

CPO/CTA ALERT: NFA ISSUES NOTICE ON DISCLOSURE OF CONFLICTS

The National Futures Association recently issued a Notice to Members to remind commodity pool operators and commodity trading advisors of their obligation to disclose conflicts of interest to their clients. The Notice highlights several specific examples of relationships that would require disclosure in CPO and CTA disclosure documents. Of particular concern are actual or potential conflicts of interest involving CPOs or CTAs that engage related futures commission merchants (“FCMs”) or introducing brokers (“IBs”) to carry or introduce their clients’ accounts.

The Notice identified the following facts that create conflicts:

- **A CPO or CTA or an affiliate is also an IB or FCM**

If a CPO or CTA or one of its affiliates is registered as an IB or FCM, the CPO or CTA must disclose that fact. The disclosure must state whether the client account must be maintained with the IB or FCM and, if so, (i) the amount of fees to be paid to the IB or FCM, (ii) that such fees were not negotiated at arm’s length, (iii) that the CPO or CTA has no incentive to seek lower fees from other FCMs or IBs, and (iv) that the arrangement creates an incentive for the CPO or CTA to overtrade the client’s account.

- **A principal of a CPO or CTA is also a principal or associated person of an IB or FCM**

CPOs and CTAs must disclose the business background of trading principals and others involved in making operational decisions. Principals who are affiliated with an IB or FCM through which client accounts are maintained must disclose their relationships with such entities, including the items noted under the first bullet above.

- **Payments by a CTA to a CPO**

A CPO must disclose any arrangement pursuant to which it receives, either directly or indirectly, any portion of the advisory or incentive fees or any other benefit from a CTA to which it allocates assets of a pool.

- **Loans between commodity pools and affiliated entities or individuals**

Where applicable, pool disclosure documents must state the fact that the pool will or is permitted to make loans to affiliated entities or individuals. Disclosure about any such loan or potential loan must, at a minimum, include its interest rate, the basis for the rate, its repayment terms and the consequences of default to the pool’s participants.

The above is not an exhaustive list of all potential conflicts of interest. Each CPO, CTA and their principals should examine all of their relationships. Particular attention must be paid to any arrangement pursuant to which fees or other compensation is directly or indirectly paid by or to the CPO or CTA or a principal or affiliate of any of them.

* * * * *

If you have any questions regarding this memorandum, please contact Emily M. Zeigler (212-728-8284, ezeigler@willkie.com), Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Gabriel Acri (212-728-8833, gacri@willkie.com) or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our website is located at www.willkie.com.

June 1, 2007

Copyright © 2007 by Willkie Farr & Gallagher LLP.

All Rights Reserved. This memorandum may not be reproduced or disseminated in any form without the express permission of Willkie Farr & Gallagher LLP. This memorandum is provided for news and information purposes only and does not constitute legal advice or an invitation to an attorney-client relationship. While every effort has been made to ensure the accuracy of the information contained herein, Willkie Farr & Gallagher LLP does not guarantee such accuracy and cannot be held liable for any errors in or any reliance upon this information. Under New York's Code of Professional Responsibility, this material may constitute attorney advertising. Prior results do not guarantee a similar outcome.