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July 7, 2003

FinCEN
P. O. Box 39
Vienna, Virginia 22183

Attn: Section 352 CTA Regulations

Dear Sir or Madam:

John W. Henry & Company, Inc. (JWH) is submitting these comments in response to the Notice of Proposed Rulemaking concerning anti-money laundering programs for commodity trading advisors (CTAs), published in the Federal Register on May 5, 2003, 68 F.R. 23640 (the Proposal). JWH is registered under the U. S. Commodity Exchange Act (the Act) as a commodity trading advisor and has conducted business in that capacity since 1981. JWH is one of the largest CTAs, managing approximately $1.7 billion as of July 1, 2003. Virtually that entire amount is managed by JWH for commodity pools sponsored by unaffiliated commodity pool operators registered as such under the Act. Accordingly, JWH has a significant interest in the proposed rules.

As we noted in our comment letter dated October 18, 2002 regarding the proposed Section 352 Unregistered Investment Company Regulations, JWH appreciates the need for significantly enhanced anti-money laundering standards to combat terrorist and criminal money laundering activities. JWH believes that regulation is one method for establishing minimum standards in anti-money laundering procedures in financial services industries, and that compliance with such regulations and the effectiveness of their application are enhanced when regulations correspond to the functional activities and services that various industry members provide. As a preliminary matter, therefore, we feel that it is important to emphasize the limited role that CTAs play in the flow of assets to and from the accounts that they manage. For purposes of this discussion, and following the Proposal, we confine our remarks to the operations of CTAs that have discretionary authority to manage or direct trading for client accounts, as opposed to those who provide non-customized advice for possible implementation by clients.

Background

CTAs manage client accounts on a discretionary basis pursuant to powers of attorney and/or advisory agreements that set out the material terms of the services to be provided. CTAs are prohibited by the Act (see Rule 4.30 of the Commodity Futures Trading Commission (CFTC)) from holding customer funds, and that fact must be disclosed in CTAs' disclosure documents (CFTC Rule 4.34(b)(3)). All client funds must be maintained at a registered futures commission merchant (FCM). FCMS are subject to detailed regulation concerning customer funds (CFTC Rule 1.20 ff.; section 4d of the Act). CTAs therefore are regulated in a different manner than investment advisers under the Investment Advisers Act of 1940 in the area of client funds. FCMs are advised of the CTA's authority to direct trading in an account by a copy of the power

of attorney or advisory agreement. CTAs cannot transfer assets from the brokerage account; payment of CTA fees from the brokerage account must be specifically authorized by the client. All JWH clients choose the FCM that they will utilize and negotiate brokerage rates with that firm.

Once trading begins for an account, JWH receives from the FCM copies of account statements showing confirmations of trades and deposits or withdrawals of assets from the account. Those statements provide one method for confirming that FCM and CTA records of trades correspond. Trades may also be checked during or after the trading day by CTA and FCM staffs.

For CTAs like JWH that manage pools organized and operated by independent third parties almost exclusively, the CTA does not have knowledge of the identities of pool investors, and that information is closely guarded proprietary information of the pool operator and the selling agents that sell pool interests. In the case of individually managed accounts, which may be owned by an individual or an institution, the CTA would have varying degrees of information about the account owner, depending on how the account was developed. When the CTA itself has marketed a program to a client who opens an IMA, or the CTA maintains a relationship with the client, it would have the opportunity to acquire information about the client's financial situation, and indeed has such responsibilities under NFA Compliance Rule 2-30. In other cases, however, accounts are marketed by an FCM or introducing broker, and in that case the CTA would have relatively little information about the client compared to the FCM or introducing broker.

Comments

JWH agrees with the definition of "commodity trading advisor" in section III.A of the Proposal, limiting the term to CTAs "directing"accounts. Those not engaged in directing trading for an account should not under any circumstances be involved with information involving asset transfer to or from an account trading commodity interests.

JWH also concurs with the significant exclusion contained at the end of Section III.A of the Proposal for CTAs that advise investment vehicles that are themselves subject to an anti-money laundering program requirement under BSA rules. JWH believes, however, that this exclusion should be more fully described and developed in the rule or the final adopting release, particularly to make the exclusion as clear as possible for smaller CTAs that may not have access to the complete body of anti-money laundering regulations.

The four elements of the individualized anti-money laundering program described in section III.B.2 as program requirements should pose no problems for most CTAs. However, JWH strongly believes that subsection (1), although apparently meant to be merely illustrative, contains several examples of situations that do not accurately reflect the conduct of the typical CTA's business or its relationships with the FCMs that carry its customers' accounts.

