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FOUNDED 1866

September 25, 2007

Nancy M. Morris, Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

Re: Petition for Rulemaking

Dear Ms. Morris:

We are writing on behalf of Superfund Capital Management, Inc. ("Superfund"), the general partner and commodity pool operator of Quadriga Superfund L.P., a Delaware limited partnership whose sole business is to trade and invest in a diversified portfolio of commodity futures contracts and foreign currency forward contracts. Quadriga Superfund L.P.'s limited partnership interests are sold publicly in the United States pursuant to an effective registration statement on Form S-1. Pursuant to Rule 192(a) under the Rules of Practice, Superfund hereby petitions the Securities and Exchange Commission (the "Commission") to promulgate a new rule, described below, to permit commodity pools, the securities of which ("Units") are registered for sale to the public, to publish and distribute advertisements that disclose certain information about the commodity pool beyond that specified by the safe harbor of Commission Rule 134, without such materials being accompanied or preceded by a prospectus meeting the requirements of Section 10(a) of the Securities Act of 1933 (the "Securities Act") which advertisements would be deemed to be prospectuses under Section 10(b) of the Securities Act.

## II. Background

Commodity pools are pooled investment entities with no business or operations other than their investing, reinvesting and trading activities and offer no products or services other than their

Nancy M. Morris  
September 25, 2007  
Page 2

Units. Public commodity pools are among the most heavily regulated vehicles for collective investment available to retail investors. These pools register their Units on Form S-1<sup>1</sup> and their registration statements are uniformly fully reviewed by the staff of the Division of Corporation Finance before commencing the distribution of their Units. A pool's Section 10(a) prospectus is coincidentally the "disclosure document" required by Rule 4.21 of the Commodity Futures Trading Commission (the "CFTC") for offerings of commodity pool interests subject to review by National Futures Association, the self regulatory organization of the futures industry ("NFA") for compliance with CFTC Rules<sup>2</sup>. Generally, because public commodity pools engage in a continuous offering of their securities pursuant to Rule 415(a)(1)(ix), updates of pool prospectuses are filed with the NFA and the Securities and Exchange Commission, typically as post-effective amendments, approximately every nine months.<sup>3</sup>

Because Units issued by public commodity pools that are not listed on a national securities exchange are not described in Section 18(b) of the Securities Act and because there is otherwise no exemption from State registration available for the offer and sale of such Units, public offerings by commodity pools that are not exchange-listed are subject to further substantive

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<sup>1</sup> Because, historically, public commodity pools have not listed their Units for trading on a national securities exchange, they never become S-3 eligible. Public commodity pools historically have issued Units that are redeemable at net asset value per Unit at the option of the holder. Investors in such pools look to the redeemability of the Units for liquidity in their investment. We are aware, however, of twelve public commodity pools whose Units are listed on the Amex and one whose Units are listed on the NYSE. The first of these commenced its operations on February 3, 2006. Units of these pools are redeemable, but only in large aggregations, called baskets, and only by certain eligible financial institutions that are in privity of contract with the pool, in a manner analogous to exchange-traded funds. Presumably, these exchange-listed public commodity pools will become S-3 eligible like other types of issuers.

<sup>2</sup> Primarily CFTC Rules 4.24 and 4.25 dictating the contents of pool disclosure documents and the presentation of required and supplemental performance information of the pool, its operator and trading advisor.

<sup>3</sup> We are aware of one commodity pool currently in registration with the Division of Corporation Finance that proposes to list its Units on the Amex but does not intend to engage in a continuous offering of its Units. Such a public commodity pool is analogous to a closed-end investment company and would not be required periodically to update its prospectus.

regulation by the States. During the State registration process, approximately fifteen to twenty States perform a substantive review of a pool's registration application, largely to ensure compliance with the North American Securities Administrators Association Statements of Policy "Registration of Commodity Pool Programs," as adopted September 21, 1983 and subsequently amended ("NASAA Guidelines"). The NASAA Guidelines provide comprehensive registration criteria for commodity pool offerings required to register their securities in the various States. The NASAA Guidelines limit pool fees and expenses, prescribe minimum liquidity terms, minimum experience and net worth requirements for pool sponsors, minimum income and/or net worth requirements for pool participants, minimum reporting requirements to pool participants, prohibit (or require justification for) certain affiliations among the service providers to pools and prohibit certain transactions (*e.g.*, loans from a pool to its sponsor or any other person). Additionally, a substantial number of States require public pool sponsors to limit a pool investor's investment to not more than 10% of worth (excluding home, furnishings and automobiles) such that the 10% investment limit has become a standard term of non-exchange-traded public commodity pool offerings.

