stawick:

This letter provides comments on the Release of the Commodity Futures Trading Commission (“Commission”) published in the Federal Register on Friday, February 11, 2011 (FR Doc No: 2011-2437) and identified in the Release as RIN 3038-AD30.

My comments are limited to the section of the Release which proposes to eliminate Commission rules §4.13(a)(3) and §4.13(a)(4). The discussion of these proposed changes is contained in section II E of the Release.

Background.

Dodd-Frank expanded the scope of instruments subject to Commission regulation and provides for a new regulatory structure. The definition of “commodity interest” will include certain swaps, leverage transactions and other items. The Congressional focus in Dodd-Frank appears to have been on the regulation of swaps and other non-traditional derivatives that may present systemic risk. Another primary focus of the regulatory structure contemplated by Dodd-Frank was the avoidance of duplicative Commission and

SEC provisions. It is not at all clear that the proposed elimination of Commission rules 4.13(a)(3) and 4.13(a)(4) is supported by Dodd-Frank or the legislative record which developed around Dodd-Frank, particularly where the fund in question is mainly a vehicle for investments in securities. Implementation of these proposals will have a negative impact on these types of private funds.

Most private funds are privately placed pursuant to SEC rule 506. Use of this rule preempts state regulation, except for notice filings. In addition, if the investors are accredited, then there are no particular required disclosure items in the private placement memorandum. Registration as a commodity pool operator (“CPO”) generally brings with it certain mandatory disclosures. In addition to being inconsistent with rule 506, this approach may result in the inclusion of information in the private placement memorandum which is of limited use to potential investors, particularly where trading in securities is the main purpose of the investment vehicle

Many private funds invest in both securities and commodity interests. Managers of investment vehicles that include securities will be required to provide extensive reports to the SEC concerning fund positions, regardless of whether the manager is registered as an adviser with the SEC.

I recommend that the Commission consider the following approach.

The Commission Should Retain A De Minimis Exemption.

The Commission should retain a de minimis exemption from registration as a CPO and commodity trading advisor (“CTA”). There is no reason to require registration in cases where the positions in commodity interests are limited. These types of positions

obviously do not present systemic risk. If the Commission believes that the current de minimis exemption allows unreported positions that present systematic risk, then the Commission should revise the rule, rather than eliminate it.

The Commission Should Retain 4.13(a)(4).

Investment vehicles holding securities will be subject to extensive SEC reporting requirements. These reporting requirements will be present for managers that are registered with the SEC as investment advisers and managers that are exempt from registration as advisers. So the regulatory arbitrage concern discussed in the Release is not present where the investment vehicle also holds securities as well as commodity interests. As a result, 4.13(a)(4) should be retained for investment vehicles that hold securities. For investment vehicles that include securities, elimination of 4.13(a)(4) will result in unnecessary and duplicative regulation.

Rather than eliminating 4.13(a)(4) entirely, I recommend eliminating the exemption only for CPOs and CTAs that deal exclusively with futures regulated by the Commission in excess of a specified systemically significant number. For other CPOs and CTAs that deal exclusively with futures regulated by the Commission, I recommend adding a reporting provision with respect to futures positions which are less than the designated systemically significant position number.

In any event, Rule 4.13(a)(4) should be retained with respect to investment vehicles the managers of which will be required to provide reports to the SEC.

The views contained in this letter are on my own and do not represent the views of McGuireWoods. If you have any questions concerning the matters discussed in this letter, please contact me at (202) 857-1716 or email me at dpankey@mcguirewoods.com.

Respectfully Submitted,

s/David H. Pankey
David H. Pankey