# HORIZON COMMODITY FUND, LP

# AGREEMENT of LIMITED PARTNERSHIP

**1. AGREEMENT:** An agreement of Limited Partnership made on March 11, 2005 by Crutchfield Asset Management, LLC of 312 8th Street SW, Alabaster, Alabama, 35007 as General Partner.

Hereinafter, the parties that subscribes to this Limited Partnership agrees to form a Limited Partnership under the Uniform Limited Partnership Act of Alabama on the terms and conditions hereinafter set forth:

**2. NAME OF PARTNERSHIP:** The name of the Partnership shall be HORIZON COMMODITY FUND, LP (hereinafter referred to as the "Partnership" or the "Fund").

**3. BUSINESS OF PARTNERSHIP:** The Partnership shall be for the purpose of engaging in the business of commodity futures trading for profit in a diversified group of futures contracts and markets, and in such other related business as may be agreed on by the partners.

**4. CERTIFICATE OF LIMITED PARTNERSHIP:** The General Partner has executed a Certificate of Limited Partnership, and shall cause such Certificate to be filed with the Office of the Secretary of State, State of Alabama, or in the state of the residence of the participating Limited Partner. Such amended Certificate as may be required by the laws of the State of Alabama, or the appropriate state if not in Alabama, shall be executed and filed by the partners as necessary.

**5. PLACE OF BUSINESS:** The principal place of business of the Partnership shall be 312 8th Street SW, Alabaster, Alabama 35007, and in other such place or places as may be decided upon at the sole discretion of the General Partner.

**6. INITIAL CONTRIBUTIONS:** Initial contributions will be in the amount of $1,000 per unit until the initial offering has closed, subject to the terms herein.

| | |
|---|---|
| Total # Units Available | 400 |
| 1 Unit | $1,000 |
| Maximum Participants | Sixteen (16) (Including the General Partner) |
| Minimum subscription | $25,000, ten (10) units |

**6.1 Designation of Limited Partners and units:** Limited partners will be referred to by their appropriate designation (i.e., Limited Partner A…B…C…) in order to insure confidentiality and afford financial privacy.

| FOR EXAMPLE: | # Units | Amount |
|---|---|---|
| A - General Partner | 12.50 | $12,500 |
| B - Limited Partner | 10.00 | $10,000 |
| C - Limited Partner | 25.00 | $25,000 |
| D - etc. | | |

**6.2 Additional Contributions (additions):** Additional capital contributions may be made by either the General Partner or any Limited Partner, until the combined aggregate total between any and all pools operated by the General Partner (equaling but not exceeding four hundred [400] Units) are subscribed to, or fifteen (15) participants (excluding the General Partner) have subscribed to this Partnership, whichever occurs first. All additional capital contributions will be deposited immediately and posted to the Trading Account with the "NAV per unit" determined as of the close of business on the Friday of the week funds are received. All existing positions will be marked to market. The new contributions will be added to current equity and total percentages will be adjusted in accordance with the new contributions, with such units added to the whole.

**Contributions (additions) and redemptions (withdrawals), number of units ( # units), and percent interest (% interest) will be included on the monthly account summary.**

**7. DUTIES and RIGHTS OF PARTNERS**: The General Partner shall devote to the business of the Partnership the appropriate amount of time and effort in order to accomplish the purpose of the Partnership. The General Partner, during the continuance of the Partnership, shall be allowed to pursue, or become directly or indirectly interested in, any business or occupation, which is in conflict either with the business of the Partnership, or with the duties and responsibilities of such partner to the Partnership. The Limited Partners acknowledge that the General Partner is in the investment business and has and will have, during the term of the Partnership, other investments under which the General Partner will be spending a portion of the business time and efforts in managing.

**8. LIMITED PARTNERS' PARTICIPATION IN CONDUCT OF BUSINESS:** The Limited Partners shall have no right to be active in the conduct of the Partnership in any contract, agreement, promise or understanding.

**9. DURATION OF THE LIMITED PARTNERSHIP:** Unless otherwise liquidated or agreed upon, the term of the Limited Partnership is seven (7) years.

**10. PROFIT AND LOSS SHARING BY THE PARTNERS:** The net profits and net losses shall be shared proportionately (based on the number of units owned as a percentage of the whole).

