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Division of Clearing and
Intermediary Oversight

January 26, 2009

To: **All Commodity Pool Operators**
Attention: **Chief Financial Officer**
Subject: **Annual Reporting for Commodity Pools**

The Division of Clearing and Intermediary Oversight ("DCIO" or "Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission") is issuing this letter to assist commodity pool operators ("CPOs"), and their public accountants, with the preparation and filing of annual financial reports required under the Commodity Exchange Act ("Act") and Commission regulations.[1] This letter highlights regulatory changes affecting CPOs with respect to financial filing and provides reminders of requirements in response to common deficiencies observed in prior years' annual reports. CPOs, including those that operate in non-U.S. jurisdictions, are encouraged to provide this letter to their public accountants and others assisting in the preparation of commodity pool annual financial statements.

The Division has issued similar letters in prior years, which are available at the Commission's website.[2] Those letters should be consulted with respect to commodity pool annual financial statements and reporting. In particular, prior letters contain information regarding the following topics, which are still relevant for many commodity pools:

- American Institute of Certified Public Accountants' ("AICPA") Statement of Position ("SOP") 03-04, *Reporting Financial Highlights and Schedule of Investments by Nonregistered Investment Partnerships: An Amendment to the Audit and Accounting Guide, Audits of Investment Companies* (2005 letter; an illustration of the investments schedule and additional fund of funds disclosures can be found in Attachment B);
- Reports for pools for the fiscal year in which an initial claim of exemption under Regulation 4.13 is filed (2006 letter);

[1] The Act is codified at 7 U.S.C. §1 et seq. (2007). The Commission's regulations are found in Title 17 of the Code of Federal Regulations. The Commission's internet website, www.cftc.gov, provides links to both the Act and Commission regulations.

[2] Prior letters from 1998 forward are available at the Commission's website at http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html.

- Notice of replacement of accountant (2006 letter);
- Notice regarding election of fiscal year other than calendar year (2006 letter);
- Requests for confidential treatment of commodity pool annual reports (2006 letter);
- AICPA SOP 95-2, *Financial Reporting by Nonpublic Investment Partnerships*, applicability to both required audited and unaudited commodity pool annual financial reports (2004 letter); and
- Filing of initial annual reports and final annual reports (2007 letter).

In addition, CFTC interpretations and other staff letters that provide written guidance concerning the Act and the Commission's regulations are available on the Commission's website. In particular, CFTC Interpretative Letter 94-3, *Special Allocations of Investment Partnership Equity*, addresses how a CPO should report a special allocation of partnership equity to the general partner or any other special class of participant of an investment partnership in the financial statements of a commodity pool.

I. Due Dates of Commodity Pool Financial Filings – Late Filings

CPOs and public accountants should be familiar with the Commission's regulations, particularly Regulations 4.7 and 4.22, in preparing and filing commodity pool annual financial statements. These regulations establish the due dates by which such commodity pool annual financial statements must be provided to participants and received by the NFA.

Specifically, Commission regulations provide that:

- **Commodity pool annual reports must be distributed to pool participants and filed with NFA within 90 calendar days of the pool's fiscal year end.** The filing date for commodity pool reports as of December 31, 2008 is March 31, 2009. Copies of such reports should be filed electronically with the NFA. A CPO should not file a copy of a commodity pool's annual report with the Commission.

- **CPOs must submit annual reports to NFA electronically in accordance with NFA's EasyFile electronic filing system and procedures.**

- **An annual report may be distributed in hardcopy or electronically to pool participants. The CPO, however, must obtain a participant's prior consent to distribute an annual report in electronic format.**

- **Applications for an extension of the distribution and filing date must be submitted to NFA prior to the original due date and must include the information required by Regulation 4.22(f)(1). Extension requests beyond 90 days should be addressed to the undersigned with copies to the NFA.**

- **CPOs of commodity pools that invest in other collective investment vehicles may obtain an "automatic" 60-day extension of the distribution and filing due date by submitting the information specified by Regulation 4.22(f)(2) to NFA prior to the original due date. In subsequent years, the requisite representations required by**

Regulation 4.22(f)(2) may be made in a statement attached to and filed at the same time as the annual report.

- Some CPOs have filed incomplete, or "draft", unaudited financial statements for pools exempt under Regulation 4.7 to meet the due dates for such filings. CPOs are reminded that although Regulation 4.7 provides exemption from certain requirements, reports filed and distributed to participants must include all required information and be in accordance with Generally Accepted Accounting Principles as established in the United States ("U.S. GAAP") to be considered timely filed.

II. Complex Entities and Complex Capital Structures

Master/Feeder Structures. Paragraph 7.07 of the May 1, 2008 edition of the AICPA Audit and Accounting Guide, *Audits of Investment Companies*, permits nonpublic feeder pools either to follow the disclosure and reporting provisions of SOP 95-2, as amended by SOPs 01-1 and 03-4, or to present a complete set of master financial statements with each feeder financial statement.

