

March 16, 2005

Memorandum to our Investment Management Clients and Friends

**CFTC Annual Report Requirement**

90 Day Reporting Requirement

Commodity Futures Trading Commission ("CFTC") Rule 4.22(c) requires a commodity pool operator ("CPO") to prepare an Annual Report, including certified financial statements presented in accordance with generally accepted accounting principles. The Report must be filed with the National Futures Association and distributed to pool participants within 90 days after the pool's fiscal year end.

A fund manager who was registered as a CPO at any time during a particular year, but who (i) withdrew its registration or (ii) withdrew its registration and filed a Claim of Exemption under CFTC Rule 4.13(a)(3) or (a)(4) in such year, is required to prepare and distribute the Annual Report with respect to such year. (For example, a CPO that was registered in January 2004, but who filed a Claim of Exemption under 4.13 and withdrew its CPO registration in February, is still required to file and distribute the Report with respect to 2004. Likewise, a manager who was registered as a CPO and simply withdrew its registration without filing a Claim of Exemption must also prepare the Report for such year.) Thereafter, a fund manager will not be required to prepare the Report (or comply with CFTC regulations), for any year that it remains unregistered.

A fund manager who filed a Claim of Exemption under Rule 4.13, but who was not registered as a CPO, is not required to prepare and file the Annual Report.

Extensions for Fund-of-Funds Operators

Operators of funds-of-funds generally cannot obtain the information regarding the underlying investee funds in sufficient time to meet the filing deadline. Accordingly, Rule 4.22(c) provides a standard extension of 60 days (i.e., to 150 days after the pool's fiscal year end) and a procedure for obtaining the extension.

Notices for the first year.

The CPO's first notice claiming the extension must be filed within 90 days after the end of the pool's fiscal year (that is, by the normal deadline for filing the annual report). The notice must contain the following information:

- 1) The name, main business address, main telephone number and the NFA identification number of the CPO, and the name and NFA identification number of the commodity pool.
- 2) The date by which the annual report will be distributed and filed (the "Extended Date"). The Extended Date must be no more than 150 calendar days after the end of the pool's fiscal year.

3) Representations by the CPO that:

(A) The pool for which the annual report is being prepared has investments in one or more collective investment vehicles ("Underlying Funds");

(B) The CPO has been informed by the certified public accountant selected to audit the pool's financial statements that specified information establishing the value of the Underlying Funds is necessary in order for the accountant to render an opinion on the pool's financial statements. The notice must also include the name of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the annual report to be prepared, audited, and distributed before the Extended Date.

Notices for subsequent years:

After the first year, the CPO does not have to again file for an extension, but may simply include the same information required above in a statement attached to, and filed with, the annual report.

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If you have any questions concerning the foregoing, please call an attorney in the Investment Management Group at Seward & Kissel.