**11. DISTRIBUTIONS OF PROFITS TO LIMITED PARTNERS:** Distributions of trading profits (if any) will be made at the General Partner's sole discretion. Distributions (if any) will be made in the form of wire transfer (at Limited Partner's expense) or by check.

**12. REDEMPTION AND LIQUIDITY (WITHDRAWALS):** At the General Partner's sole discretion, and subject to articles (12.1, 12.2, 12.3, 12.4) below, a Limited Partner may withdraw all or part of his capital account (whole or fractional units) under the following terms;

12.1 The Partnership has operated for 120 days.

12.2 The Partnership has received written notice of request for redemption or termination of Limited Partner's interest in whole or in part, by "registered return receipt" no later than ten (10) calendar days prior to the last day of any such month request is made.

12.3 There are assets of the Partnership that can be liquidated to permit the redemption.

12.4 In the opinion of the General Partner, such a withdrawal, will not adversely affect the interest of the other Partners ( extraordinary market conditions only).

The valuation of such Limited Partner's "interest" will be determined as set forth in Section 16.3.

Subject to the above, such redemptions will normally be paid no later than five (5) business days following the last trading day of any such month of a Limited Partner's "Redemption Request" or "Notice of Termination". The "NAV per/Unit" of such "Partnership Interest" will be set as of the close of business on the last day of trading for any such month, net of all management fees and incentive fees (if applicable). The value of such Limited Partner's interest will be determined, as set forth in Section (16.3).

**13. PARTICIPATING IN COSTS AND REVENUES:** The Partners will risk only the amount of their investments. The General Partner does not have the right to assess the Limited Partners for additional funds. Gains and losses will be debited and credited to the individual Limited Partner's capital account according to the percentage owned.

**14. LIABILITIES AND ASSESSMENTS:** Investors will be liable only for amounts invested. There will be no assessments. No Limited Partner shall, at any time, become assessed or liable for any obligation or losses of the Partnership in excess or beyond the amount represented by the sum of his original capital contributions, plus any additional contribution by the Limited Partner to the Partnership. For example: On a worst-case basis, if you have invested $10,000 plus another $2,000, totaling $12,000, and its value increases to $15,000, you could hypothetically lose the entire $15,000, but never more than that amount. The General Partner may not assess the Limited Partners for further capital contributions on any basis.

**15. BOOKS OF ACCOUNT TO BE KEPT:**

15.1 It is agreed that there shall be kept, at all times during the continuance of this Partnership, good and accurate books of account of all transactions, assets and liabilities of the Partnership. Such books shall be balanced and closed at the end of each fiscal year, and at any other time on reasonable request of the General Partner.

15.2 Method of Accounting: All accounts of the Partnership shall be kept on an accrual basis. All matters of accounting for which there is no provision in this Agreement are to be governed by generally accepted methods of accounting.

15.3 Capital Account: An individual capital account shall be maintained for each Limited Partner. All Limited Partners' initial capital contributions, and any profits, shall be credited to the capital account. Withdrawals, losses and distributions shall be charged against the Account. Nothing herein shall restrict the application of accepted accounting principles. The total value of a Partner's capital account at any time is equal to the Partner's initial capital contribution, plus any credits to his capital account (any capital additions, and the Partner's share of any capital gains or operating profits of the Partnership), and minus any debits to his account (capital withdrawn, distributions, expenses as described in other sections of this agreement, and the Partner's share of any capital or operating losses of the Partnership). See Section (16.3) for more details.

15.4 Annual Summary on Calendar-Year Basis: The profits and losses of the Partnership and its books of account shall be maintained on a calendar-year basis, unless otherwise determined by the General Partner. An annual summary will be provided to each participant, effective December 31st of any given year.

15.5 Place Where Books to be Kept; Inspection: The Partnership books of account shall be kept at the principal place of business of the Partnership and shall be open for inspection by any partner at all reasonable times.

15.6 Monthly Summary: A summary of the trading account will be mailed to each participant on a monthly basis, providing a summary of the following:

**a) The General Trading Account-**
A monthly summary of all activities in the Trading Account or Accounts (including all trades, gains, and losses as provided by the FCM Clearing Firm to the General Partner), as well as the net change of Net Asset Value from the previous month. Such summary will be provided on a month-end basis.