Fund of Funds. The Division believes that CPOs should report amounts of income and fees paid to operators of investment partnerships in which they invested significant portions of the commodity pool's capital as such information is deemed material for participants to fully comprehend the investment strategy of the commodity pool. Accordingly, CPOs are strongly encouraged to disclose amounts of income and fees associated with investments in investment partnerships that exceed five percent of the commodity pool's net assets. The five percent threshold is consistent with the reporting thresholds set forth in SOP 95-2 and SOP 03-4 for investment partnerships. Illustrative disclosures are in Attachment B to this letter.

If a commodity pool's annual financial statements are found deficient with respect to compliance with U.S. GAAP, the CPO may be required to revise the commodity pool's financial statements, distribute the revised statements to participants, and re-file the statements with NFA.

See **Accounting Developments** below for possible additional guidance in valuing investments in funds that have prohibited redemptions by investors.

III. Requests for Limited Relief from U.S. GAAP Compliance for Certain Offshore Commodity Pools

The SEC approved, in November 2007, rule amendments under which financial statements from foreign private issuers in the U.S. will be accepted without reconciliation to U.S. GAAP only if they are prepared using International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board. In furtherance of its move to international uniformity of accounting principles, the SEC issued a Proposed Rule: *Roadmap for the Potential Use of Financial Statements Prepared in Accordance with International Financial Reporting Standards by U.S. Issuers* (Release No. 33-8982; November 14, 2008), with comments due by February 19, 2009.

CFTC rules, however, require that audited and unaudited financial statements, as well as periodic account statements, must be presented and computed in accordance with U.S. GAAP. The U.S. GAAP requirement also applies to commodity pools operated pursuant to an exemption under Regulation 4.13.

Nevertheless, Division staff has, on a case-by-case basis, provided limited relief to CPOs that operate offshore pools by allowing the operators of such commodity pools to prepare and to present their financial statements in accordance with another comprehensive basis of accounting including International Financial Reporting Standards, or United Kingdom or Irish accounting standards, instead of U.S. GAAP.

In each case, the Division's relief was conditioned upon the offshore pool following certain key elements of U.S. GAAP standards, including: 1) determining fair values of investments in accordance with U.S. GAAP; 2) reporting of both realized and unrealized gains and losses through the statement of operations; 3) preparing a condensed schedule of investments;[3] and 4) reporting special allocations of partnership equity in accordance with CFTC Interpretative Letter 94-3. Further, if an investment company is consolidated with another entity, such as a feeder fund consolidating with its master fund, all applicable disclosures required by U.S. GAAP for the feeder must be presented with its consolidated financial statements.

In addition, using accounting standards other than U.S. GAAP must not conflict with any representations made to participants or potential participants in the pool.

CPOs operating offshore pools may request relief from the U.S. GAAP requirement by submitting their requests, enumerating compliance with each of the elements noted above, to the undersigned at the address shown on this letterhead. If you have any further questions, contact Ronald Carletta, Branch Chief, or Al Goll, Auditor, at the phone numbers or addresses listed in Attachment A.

IV. Accounting Developments

A. *FAS 157, Fair Value Measurements* –Applicable to 2008 financial statements, FAS 157:

- defines fair value;
- establishes a framework for measuring fair value under U.S. GAAP;
- expands disclosures about fair value measurements;
- applies under other accounting pronouncements that require or permit fair value measurements, the FASB having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute; and
- does not require any new fair value measurements. (However, for some entities, the application of this Statement will change current practice.)

The changes to current practice resulting from the application of this Statement relate to

[3]As required by AICPA SOP 95-2, subsequently amended by SOP 01-1 and SOP 03-4.

the definition of fair value, the methods used to measure fair value, and the expanded disclosures about fair value measurements.

Resources that may be helpful in understanding and applying FAS 157 are:

- *Measurements of Fair Value in Illiquid (or Less Liquid) Markets*, issued by the AICPA Center for Audit Quality, available at www.aicpa.org/caq/download/caqalert2007_51_10032007.pdf;
- AICPA Audit Risk Alerts: *Securities Industry Developments 2008/2009* and *Investment Companies Industry Developments 2008/2009*;
- AICPA Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*, when auditing financial statements that contain complex fair value measurements;
- FASB Staff Position No. 157-3 "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active";
- Valuation Resource Group – in particular, issue 2008-10 "Use of Net Asset Value in Fund of Funds Investments" (you may want to visit http://www.fasb.org/project/vrg_summary_of_discussions.pdf); and
- AICPA publications, including Technical Practice Aid (TPA) on Liquidity Restrictions, Investment Companies TPAs, etc. – please refer to http://www.aicpa.org/Professional+Resources/Accounting+and+Auditing/Accounting+Standards for more information.

B. Alternative Investments, Audit Considerations – The AICPA Practice Aid, *Alternative Investments Audit Considerations: A Practice Aid for Auditors*, should be of interest to management of investor entities including, but not limited to, other investment companies (e.g., funds-of-funds). It provides guidance to assist auditors in addressing the existence and valuation assertions associated with alternative investments due to the lack of a readily determinable fair value and the limited investment information generally provided by investee fund managers.