Distributions of Units are subject to regulation by the Financial Industry Regulatory Authority ("FINRA"), formerly the National Association of Securities Dealers, Inc. ("NASD"). NASD Conduct Rule 2810, applicable to public offerings of direct participation program securities such as Units, requires, among other things, that prior to participating in a pool's offering, a FINRA member (or person associated with the member) must have reasonable grounds to believe that all material facts regarding the pool's offering (*e.g.*, items of compensation, tax aspects, financial stability and experience of the sponsor/commodity pool operator, and relevant conflict and risk factors) are adequately and accurately disclosed and provide a basis for evaluating the program<sup>4</sup>.

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<sup>4</sup> NASD Conduct Rule 2810(b)(3)

Pools distribute Units through registered broker-dealer members of FINRA, each of which must make this determination with respect to the pool's prospectus.<sup>5</sup>

Publicly offered commodity pools generally register their Units under Section 12(g) of the Securities and Exchange Act of 1934 and file periodic and current reports with the Commission pursuant to Section 13(a) or otherwise file such reports under Section 15(d). In addition, as a commodity pool operated by a registered commodity pool operator, publicly offered commodity pools are subject to the reporting requirements of CFTC Rule 4.22, which requires, among other things, that pool participants receive a monthly account statement of the pool containing updated performance and financial information.<sup>6</sup> CFTC Rule 4.26 requires that the most recent such account statement accompany the disclosure document distributed to prospective pool participants.<sup>7</sup> Moreover, pursuant to CFTC Rule 4.23, pool operators are required to keep specific records relating to the pools they operate and the pool participants, as well as with respect to their own operations, all of which are subject to regulatory compliance audits performed by NFA.<sup>8</sup>

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<sup>5</sup> Additionally, pursuant to NASD Conduct Rule 2710(b)(9), prior to the commencement of an offering of Units, a commodity pool, or its operator, files the pool's registration statement with FINRA's Corporate Financing Department for consideration of the fairness and reasonableness of the pool's underwriting terms and arrangements, and must obtain a "no objections" position from FINRA with respect thereto prior to requesting effectiveness with the Commission and distributing its Units through FINRA member broker dealers.

<sup>6</sup> Exchange-traded pools generally obtain relief from the CFTC permitting them to satisfy this requirement by making such information available on the pool operator's website.

<sup>7</sup> Publicly offered commodity pools generally file their monthly account statements with the Commission as prospectus supplements pursuant to Rule 424(c), although exchange traded commodity pools, which operate pursuant to relief from CFTC disclosure document delivery requirements, do not.

<sup>8</sup> Commodity pools and their operators are subject to regulatory audits. National Futures Association regulatory compliance audits generally are performed on a three-year cycle and provide a form of substantive regulatory oversight generally not provided with respect to operating companies.

### **III. Discussion**

Similar to investment companies prior to the 1979 adoption of SEC Rule 434d (now redesignated as Rule 482), commodity pools generally are restricted in their ability to advertise Units by a combination of the following: Section 2(a)(3) of the Securities Act, which defines an "offer to sell" to include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or an interest in a security, for value; Section 2(a)(10) of the Securities Act, which includes advertisements in the definition of "prospectus"; and Section 5(b)(1) of the Securities Act which prohibits the use of any prospectus unless such prospectus meets the requirements of Section 10 of the Securities Act. Section 10(a) of the Securities Act, Schedule A thereto (as modified by Regulations S-K and S-X), Form S-1 and CFTC Rules 4.24 and 4.25 generally dictate the content of the pool's prospectus.