**b) Individual Capital Account -**
Breakdown of Individual Partnership number of Units and Unit Value. The net gain or loss of each Participant's per unit value as well as total gain or loss on a participant's total combined unit value resulting from combined open and closed positions, as well as the net change of the NAV from the previous month.

## 16. TERMINATION OF INTEREST OF LIMITED PARTNER; RETURN OF CAPITAL CONTRIBUTION:

16.1 Termination of Interest: The interest to any Limited Partner may be terminated by:

a) Voluntary termination by written notice;
b) Dissolution of the Partnership for any reason as provided herein;
c) Agreement of all partners;
d) Initiation of bankruptcy proceedings prior to or during Partnership participation;
e) Misrepresentation as to material fact in the trading agreement by any Limited Partner, as determined by the General Partner. Such misrepresentation cancels such Limited Partner's participation, effective immediately.

16.2 Payment on Termination: Provided the Partnership has operated for 120 days, there shall be payable to such Limited Partner the value of their interest net of management fees, expenses and incentive fees (if applicable), as determined by Section 16.3 below. Written notice of termination of Limited Partner's interest by registered return receipt must be received no later than 10 calendar days before the last day of any such month request is made. Payment shall normally be made within five (5) business days following the last day of such month.

16.3 Value of Partner's Interest: The monthly valuation of a Partner's interest in the Partnership shall be computed as of the close of the last day of trading for a given month by determining the following:

a) The Total Account Value equals (total combined open position equity and available account equity including cash, T-Bills, and interest income) net of all management, expenses and incentive fees to the General Partner.
b) Total number of units outstanding.
c) Value per Unit equals a) (Total account value) divided by b) (Number units outstanding.)
d) Number of units held by the Partner.
e) Value of Partner's Interest equals c) (Value per Unit) times d) (Number of Units held by Partner.)

**Example:**

| | | | |
|---|---|---|---|
| a | = | $170,000 Total Account Value |
| b | = | 100 Units outstanding |
| c | = | $1,700 Value per unit |
| d | = | x 12 Units held by Partner |
| e | = | $20,400 Value of Partner's interest. |

Subtracting from the sum of the above totals, the sum of the totals of all the amounts owed by the Limited Partner to the Partnership or General Partnership for expenses. For the purposes of valuation, it is agreed that the goodwill of the Partnership business, as well as other tangible items, shall have a value of zero.

## 17. SUBSTITUTIONS, ASSIGNMENTS AND ADMISSIONS OF ADDITIONAL PARTNERS:

17.1 Substitution of Limited Partner: Sale or Assignment of Interest: Subject to the laws of the State of Alabama, the Limited Partner may, upon (registered receipt of) written notice, and with written consent by the General Partner assign and substitute a partner in their stead. However, the General Partner has the right of first refusal to substitute himself personally or solicit remaining Limited Partners for funds necessary to satisfy capital deficit in replacement of the withdrawing partner. On behalf of the Partnership, the General Partner has 78 hours from (registered receipt of) written notice of "Assignment of Interest" to respond in writing (by registered receipt) of his intention to exercise "this right of first refusal" or waive first refusal rights and consent to the substitution as requested.

17.2 Additional General or Limited Partners: Additional General or Limited Partners may be admitted to the Partnership on such terms as may be agreed upon in writing at the discretion of the General Partner. The terms so agreed on shall constitute an amendment of this Partnership Agreement.

17.3 The Partnership expects new Limited Partners to invest at least $25,000 subject to reduction in the sole discretion of the General Partner. Initial and any additional capital contributions shall be made only in cash.

## 18. TERM OF PARTNERSHIP; DISSOLUTION:

18.1 Term/Dissolution: The Partnership shall commence on the date referenced in Section 28, and continue thereafter for a period of seven (7) years, unless otherwise agreed.

18.2 The Partnership may be dissolved under any one of the following terms below;

a) Unanimous agreement of all Partners to dissolve;
b) The termination of the Partnership purpose;
c) The Total Net Asset Value should decline to less than 50% of its original Net Asset Value as calculated at the close of business on any regular business day.
d) Bankruptcy, removal, or withdrawal of the General Partner, unless a new General Partner is elected within 30 days;
e) Sale or disposition of substantially all of the Partnership assets;
f) Expiration of the term of the Partnership, as provided in Section 9. hereof;
g) Any event, which, in the opinion of the General Partner, prevents the Partnership from carrying on its business.

