August 25, 2009

<u>Via Federal Express</u>

Mr. David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: National Futures Association: CPO Quarterly Reporting Requirements – Proposed Adoption of Compliance Rule 2-46*

Dear Mr. Stawick:

Pursuant to Section 17(j) of the Commodity Exchange Act, as amended, National Futures Association ("NFA") hereby submits to the Commodity Futures Trading Commission ("CFTC" or "Commission") proposed NFA Compliance Rule 2-46 regarding CPO quarterly reporting requirements. This proposal was approved by NFA's Board of Directors ("Board") on August 20, 2009.

NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act ("CEA") and will make these proposals effective once it has completed the necessary programming changes unless the Commission notifies NFA within ten days after receiving this submission that the Commission has determined to review the proposals for approval.

PROPOSED AMENDMENTS
(additions are <u>underscored)</u>

COMPLIANCE RULES

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<u>Part 2 – RULES GOVERNING THE BUSINESS CONDUCT OF MEMBERS REGISTERED WITH THE COMMISSION</u>

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<u>Rule 2-46. CPO Quarterly Reporting Requirements</u>

Each CPO Member must report on a quarterly basis to NFA, for each pool that it operates and for which it has any reporting requirement under CFTC Regulation 4.22, the following information in a form and manner prescribed by NFA within 45 days after the end of each quarterly reporting period:

(a) The identity of the pool's administrator, carrying broker(s), trading manager(s); and custodian(s);

(b) A statement of changes in net asset value for the quarterly reporting period;

(c) Monthly performance for the three months comprising the quarterly reporting period;

(d) A schedule of investments identifying any investment that exceeds 10% of the pool's net asset value at the end of the quarterly reporting period.

EXPLANATION OF PROPOSED AMENDMENTS

NFA recently developed a new risk management system designed to assess risks, identify trends and assign audit priorities. NFA is concerned, however, that the current information that we have relating to commodity pools – particularly CFTC Regulation 4.7 exempt pools – may not provide sufficient information for NFA to fully utilize the risk system's capabilities. The additional limited performance and operational data NFA desires to collect is necessary so that the new risk system can provide an optimal benefit.

NFA issued a Notice to Members seeking CPO Member comment on the proposal. NFA received sixty-four comments on the proposal (including one from the Managed Funds Association and one from a law firm). The majority of comments supported the concept, although some expressed concerns regarding the method of reporting and confidentiality of the information. Those comments that did not support the proposal generally indicated that the reporting is burdensome, does not provide much benefit to NFA and is contrary to the regulatory scheme for exempt funds, including those exempt under Regulation 4.7.

Most comments supported providing the requested information on a quarterly basis. There was a general consensus, however, that CPOs should be given at least 45 days from the end of the reporting period to submit the information. CPOs felt they needed this time to gather the information and to ensure that this process did not interfere with their preparation of periodic statements. The Board also supports a quarterly reporting cycle, with the information due within 45 days of the end of the reporting period.

Although most comments were not opposed to requiring CPOs to identify the third parties with whom they have a relationship, a number of comments indicated that NFA should specifically list the types of third parties it wants identified. The Board agrees with this comment, and the proposed rule specifies that the CPO must identify the pool's carrying broker(s), trading manager(s), custodian(s) and administrator. A number of comments also indicated that CPOs should be required to file or input this information at the time of their initial quarterly filing. At the time of subsequent quarterly filings, the CPO should not have to provide any information unless there are changes to the third party relationship information previously provided.

The comments also indicated a concern with the schedule of investments and the burdens associated with having to input balances for a number of different investments. GAAP currently requires a schedule of investments to include all investments that exceed 5% of the pool's net assets. After considering the comments and the purpose behind this rule, the Board has concluded that for its purposes an appropriate threshold is any investment that exceeds 10% of the pool's net asset value. This threshold is more appropriate for risk assessment purposes and will also reduce the burden on CPO Members by reducing the number of balances that must be reported.

The Board is mindful of the burdens associated with reporting a schedule of investments and the purpose behind the rule. Therefore, NFA will make the system as user friendly as possible, and eliminate the necessity for detailed reporting (e.g., specific position information) to the extent possible.

As noted above, some comments also stated that exempt pools should not be subject to the requirement because such a reporting requirement is contrary to the regulatory scheme for CFTC Regulation 4.7 and 4.13 pools. However, the Board is concerned that the current information NFA has related to commodity pools does not provide sufficient information for NFA to fully utilize the risk system's capabilities. In particular, NFA currently uses certain data collected from pool disclosure documents (for those pools that file a disclosure document[1]) and from pool annual reports to identify CPO trends and assign audit priorities. Neither of these sources, however, updates NFA with important information on a regular basis. Moreover, since Regulation 4.7 pools do not file disclosure documents, NFA must rely only upon the dated information contained in their annual reports. NFA believes this information is insufficient, particularly given the fact that NFA has taken several recent regulatory actions against CPOs for fraudulent activity involving 4.7 pools. Due to these considerations, the Board believes that if Regulation 4.7 pools are not subject to this requirement, then the proposed rule will not address one of the primary purposes for adopting it. Therefore, both non-exempt and 4.7 pools will be subject to the quarterly reporting requirement.

As mentioned earlier, NFA is invoking the "ten-day" provision of Section 17(j) of the Commodity Exchange Act. NFA intends to make proposed NFA Compliance Rule 2-46 regarding CPO quarterly reporting requirements effective once it has completed the necessary programming changes unless the Commission notifies NFA within ten days after receiving this submission that the Commission has determined to review the proposal for approval.

Respectfully submitted,

Thomas W. Sexton

Thomas W. Sexton
Senior Vice President and
General Counsel

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[1] Approximately 75% of pools are Regulation 4.7 pools and, therefore, are exempt from filing a disclosure document.

* The proposed adoption of Compliance Rule 2-46 becomes effective March 31, 2010.