

**NFA ADOPTS NEW COMPLIANCE RULES GOVERNING REGISTERED
COMMODITY POOL OPERATORS**

CPO Quarterly Reporting Requirements. The National Futures Association has approved a new rule that will impose a quarterly reporting requirement on certain registered commodity pool operators. NFA Compliance Rule 2-46 will require CPOs to submit performance and operational data to the NFA on a quarterly basis for any commodity pool with respect to which the CPO has reporting requirements pursuant to CFTC Rule 4.22. The NFA's goal is to obtain more timely information regarding commodity pools than it currently receives through filings of pool annual reports and periodic disclosure documents. The NFA believes that Rule 2-46 will enhance the reporting requirements for CPOs so that the NFA may better utilize its risk management system, which is designed to assess risks, identify trends and assign audit priorities. The NFA intends to make Rule 2-46 effective once it has completed necessary programming changes. The NFA staff anticipates that the first filings under Rule 2-46 will be required for the quarter ending March 31, 2010.

Rule 2-46 will require CPOs to provide additional information with respect to pools offered to retail investors as well as pools operated pursuant to CFTC Rules 4.7 and 4.12(b) (collectively, "Covered Pools"). Rule 2-46 does not require a CPO to provide such information with respect to a pool for which it has claimed an exemption pursuant to CFTC Rule 4.13. With respect to each Covered Pool, Rule 2-46 will require that the following information be reported by the CPO to the NFA electronically within 45 days after the end of each quarterly reporting period:

- the identity of the Covered Pool's administrator, carrying broker(s), trading manager(s) and custodian(s);
- a statement of changes in net asset value for the quarterly reporting period;
- monthly performance for the three months comprising the quarterly reporting period; and
- a schedule of investments identifying any investment that exceeds 10% of the Covered Pool's net asset value at the end of the quarterly reporting period.

With respect to the schedule of investments, the NFA noted that although generally accepted accounting principles require disclosure of any investment in excess of 5% of a Covered Pool's net asset value, a 10% threshold is appropriate for NFA's risk assessment purposes.

Prohibition on Loans by Commodity Pools to CPOs and Affiliates. The CFTC recently approved NFA Compliance Rule 2-45 and its accompanying Interpretive Notice, effective as of September 11, 2009. Rule 2-45 prohibits a CPO from permitting a commodity pool to make direct or indirect loans or advances of pool assets to the pool's CPO or any person or entity

affiliated with the CPO (each, a “Related Person”). In addition, CPOs must provide written notice to the NFA of any existing loan or advance arrangement between the CPO or a Related Person and a pool operated by the CPO by **October 22, 2009**. Such notice must describe the reason for the loan or advance; indicate the interest, if any, paid by the Related Person; provide evidence that the loan or advance is secured by marketable, liquid assets; explain arrangements, if any, the CPO has made to pay back the loan or advance and include an executed copy of the loan or advance agreement. Moreover, the CPO must provide the NFA with written evidence that pool participants were notified about the loan or advance, whether through the pool’s disclosure document or offering memorandum or other form of correspondence. After reviewing the disclosure described above, the NFA will determine, among other things, whether the pool participants received sufficient disclosure regarding the loan or advance; whether the loan or advance is secured by marketable liquid assets and whether any additional steps should be taken, including, but not limited to, disciplinary action. Rule 2-45 applies to all commodity pools operated by a registered CPO, irrespective of the exemption, if any, claimed by the CPO.

* * * * *

If you have any questions regarding the proposed rule, please contact Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com) or Deborah A. Tuchman (212-728-8491, dtuchman@willkie.com).

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.

October 7, 2009

Copyright © 2009 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.