Of the several exceptions to the general requirement that public communications offering securities for sale be in the form of Section 10(a) prospectuses, commodity pools are currently able to avail themselves only of the exception from the definition of "prospectus," found in Section 2(a)(10), for communications preceded or accompanied by a written prospectus meeting the requirements of section 10(a). For technical reasons, commodity pools are generally not able to use a "free writing prospectus," as defined in Rule 405, for general advertising,<sup>9</sup> and Summary Prospectuses require disclosures well beyond what would normally be found in an advertisement, largely vitiating the usefulness of Summary Prospectuses as advertisements. In what may be a truly ironic twist in the law, under recently proposed Rule 507, if adopted, certain private placements of securities, including those of unregulated entities, will have more latitude

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<sup>9</sup> Specifically, other than the exchange traded commodity pools described above, commodity pools do not have a "public float" and thus never become "seasoned issuers" eligible to use a "free writing prospectus." In addition, many public commodity pools are organized as limited partnerships and are offered only on a best efforts basis and are thus "ineligible issuers" ineligible to use a "free writing prospectus."

Nancy M. Morris  
September 25, 2007  
Page 6

in advertising to the public than that currently enjoyed with respect to the registered offerings of commodity pools (which are currently limited to SEC Rule 134 “tombstone” ads).

Because the only product a pool offers is its Units and because pools generally offer their Units on a continuous basis under SEC Rule 415(a)(1)(ix), any advertisement by a pool containing information about the pool beyond that specifically within the safe harbor provided by Rule 134 (excluding supplemental advertising preceded or accompanied by a full prospectus) is likely to be deemed to be a prospectus. As a result, investors cannot learn about pool offerings in the manner they can learn about other investment products from advertisements or similar publications. As the Commission pointed out in Release 33-5833 proposing Rule 434d permitting advertising by registered investment companies, institutions such as savings and loan institutions and insurance companies compete for investor interest without the strictures regarding advertising to which commodity pools are subject. Rule 434d removed these restraints from investment companies, yet pools remain subject to strictures that, in the Commission’s judgment, unnecessarily limit the availability of information to investors about similar investment products.

Section 5(b)(1) generally works to prevent issuers from disseminating information about an offering during the pre-effective, waiting period otherwise than through the registration statement. In the case of pools, however, a part of the statutory scheme designed to prevent “crooked promotion,” in fact, works to limit “honest enterprise seeking capital by honest presentation,”<sup>10</sup> simply because of the nature of the enterprise itself as a continuously-offered vehicle for collective investment (but not an investment company). Permitting pools to include in public advertisements certain information beyond that permitted by Rule 134 (*e.g.*, performance and broker contact information), without also previously or simultaneously

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<sup>10</sup> See Loss, Seligman and Paredes “Securities Regulation” at page 580 (quoting S. Rep. No. 47, 73<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 1 (1933)).

Nancy M. Morris  
September 25, 2007  
Page 7

delivering a full Section 10(a) prospectus to each recipient of such advertisement, will not result in commodity pool investors receiving inadequate information upon which to base an investment decision. It is not permissible, as a regulatory matter, for an investor who learned about a pool from an advertisement to purchase an interest in the pool before receiving a full Section 10(a) prospectus and having time to consider the purchase decision. CFTC Rule 4.21 requires that a commodity pool's disclosure document, the full Section 10(a) prospectus in the case of publicly offered Units, be delivered to a prospective investor no later than the time at which a subscription agreement is delivered to such prospective investor.<sup>11</sup> Additionally, before a FINRA member may effect a purchase transaction in Units, that member (or an associated person) must inform the prospective investor of all pertinent facts relating to the liquidity and marketability of the program during the term of the investment.<sup>12</sup> The typical pool subscription agreement of a non-exchange-traded pool requires selling brokers to certify that they have made the relevant disclosures to their clients investing in the pool.<sup>13</sup> Further, NASAA Guideline III.E.3 prohibits the completion of a sale of a public pool interest until at least five business days after a subscriber receives the final prospectus thus assuring that not only does a prospective investor receive a prospectus before completion of the sale of Units, but also that the investor has

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<sup>11</sup> Exchange-traded pools operate pursuant to relief from the CFTC disclosure document delivery requirement, and there is no such delivery requirement in respect of secondary-market transactions on the exchange.

