Steben & COMPANY

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STATEMENT OF STEBEN & COMPANY

My name is John Grady, and I serve as chief operating officer and general counsel of Steben & Company, based in Rockville, Maryland. We have been registered as a commodity pool operator since 1989, and we currently manage pools with assets in excess of $1.5 billion. We are supportive of the Commodity Futures Trading Commission's initiative to "improve accountability and increase transparency of the activities of CPOs, CTAs and the commodity pools that they operate or advise…," and we endorse its desire to "encourage more congruent and consistent regulation of similarly-situated entities among federal financial regulatory agencies…"

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Rule 4.5 provides an exclusion from the definition of CPO to persons that operate certain enumerated investment vehicles, including investment companies registered with the SEC (otherwise known as mutual funds). There now exist mutual funds that employ the same strategies used by commodity pools to produce returns for their shareholders, but because they are registered under the Investment Company Act of 1940 they are able to operate outside of the rules adopted by the CFTC to regulate commodity pools. As we have said in previous comment letters submitted to the CFTC, we believe that there are significant consequences that flow from the fact that these funds and their advisers are not subject to the CFTC's Part 4 regulations. Set forth below is a summary of our thoughts on the questions identified by the CFTC in its prior release involving Rule 4.5:

- In our view, no exemption from CFTC Part 4 regulations should be available to any fund that is a "de facto commodity pool" and that is seeking to produce returns for investors derived from in whole or substantial part from managed futures strategies. Whether a mutual fund is such a vehicle can be determined by (i) assessing the fund's holdings and trading activities involving futures, options and/or swaps to see if it is above an appropriate threshold level established by the CFTC; and (ii) assessing whether the fund is, through its objective(s), descriptions and offering (or selling) materials, holding itself out as providing investors in whole or in substantial part with the potential for returns associated with managed futures.

  In our view, any mutual fund that uses the words "managed futures" or a close approximation thereof in its name is in fact marketing itself as such a vehicle. In addition, we believe that the following factors should be considered in determining whether a fund is marketing itself in a way that should require it to comply with the CFTC's rules:

  - the fund produces a material portion of its returns by investing in or through a wholly-owned (or controlled) foreign corporation;

- the fund compares its performance to that of a managed futures (or analogous) benchmark or index; and
- the fund makes statements in its prospectus or marketing literature to the effect that an ownership interest in the fund provides the holder thereof with meaningful exposure to the benefits of managed futures investment strategies.

- We remain convinced that mutual funds that operate as de facto managed futures pools pose investor-related concerns. The use of controlled foreign corporations (CFCs) to trade their commodity interests often results in funds investing a substantial amount of their assets in underlying pooled vehicles or thinly-veiled separate accounts managed by CTAs that charge incentive fees. In addition, many funds appear to employ high trading levels (directly or indirectly) in their CFCs in order to produce the desired returns.

- We are concerned that the disclosure and delivery regime applicable to mutual funds does not necessarily bring out all salient facts to investors at an appropriate point in the investment process. We believe that it is possible and appropriate for these funds to adapt their selling, operating and disclosure practices to the requirements of the CFTC that are applicable to registered commodity pools. Such a result is the simplest and most direct path to protecting and informing investors.

- We do not think that the CFTC should exclude funds already in existence from revised Rule 4.5. Mutual funds that are operating as de facto commodity pools should be required to come into compliance with the CFTC's Part 4 regulations in a short time. Any fund formed during the pendency of this regulatory initiative should similarly be given only a short period of time to come into compliance.

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We encourage the CFTC to continue its initiative to create an appropriate and level playing field for all investment vehicles that seek to deliver returns associated with managed futures strategies.