18.3 Right to Continue Business Following Bankruptcy or Dissolution of General Partner: On the filing of a Petition for protection under the Bankruptcy laws of the United States by the General Partner, the remaining partners shall have the right to elect to continue the business of the Limited Partnership under the same name, and to elect any additional persons or corporations they may choose as a substitute General Partner. If the partners remaining do not unanimously desire to continue the business, the Partnership shall be dissolved and liquidated.

18.4 Completion. In the event of dissolution, the General Partner shall have exclusive right to complete the affairs of the Partnership and to receive reasonable compensation for this service. Distributions made pursuant to dissolution or liquidation may be made in cash or in property.

## 19. FEDERAL INCOME TAX ASPECTS

The Units in this Limited Partnership are not offered as part of a tax shelter.

The ultimate goal of this Partnership is to create gain for the Limited Partners. All profits are passed through to the Limited Partners since the partnership pays no taxes. The Limited Partners are responsible for the taxes on the profits regardless of payout of profits. Commodity traders' profits may be taxed on a different basis than other capital gains or ordinary profits. Each investor should be careful to seek advice from his tax attorney or accountant in this regard.

THE DISCUSSION HEREIN IS PRESENTED FOR INFORMATION PURPOSES ONLY AND IS INTENDED TO BE A DISCUSSION PRIMARILY OF THE FEDERAL INCOME TAX CONSEQUENCES TO PROSPECTIVE INVESTORS WHO ARE INDIVIDUALS AND WHO ARE CITIZENS OR RESIDENTS OF THE UNITED STATES AND WHO WOULD HOLD

THE UNITS AS A CAPITAL ASSET. EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT WITH HIS OR HER PROFESSIONAL TAX ADVISOR WITH RESPECT TO ALL FEDERAL STATE, AND LOCAL INCOME TAXES, GIFT, ESTATE, AND OTHER TAX CONSEQUENCES OF AN INVESTMENT IN THE PARTNERSHIP. THE GENERAL PARTNER HAS NOT RECEIVED AN OPINION OF COUNSEL WITH REGARD TO TAX MATTERS RELATING TO THE PARTNERSHIP. THE TAX AND OTHER MATTERS DESCRIBED IN THIS CONFIDENTIAL OFFERING MEMORANDUM AND DISCLOSURE DOCUMENT DO NOT CONSTITUTE, AND SHOULD NOT BE CONSIDERED AS, LEGAL OR TAX ADVICE TO PROSPECTIVE INVESTORS.

19.1 **INTRODUCTION.** The federal income tax discussion herein constitutes only a summary of certain federal tax aspects of an investment in the Partnership and of Partnership operations. This discussion is based upon existing laws, regulations, rulings, and judicial decisions, any of which could be changed at any time. Such changes, if any, could be retroactive with respect to pending or completed transactions.

Administrative controversy or litigation may result over tax aspects of the Partnership. Such controversy or litigation could be time-consuming and costly for the Limited Partners. Further, the likelihood of such controversy or the outcome thereof cannot be predicted.

If Partnership operations are not conducted in conformity with their description contained herein due to changes in circumstances or otherwise, or if such operations are continued by a successor or amended Partnership following the removal or resignation of the General Partner, the tax consequences of such operations may differ from those discussed therein.

19.2 **PARTNERSHIP CLASSIFICATION.** For federal income tax purposes, a partnership is not a taxable entity, but rather is a conduit through which tax deductions and taxable income are passed to the partners. Each partner in a partnership is separately liable for income tax on his share of partnership items and is required to report separately his share of any item of income, gain, deduction, loss, or credit of the partnership. A partner must report and pay tax on his share of partnership income whether or not cash is actually distributed to him to pay such tax.

19.3 **PARTNERSHIP ALLOCATIONS.** For federal income tax purposes, a Limited Partner's distributive share of items of Partnership income, gain, loss, deduction, or credit generally is determined by the Partnership Agreement. The Partnership Agreement contains a description of the method of allocation of such items. Under this method of allocation, appreciation or depreciation of Partnership assets which occurs in economic effect prior to or subsequent to a Partner's ownership of his Units is not allocated to that Partner, and thus, in a given year the Partnership may recognize an overall gain but some Partners may be allocated a gain for tax purposes greater than the Partnership's overall gain, while other partners may be allocated a loss or tax purposes. The General Partner believes that such allocations will be respected for tax purposes, and the Treasury regulations under Code Section 7704 appear to support that belief.