<sup>12</sup> NASD Conduct Rule 2810(b)(3)(D).

<sup>13</sup> A typical selling broker's certification states as follows: "I hereby certify that I have informed the investor of all pertinent facts relating to the risks, tax consequences, liquidity, marketability, management, and control by Superfund Capital Management, Inc. with respect to an investment in the Units. I have also informed the investor of the unlikelihood of a public trading market developing for the Units. I have reasonable grounds to believe, based on information obtained from this investor concerning his/her investment objectives, other investments, financial situation, and needs and any other information known to me, that investment in the [Units] is suitable for such investor in light of his/her/ financial position, net worth and other suitability characteristics. I do not have discretionary authority over the account of the investor." (*See, e.g.*, Exhibit D to the prospectus of Quadriga Superfund L.P. included in Post-Effective Amendment No. 1 to Quadriga Superfund L.P.'s Registration Statement, filed June 20, 2007, effective June 29, 2007.)

Nancy M. Morris  
September 25, 2007  
Page 8

time to consider or reconsider the investment decision for a number of days before the completion of the sale (even after submitting a subscription agreement and investment funds).<sup>14</sup>

Superfund hereby petitions the Commission to promulgate a rule permitting publicly offered commodity pools to publish advertisements containing certain information substantially similar to that permitted by Rule 482 with respect to investment companies. Permitting this practice would lead to increased investor awareness about available investment choices without undermining the investor protection function of the Securities Act and the Rules promulgated thereunder.

Under the rule proposed to the Commission by this letter, the text of which is set forth in Exhibit A to this letter<sup>15</sup>, advertising by a pool would, contain only information the substance of which is included in, or consistent with, the Fund's Section 10(a) prospectus, and would include statements (i) advising an investor to consider the investment objectives, risks, and charges and expenses of the pool carefully before investing, (ii) explaining that the prospectus contains this and other information about the Fund, (iii) identifying a source from which an investor may obtain a prospectus, and (iv) stating that the prospectus should be read carefully before investing, and would not be used in conjunction with any other form of solicitation material (unless accompanied or preceded by a Section 10(a) prospectus). No such advertisement would be permissible prior to effectiveness of the pool's initial registration statement, and such advertisements would permit the inclusion of performance information, and accordingly, would require an appropriate legend, prescribed by the rule proposed hereby, an example of which is set forth below.

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<sup>14</sup> Investors in exchange-traded pools typically can exit their investments daily on the exchange at approximately net asset value per Unit thus alleviating regulatory concerns with respect to investors hastily considering an investment that may offer only periodic redemption.

<sup>15</sup> The text of two conforming, technical amendments to SEC Rule 134 is set forth in Exhibit B to this letter.



**PAST PERFORMANCE IS NOT INDICATIVE OF FUTURE RESULTS.** [POOL NAME]'s returns and the principal value of an investment will fluctuate. Units, when redeemed, may be worth more or less than their original cost. Current performance may be higher or lower than that shown [above/below]. Please visit [www.\[SITE\].net](http://www.[SITE].net) for current performance information, or call, toll free, 1.888.123.4567. [POOL NAME] is a "commodity pool," not a mutual fund or any other type of investment company within the meaning of the Investment Company Act of 1940. Investors in [POOL NAME] may [redeem or sell] their Units [daily or other period].

Each advertisement would be required to comply with specific presentation requirements, and no subscription agreement or other application for Units would be permitted to accompany any such advertisement (unless accompanied or preceded by a Section 10(a) prospectus).

