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October 18, 2002

FINCEN
P. O. Box 39
Vienna, Virginia 22183-1618
(filed by electronic mail)

Attention: NPRM – Section 352 Unregistered Investment Company Regulations

Ladies and Gentlemen:

John W. Henry & Company, Inc. (JWH) is submitting these comments in response to the Notice of Proposed Rulemaking concerning anti-money laundering programs for unregistered investment companies, published in the Federal Register on September 26, 2002, 67 F.R. 60617. JWH is registered under the U. S. Commodity Exchange Act (the Act) as a commodity trading advisor. JWH is one of the largest commodity trading advisors in the world; it managed approximately $1.3 billion as of September 30, 2002. Virtually that entire amount is managed by JWH for commodity pools sponsored by commodity pool operators registered under the Act. Two of JWH's affiliates are registered under the Act as commodity pool operators: one offers funds that are privately placed domestically pursuant to Regulation D, and the other offers a fund to non--U. S. investors. Accordingly, JWH and its affiliated commodity pool operators have a significant interest in the proposed rules.

JWH and its affiliates appreciate the need for significantly enhanced anti-money laundering standards to combat terrorist and criminal money laundering activities. Regulation is one productive method for achieving greater uniformity and imposing minimum standards in anti-money laundering procedures applied by the investment management industry. Accordingly, JWH's comments are focused on making the proposal more efficient and less burdensome in one specific area – the proposed requirement for a new form of notice registration that would apply to all unregistered investment companies. The notice of proposed rulemaking specifically requests comment on the issue of whether commodity pools identified in the database of the National Futures Association (NFA) should be exempt from that requirement. The notice explains the rationale for the notice requirement as follows: "Unlike many other financial institutions subject to the anti-money laundering regime in the BSA, such as banks, savings associations, and mutual funds, unregistered investment companies are not necessarily registered with or identifiable by Treasury or another Federal functional regulator."

JWH and its affiliates believe strongly that registered commodity pool operators should be exempt from the proposed notice requirement because that requirement, as proposed to be applied to registered commodity pool operators, would duplicate existing data available at the NFA that is collected pursuant to existing law and regulation. The rationale for the proposal – the absence of other registration requirements – is not satisfied in the case of these entities. Requiring registered commodity pool operators to file an additional notice would provide no increased regulatory or other public benefit, and would lack the built-in cross-checks and verification procedures that the existing NFA data base provides, so that it could well be less effective and reliable. It would add one more regulatory filing in an industry where a coherent regulatory system already exists. We understand that the NFA is willing to act as the source of information about registered commodity pool operators for the purpose of anti-money laundering regulation and enforcement.

JWH believes that registered commodity pool operators differ significantly from the other types of financial institutions grouped loosely under the title of unregistered investment companies in the proposal. Unlike the typical hedge fund manager or sponsor, registered commodity pool operators are subject to substantial direct regulation under the Act and the rules promulgated thereunder by the Commodity Futures Trading Commission (CFTC) and the NFA. The registration requirements for a commodity pool operator include registration of the firm itself, with identification of the firm's ownership. In addition, all principals (including owners) of a commodity pool operator are listed on the firm's registration form and they must submit personal information and fingerprints that are the basis for a background investigation conducted by the FBI that must be completed favorably before registration can be granted to the firm. Individual associated persons (including those involved in supervisory capacities) are subject to registration, and the same background and fingerprint examinations apply to them. Associated persons and their supervisors must pass proficiency examinations. Pool operators are also required to file with the CFTC the annual financial report for each pool that they operate (as well as providing the report to each pool investor).

Registration information maintained by the NFA lists all pools operated by each registered pool operator. The NFA's role is more than one of simply maintaining information provided to it by registrants, however. The NFA reviews all commodity pool operator disclosure documents (private placement memoranda) before they may be used by the pool operator or its selling agents to solicit subscriptions to a privately offered pool. (The CFTC reviews all commodity pool operator disclosure documents (prospectuses) before they may be used by the pool operator or its selling agents to solicit subscriptions to a public offered pool.) Even pools that elect an exemption from filing their disclosure documents for review and from the general pool financial reporting requirements because their investors are limited to those who are Qualified Eligible Persons under CFTC Rule 4.7 must be the subject of notice filings by pool operators with the NFA in which such pools are identified by name. Registered commodity pool operators are also subject to periodic on-site audits by NFA auditors, generally every three to four years.

The notice of proposed rulemaking refers to the proposed notice requirement as a prerequisite for Treasury (or its designee) to have a means for examining and enforcing compliance with the proposed rule. JWH urges Treasury to rely initially and primarily on the expertise and efforts of the CFTC and NFA in any issues involving registration or compliance with the rule in order to take full advantage of these experience of these regulatory bodies.

For the above reasons, JWH and its affiliates believes that the intended purpose of the proposed notice registration requirement – identification of existing commodity pools – can be accomplished most effectively and economically through use of the existing NFA database. Use of that database would avoid creation of duplicative notice registration, and, since that database is part of a coherent regulatory system for registered commodity pool operators, it would provide a form of verification that the proposed notice registration system would not. JWH stands ready to assist FinCEN with further information or other assistance concerning this important issue.

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

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