19.4 **"AT-RISK" LIMITATION AND BASIS ADJUSTMENTS.** The amount of Partnership loss (including capital loss), which a Limited Partner is entitled to include on his personal income tax return, is limited to the lesser of the tax basis or the "at-risk" basis of his Units as of the end of the Partnership's taxable year in which such loss occurs.

Generally, a Limited Partner's initial tax basis in his Units will be the amount paid for his Units. A Limited Partner's initial "at-risk" basis in his Units will generally also equal the amount paid for such Units. However, a Limited Partner who borrows funds to purchase all or a portion of his Units can include this amount in his at- risk basis only if such Limited Partner is personally liable to repay the debt or has pledged property other than his Units with respect to the borrowed funds. A Limited Partner's "at risk" basis does not include amounts borrowed from persons who have a proprietary interest in the Partnership or from certain related persons or (under current or proposed Treasury regulations) amounts borrowed for which he is protected against loss through guarantees or similar arrangements. A Limited Partner's tax basis and "at-risk" basis for his Units are reduced by his share of Partnership distributions, losses, and expenses allocated to him and increased by his share of Partnership income, including gains.

19.5 **APPLICATION OF PASSIVE LOSS RULES.** Code Section 469 contains rules designed to prevent investors from deducting losses related to "passive" except to the extent of income resulting from such activities. However, temporary regulations provide that trading income or loss of a partnership engaged in trading personal property (e.g., commodity futures) will not be treated as passive, even if the partnership is engaged in a trade or business. Accordingly, Partnership income allocable to the Limited Partners may not be offset by passive losses, and Partnership losses will not be subject to limitation under the Passive Loss Rules.

19.6 **CASH DISTRIBUTIONS AND REDEMPTIONS.** Cash distributions to a Limited Partner by the Partnership (whether or not in redemption of the Limited Partner's interest) are treated first as a nontaxable reduction of basis and then as capital gain. However, under the 1984 Act, the portion of the Limited Partner's gain attributable to accrued but unrecognized interest on Treasury bills (and other short-term and discount obligations) may be taxed as ordinary income rather than capital gain. A loss will be recognized only on a complete redemption paid solely in cash and only to the extent the Limited Partner's tax basis exceeds the amount of cash received. If he has held his Units for more than 12 months (six months for units acquired prior to January 1,1988), such gain or loss is generally long-term capital gain or loss.

19.7 **TAXATION OF TRANSACTIONS.** (i) Section 1256 Contracts. Any Section 1256 contracts held by the Partnership as capital assets at the end of the Partnership's taxable year generally are "marked to market," (i.e., treated as if such gain or loss were realized on such date). Section 1256 contracts include futures contracts (a) with -respect to which the amount required to be deposited and the amount which may be withdrawn is required to be adjusted according to a system of "marking-to-market" and (b) which are traded on a United States exchange regulated by the CFTC (or on any other exchange determined by the Secretary of the Treasury to have rules adequate for purposes of the "mark-to-market" rules of the code).

Any gain or loss recognized by the Partnership on Section 1256 contracts (as a result of the mark-to-market rules on unrealized appreciation or otherwise) is deemed to consist of 60% long-term capital gain or loss and 40% short-term capital gain or loss. However, the elimination of preferential treatment for long-term capital gains beginning in 1988 eliminated any tax benefit which may previously have been considered applicable to an investment in the Partnership by reason of the reduced maximum tax rate on Section 1256 contracts. Each Limited Partner will take into account his distributive share of such gain or loss in computing his federal income tax liability. The amount of such unrealized gain or loss recognized with respect to a Section 1256 contract generally is determined by reference to the prices quoted for such Section 1256 contract on the exchange on the last day of the Partnership's taxable year. (Appropriate adjustments are

made to the gain or loss subsequently realized on disposition or closing out of Section 1256 contracts to reflect the fact that unrealized gain or loss was reported at the close of a prior taxable year.) Moreover, taking or making delivery of the underlying property on a Section 1256 contract also results in recognition of gain or loss.