In subsection (1), third paragraph, it is stated that "CTAs face higher vulnerability to money laundering when clients place their assets with a futures commission merchant and the funds are directed by a CTA." As noted above, the FCM has direct legal custodial responsibility for client

funds, and receives all communications from its customers regarding deposits and withdrawals of funds. The CTA learns of the transactions in an account that do not involve its placement of trades only indirectly through the records produced by the FCM and forwarded to the CTA. Even if a CTA first solicited a client to open an individually managed account, and so might have more detailed knowledge of a customer's background than the FCM, all account transactions
would have to be conducted by and through the FCM. This example does not recognize the fact that in such situations the FCM is best placed to determine "unusual transactions."

In JWH's opinion, the following examples also do not reflect the way CTAs conduct their business or the types of account information available to them, and so would not provide for efficient anti-money laundering scrutiny, absent significant modification of the business relationships between CTAs and FCMs.

Example 1 – The statement is made that "In addition, a CTA's procedures would identify unusual transactions, such as those involving the subsequent withdrawal of assets from the futures commission merchant through transfer to unrelated or numerous accounts, or to accounts in countries in which drugs are known to be produced or other countries at high risk for money laundering or terrorist financing."

Example 2 -- "A CTA's vulnerability to money laundering may rise further with respect to clients who make frequent additions to or withdrawals from their accounts held with futures commission merchants. A CTA would need to establish procedures to identify which clients engage in such activity and assess the reasonableness of the additions or withdrawals in light of the client's investment objectives and the CTA's existing knowledge of the client's personal finances or business operations."

Example 3 – "A CTA faces the highest degree of vulnerability in the event that clients deposit or attempt to deposit assets in their accounts at futures commission merchants in the form of cash."

Since a CTA is not involved in the flow of assets to and from an account, cannot hold client assets, and can direct trading only to the extent authorized by its advisory agreement, it would not normally have direct or detailed knowledge of:

1. Sources of cash, checks or wires; deposits from accounts of third parties with no family or business relation to the client or through numerous checks or transfers from one or more issuers or institutions; transfers to accounts of such third parties; or through numerous checks or transfers.

2. Issuing institutions for checks or wires.

3. Destination (institution and country) of transfers from trading account.

4. Client overall portfolio investment objectives that might necessitate transfers from the account managed by the CTA.

To the extent that these examples might serve as the basis for audits or as standards for the design and operation by CTAs of their anti-money laundering programs, JWH believes that they should be modified or deleted in a final adopting release. General principles that illustrate the obligations of CTAs to determine the facts of suspicious circumstances and take appropriate action would be

more useful to CTAs seeking to comply with these requirements than examples removed from their actual conduct of business. The statements that a CTA receives would not show the name of the institution, person or account from which a check or wire originated or to which it was sent. The CTA also would not have information about the destination of funds transferred from accounts. While CTAs may, as an accounting matter, confirm inflows or outflows of assets from an account with the client, they would not have enough information available to them to serve as
the basis for questions about sources and destinations of checks or wires, or to detect unreasonable patterns of additions and withdrawals from an account. As a business matter, most CTAs discourage frequent or irregular changes to an account's equity, because such shifts require reassessment and possibly readjustment of positions held in the account in relation to account size.

JWH believes that anti-money laundering responsibility should rest with the FCM for all activities that concern details of an account's inflow or outflow of assets because the FCM handling the account would have direct, first hand knowledge of the deposits and withdrawals made by clients in their accounts. The CTA would learn of them only after the fact and only through the FCM's statements. JWH urges FinCEN to adopt an exclusion for CTAs' anti-money laundering programs for accounts they manage that are carried by an FCM subject to an anti-money laundering program requirement under BSA rules, in the same way that investment vehicles subject to such rules are proposed for exclusion. Doing so would avoid overlap of anti-money laundering responsibilities between CTAs and FCMs, and make it clear that CTAs do not have any obligation to examine an FCM's anti-money laundering program as it applies to account asset movements. .

JWH believes that the Proposal places appropriate emphasis on the customer identification and verification responsibilities of a CTA when a CTA is engaged in establishing new account relationships, where a prospective client is not separately subject to anti-money laundering review requirements under the BSA, or seeks to establish arrangements that would for no apparent legitimate reasons create anonymity in establishing or operating an account. Examples in the Proposal include certain types of custodial arrangements designed to create and preserve anonymity for the customer and offshore investment vehicles.

Finally, JWH supports the intention expressed in the Proposal of delegating the examination of CTAs' anti-money laundering compliance activities to the CFTC. JWH believes that only a specialized regulator has expertise to evaluate thoroughly whether a particular CTA's anti-money laundering program is designed to screen risks of the type that that CTA's business may generate.

Sincerely yours,

/s/ David M. Kozak
Senior Vice President and General Counsel

cc: Office of the General Counsel,
Commodity Futures Trading Commission

General Counsel,
National Futures Association