The Accounting Standards Executive Committee of the AICPA issued a Draft Issues Paper, *FASB Statement No. 157 Valuation Considerations for Interests in Alternative Investments*, which includes guidance on how to value investments in investment companies that have prohibited withdrawals by investors.

C. AICPA Technical Guidance – AICPA issued technical guidance regarding accounting treatment of offering costs incurred by investment partnerships.[4] This guidance:

- provides that investment partnerships that continually offer interests should amortize offering costs over a 12-month period, generally on a straight line basis; and
- defines the phrase "continually offer interests."

[4] See footnote 1 to paragraph 8.24 of the AICPA Audit and Accounting Guide, *Investment Companies* (May 1, 2008 edition).

Registrants are reminded that organization costs are not affected by this guidance and must be charged to expense as incurred as required by AICPA SOP No. 98-5, *Reporting on the Costs of Start-up Activities*. However, if appropriately disclosed to participants and potential participants, net asset value used to compute investment entrance and exit values may be adjusted to amortize such costs differently, but generally not to exceed a period of 60 months.

V. DCIO and NFA Contact Information

If a CPO or a public accountant has any questions on the foregoing, please feel free to contact the DCIO staff or NFA staff listed in Attachment A to this letter.

Very truly yours,

Thomas J. Smith
Deputy Director and
Chief Accountant

ATTACHMENT A
CFTC DIVISION OF CLEARING AND INTERMEDIARY OVERSIGHT CONTACT INFORMATION

Regional Office Locations	Contacts	Location of CPO's Principal Office
Eastern Region		
140 Broadway, 19th Floor New York, NY 10005-1146	Ronald A. Carletta Phone: (646)-746-9726 E-Mail: rcarletta@cftc.gov Al Goll Phone: (646)-746-9723 E-Mail: agoll@cftc.gov Fax: (646)-746-9937	All states east of the Mississippi River, *except* Illinois, Indiana, Michigan, Ohio, and Wisconsin. Any location outside of the United States
Central Region		
525 West Monroe Street Suite 1100 Chicago, IL 60661	Lisa M. Marlow Phone: 312-596-0566 Fax: 312-596-0712 E-Mail: lmarlow@cftc.gov	Illinois, Indiana, Michigan, Ohio, and Wisconsin
Southwestern Region		
Two Emanuel Cleaver II Boulevard, Suite 300 Kansas City, MO 64112	Kurt Harms Phone: 816-960-7711 Fax: 816-960-7750 E-Mail: kharms@cftc.gov	All states west of the Mississippi River

National Futures Association Contact Information	
National Futures Association 300 South Riverside Plaza, Suite 1800 Chicago, IL 60606	Shamika Carr 312-781-1621 scarr@nfa.futures.org Joe Patrick 312-781-1596 jpatrick@nfa.futures.org

ATTACHMENT B

ILLUSTRATION – Fund of Funds Additional Disclosures

Note X. Investments

As of December 31, 2008, ABC Fund invested in other funds, none of which were related parties.

The following table summarizes ABC Fund's investments in other funds as of December 31, 2008. Funds in which ABC Fund invested more than 5% of its net assets are individually identified, while smaller investments in three other funds are aggregated. The management agreements of the investee funds provide for compensation to the managers in the form of fees ranging from 1% to 3% annually of net assets and performance incentive fees ranging from 5% to 25% of net profits earned.

Investment	% of ABC's Net Assets	Fair Value	Income (Loss)	Fees Mgmt	Fees Incentive	Investment Objective	Redemptions Permitted♦
Airjo Fund Ltd.	5.0	$ 2,500,000	$200,000	$ 25,000	$ 30,000	Emerging market	Quarterly
Carron Int'l Fund	5.2	2,600,000	210,000	26,000	42,000	Sector investment	Monthly
Vital Fund NV	5.6	2,800,000	(30,000)	28,000	0	International equity	Semi-Annual
Other funds:	4.2	2,100,000	100,000	24,000	25,000	Other	Monthly-Annually
Total	20.0%	$10,000,000	$480,000	$103,000	$97,000		

An alternative illustrative table, for *unusual cases*, where the fee information cannot be obtained is shown below:

Investment	% of ABC's Net Assets	Fair Value	Income (Loss)	Fees Mgmt	Fees Incentive	Investment Objective	Redemptions Permitted♦
Airjo Fund Ltd.	5.0	$ 2,500,000	$200,000	$ 25,000	$ 30,000	Emerging market	Quarterly
Carron Int'l Fund	5.2	2,600,000	210,000	26,000	42,000	Sector investment	Monthly
Other funds:	4.2	2,100,000	100,000	24,000	25,000	Other	Monthly-Annually
Subtotal	14.4	7,200,000	510,000	$75,000	$97,000		
Vital Fund NV	5.6	2,800,000	(30,000)	*	*	International equity	Semi-Annual
Total	20.0%	$10,000,000	$480,000				

* = The fund operator is not able to obtain the specific fee amounts for this fund and does not know what those amounts are. However, management fees are computed based on 1% per year of net asset balances at the beginning of each month; incentive fees are computed based on 20%

per year of net income.

♦ Note any funds in which redemptions have been suspended.