As the CFTC prescribes rules for the presentation of commodity pool performance information, pool performance information would be presented in compliance with CFTC Regulation 4.25, showing monthly returns since inception of the pool, or for the last five years and current year to date, whichever is shorter, within a month of publication of the advertisement, along with compounded annual returns for the same periods<sup>16</sup> and, if more than five years of performance is shown, annual performance for each year since inception.<sup>17</sup> The rule proposed hereby requires

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<sup>16</sup> CFTC Regulation § 4.25(a) requires, among other things, that the rate of return for a pool for the most recent five calendar years and year-to-date, be computed on a compounded monthly basis, supported by the following amounts, calculated on an accrual basis of accounting in accordance with generally accepted accounting principles: (A) The beginning net asset value for the period, which shall be the same as the previous period's ending net asset value; (B) All additions, whether voluntary or involuntary, during the period; (C) All withdrawals and redemptions, whether voluntary or involuntary, during the period; (D) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, and redemptions; (E) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals, redemptions and net performance; (F) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and (G) The number of units outstanding at the end of the period, if applicable.

<sup>17</sup> Performance information in such advertisements would not extend beyond that included in the Fund's full Section 10(a) prospectus

submission of such advertising to the Commission – or staff of the Division of Corporation Finance – unless the advertisement is submitted to the Advertising Department of FINRA.

Commodity pool operators are subject to regulation with respect to their advertising. The Commodity Exchange Act provides that “[i]t shall be unlawful for a . . . commodity pool operator . . . by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly (A) to employ any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or (B) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant,”<sup>18</sup> and the CFTC and NFA have each promulgated rules with respect to advertising by commodity pool operators and commodity trading advisers.<sup>19</sup>

#### **IV. Conclusion**

Public commodity pools and their sponsors are subject to substantial regulatory oversight, and investors generally must receive a Section 10(a) prospectus as well as specific information about the pool from their selling brokers (which the brokers attest to having given) prior to completion of any sale of Units.<sup>20</sup> Accordingly, existing limitations on what information about a pool that may be disseminated through advertising unaccompanied by a Section 10(a) prospectus serves only to exclude information about a particular type of investment product, which competes for investor attention with a myriad of other investment products free to advertise within restrictions

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<sup>18</sup> Commodity Exchange Act Section. 4o.(1).

<sup>19</sup> CFTC Regulation. §4.41, “Advertising by commodity pool operators, commodity trading advisors, and the principals thereof”; and NFA Rule 2-29, “Communications with the public and promotional material,” Section (b) of which provides, in part, that “[n]o Member or Associate shall use any promotional material which: (1) is likely to deceive the public; (2) contains any material misstatement of fact or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading; (3) mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss; (4) includes any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results . . . .”

<sup>20</sup> There is no such requirement with respect to secondary market transactions in exchange-traded pool Units.

to which commodity pools would willingly submit. Such limitations unfairly preclude advertising of registered offerings by a regulated entity where advertising of similarly registered offerings of regulated entities (and, ironically, certain unregistered private offerings, including those of unregulated entities, if proposed Rule 507 is adopted) is permitted. Such limitations unnecessarily reduce investor choice, or at a minimum, investor awareness of an available investment product, and simply do not work to protect investors from any dishonest presentation of or promotion of pools and their Units. As a policy matter, there does not seem to be any principled justification for prohibiting the efficient distribution of relevant information about a particular type of investment vehicle, the securities of which are registered and the sponsor of which is regulated and subject to regulatory audit, through advertising means by which the availability of and information about other investment options is generally made known to the investing public.

Superfund therefore petitions the Commission to promulgate a rule, substantially in the form set forth in Exhibit A hereto, permitting commodity pools to publish and distribute advertising materials, subject to the rule, without such materials being accompanied or preceded by a full prospectus meeting the requirements of Section 10(a) of the Securities Act, deeming such advertisements to constitute a prospectus under Section 10(b) of the Securities Act for purposes of Section 5(b)(1) of the Securities Act. Superfund also petitions the Commission to amend SEC Rule 134, to conform to the rule proposed by this letter, similar to those amendments required when SEC Rule 434d was adopted. The text of these conforming amendments is set forth in Exhibit B hereto.