**(ii) Foreign Currency Contracts and Futures Options.** Section 1256 contracts also include (a) certain foreign currency forward contracts traded on the inter bank market and entered into at an arms-length price determined by reference to the price in the inter bank market, and with respect to which there is trading in Section 1256 contracts on the underlying currency; and (b) non equity options, including options on Section 1256 contracts ("futures options"). In addition, exercise or assignment of a futures option constitutes a taxable event requiring recognition of gain or loss. Dealer equity options are also Section 1256 contracts, but 60/40 treatments on such options are not available to limited partners of option dealers. An "Equity Option" is any option to buy or sell stock, or any option the value of which is determined by reference to any stock or stock index, except for any option with respect to a group of stocks or stock index for which there is a CFTC-designated contract market.

19.8 **ALTERNATIVE MINIMUM TAX.** In certain circumstances, taxpayers may be subject to an alternative minimum tax in addition to regular taxable income. Long-term capital gains and gains on Section 1256 contracts are taxed at the same rates as other income and no longer result in tax preference items for purposes of the alternative minimum tax.

19.9 **LIMITED DEDUCTION FOR CERTAIN EXPENSES.** For individual taxpayers, expenses of producing income, including investment advisory fees, are aggregated with employee business expenses and other expenses of producing income (collectively, the "Aggregate Investment Expenses"), and the aggregate amount of such expenses is deductible only to the extent such amount exceeds 2% of a taxpayer's adjusted gross income. Unless the Partnership is treated as engaged in a "trade or business" (see discussion below), any Monthly Incentive Fee and/or Monthly Management Fee will likely be treated as investment advisory fees for this purpose. The IRS might contend that a portion of the brokerage commissions received by the General Partner should be re- characterized as fees paid to the General Partner in exchange for services. If such a contention were sustained, unless the Partnership is treated as engaged in a "trade or business," a Limited Partner's pro rata share of the amounts re-characterized would be deductible only to the extent that such Limited Partner's Aggregate Investment Expenses exceeds 2% of such Limited Partner's adjusted gross income. In addition, each Limited Partner's distributive share of income from the Partnership would be increased (solely for tax purposes) by such Limited Partner's pro rata share of the amounts re-characterized.

It is the General Partner's position that the Partnership may be deemed to be engaged in a trade or business. If this position were sustained, the portion of the brokerage commissions and advisory fee received by the General Partner would be deductible as ordinary and necessary business expenses and would not be subject to the above-described 2% rule. However, it is uncertain whether the IRS, upon audit, will agree that the Partnership is engaged in a trade or business.

19.10 **PARTNERSHIP AUDITS.** Any IRS examination relating to items of the Partnership would be conducted in a single unified proceeding at the Partnership level, and not in separate

proceedings with each individual Limited Partner. The tax matters partner responsible for responding to an IRS audit of the Partnership is the General Partner. Any such Partnership audit may lead to adjustments, in which event the Limited Partners may be required to file amended personal federal income tax returns. In addition, any such audit could lead to an audit of a Limited Partner's individual tax return, which may in turn, lead to adjustments other than those relating to items of the Partnership. In certain circumstances, a Limited Partner may be bound by a settlement of disputed tax issues reached between the IRS and the Partnership. The Partnership (and, in some cases, a Limited Partner) may also appeal any disputed issues to an appropriate judicial tribunal for review.

19.16 **STATE AND LOCAL TAXES.** In addition to the federal income tax consequences described above, the Partnership and the Limited Partners may incur tax liabilities under the state and local income tax laws of various jurisdictions, including the jurisdiction of a Limited Partner's residence, and the jurisdiction where the Partnership is organized, whether or not a Limited Partner is a resident thereof.

These laws vary from one locale to another and like the federal income tax laws, are both complex and subject to change. A Limited Partner's distributive share of the realized profits of the Partnership may be required to be included in determining his reportable income for state tax purposes. Each Limited Partner is advised to consult his own tax advisors concerning these matters.

19.17 **LAWS SUBJECT TO CHANGE.** The various statutory provisions and regulations discussed herein are subject to interpretation by the courts and to amendment by legislative or administrative action. No prediction can be made as to what new legislation or regulations will be adopted and, if adopted, whether there will be any retroactive application or adverse tax consequences to the Partnership or any Limited Partners.