Nancy M. Morris  
September 25, 2007  
Page 12

If you have any questions concerning the above, or require additional information please contact the undersigned at (312) 853-7557 or Mr. James Munsell at 212-839-5609.

Sincerely,

A handwritten signature in cursive script that reads "James B. Biery".

James B. Biery

## EXHIBIT A

### Text of Proposed Rule

(Rule \_\_\_\_\_) Advertising of Registered Commodity Pool Offerings as Satisfying Requirements of Section 10

Reg. §230.\_\_\_\_\_. (a) *Scope of rule.* This section applies to an advertisement or other sales material (*advertisement*) with respect to securities of a commodity pool, the commodity pool operator(s) of which are registered with the Commodity Futures Trading Commission, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)), or a Summary Prospectus. An advertisement that complies with this section, which may not include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

Note to paragraph (a): The fact that an advertisement complies with this section does not relieve the pool operator or underwriter of any obligations with respect to the advertisement under the antifraud provisions of the federal securities laws. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in pool advertisements are misleading, *see* §230.156 pertaining to investment company sales literature. In addition, an advertisement that complies with this section is subject to the legibility requirements of §230.420.

(b) *Required disclosure.* This paragraph describes information that is required to be included in an advertisement in order to comply with this section.

(1) *Availability of additional information.* An advertisement must include a statement that advises an investor to consider the investment objectives, risks, and charges and expenses of the pool carefully before investing; describes the frequency of permitted redemptions; explains that the prospectus contains this and other information about the pool and identifies a source from which an investor may obtain a prospectus; states that the pool is not a mutual fund or other type of investment company; and states that the prospectus should be read carefully before investing.

(2) *Advertisements including performance data.* An advertisement that includes performance data of a pool must include the following:

(i) A legend disclosing that the performance data quoted represents past performance; that past performance does not guarantee future results; that the investment return and principal value of an investment will fluctuate so that an investor's units or other interests, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify either a toll-free (or collect) telephone number or a website where an investor may obtain performance data current to the

most recent month-end and estimated daily net asset value of a unit or other pool interest; and

(ii) If a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee, and if the sales load or fee is not reflected, a statement that the performance data does not reflect the deduction of the sales load or fee, and that, if reflected, the load or fee would reduce the performance quoted.

(3) *Presentation.* In a print advertisement, the statements required by paragraphs (b)(1) and (b)(2) of this section must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by paragraph (b)(2) of this section may appear in a type size no smaller than that of the performance data. If an advertisement is delivered through an electronic medium, the legibility requirements for the statements required by paragraphs (b)(1) and (b)(2) of this section relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them. In a radio or television advertisement, the statements required by paragraphs (b)(1) and (b)(2) of this section must be given emphasis equal to that used in the major portion of the advertisement. The statements required by paragraph (b)(2) of this section must be presented in proximity to the performance data, and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote.

(4) *Commission legend.* An advertisement that complies with this section need not contain the Commission legend required by §229.501(b)(7).

(c) *Use of applications.* An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the pool unless also accompanied by the section 10(a) prospectus.

(d) *Performance data.* Any quotation of performance contained in an advertisement shall be limited to quotations of performance data included in the pool's section 10(a) prospectus, as supplemented, based on methods of calculation prescribed in Commodity Futures Trading Commission Rule 4.25(7) [§4.25(7)], or quoted on a national securities exchange; and shall identify the length of and the date of the last day in the base period used in computing the quotation.

(e) *Timeliness of performance data.* All performance data contained in any advertisement must be as of the most recent month-end or other practicable date considering the type of pool and the media through which the data will be conveyed.

(f) *Filing.* An advertisement that complies with this section need not be filed as part of the registration statement filed under the Act.

Note to paragraph (f): These advertisements, unless filed with the Financial Industry Regulatory Authority, are required to be filed in accordance with the requirements of §230.424.

## **EXHIBIT B**

### Text of Technical Amendment to Rule 134

Preamble: “Except as provided in paragraph (e), (g), and (h) of this section...”

(h) This Section does not apply to communications relating to a commodity pool which communications comply with Rule \_\_\_\_ (§230. \_\_\_\_).