## 20. ERISA ASPECTS:

20.1 Subject the following discussion; the purchase of Units may be a suitable investment for an employee benefit plan (as such term is defined in Section 3 (3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and Section 4975 (E) (l) of the Code). Such employee benefit plans include corporate pension, stock bonus and profit-sharing plans, "simplified employee pension plans, " so-called "Keogh" plans for self-employed individuals, 401k plans and IRA's for persons (including employees and self- employed persons) who receive compensation income and include medical plans, death benefit plans, prepaid legal service plans and all other plans providing non-exempt welfare benefits.

20.2 Before proceeding with an investment in the Partnership of a portion of the assets of an employee benefit plan, the person with investment discretion on behalf of the employee benefit plan ("fiduciary"), taking into account the facts and circumstances of such plan, should consider applicable fiduciary standards imposed by ERISA, prohibitions applicable to certain transactions imposed by ERISA, and the Code and permissibility of such investment under the governing documents of such employee benefit plan. Thus, taking into consideration the information contained herein, the fiduciary should give special attention to (i) the status of Department of Labor regulations regarding the definition of plan assets (discussed below) and the impact of such regulations upon the fiduciary's decision to invest in the Partnership, and (ii) the prudence of an investment in the Partnership, considering all facts and circumstances of the investment which the

fiduciary knows or should know are relevant to the investment, or a series or program of investments, of which an investment in the Partnership is a part.

20.3 The Department of Labor has adopted regulations ("Plan Asset Regulations") that set forth guidelines to determine when an investment in an entity, such as the Partnership, by an employee benefit plan will cause the assets of the entity to be treated as assets of the investing plan for purposes of ERISA. If the Partnership were deemed to hold plan assets, the General Partner would most likely become an ERISA fiduciary with respect to the Partnership assets and, therefore, a co-fiduciary with the person making the investment decision to purchase Units, subject to ERISA; and the assets of the Partnership would be subject to the prohibited transaction rules of ERISA and the Code.

20.4 The Plan Asset Regulations provide that assets of an entity in which an employee benefit plan invests will not be deemed for purposes of ERISA to be assets of such plan, if the class of "equity" interests held by the plan are (i) held by 100 or more investors independent of the Partnership and of each other, (ii) "freely transferable" and (iii) sold to employee benefit plans as a part of an offering of Units to the public, pursuant to (a) an effective registration statement under the Securities Act of 1933, and then the Units are registered under the Securities Act of 1934, or (b) an effective registration statement under Section 12(b) or 12(g) of the Securities Exchange Act of 1934 ("Publicly Offered Securities").

20.5 Under the Plan Asset Regulations, the determination of whether Units are freely transferable is based on all relevant facts and circumstances. The Plan Asset Regulations provide that certain restrictions on, or prohibitions against, any transfer or assignment, including a restriction or prohibition designed to prevent termination or reclassification of the entity for Federal or State tax purposes, will not, alone or in combination with certain such other enumerated restrictions or prohibitions, affect a finding that equity interests are freely transferable for purposes of the requirement in (ii) above. On August 2, 1989, the Department of Labor issued advisory opinion No. 89-14A, interpreting the Plan Asset Regulations, stating it was the Department's opinion that a restriction against a transfer which is drafted to avoid reclassification of a partnership as a publicly traded partnership under Sections 469(k) (2) and 7704 (b) of the Code would qualify as one of the permissible restrictions. Section 12 and 17.1 of the Limited Partnership Agreement contains several restrictions or prohibitions on transfer or assignment, each of which attempt to satisfy the restrictions in the Plan Asset Regulations. Accordingly, absent other facts to the contrary, there is a presumption that the Units will be considered freely transferable, notwithstanding the existence of such restrictions.

20.6 Because Units will not be registered under the Securities Exchange Act of 1934, the Partnership will rely upon another exemption provided by the Plan Asset Regulations, which provides that the purchase of Units by an employee benefit plan will not result in the underlying assets of the Partnership being assets of a n employee benefit plan, provided that, immediately following the most recent acquisition of Units, less than 25 % of the Units are held by employee benefit plans (including any entity whose underlying assets are considered to be plan assets by reason of an investment in the entity by an employee benefit plan) and another class of equity interests in the Partnership are held by employee benefit plans. For this purpose, Units held by any person who had discretionary authority or control with respect to assets of the Partnership, any person who provides investment advice for a fee with respect to such assets, or any of their affiliates will be disregarded. Accordingly, the General Partner will cause the Partnership to comply with the above-described 25% limit by restricting redemptions, purchases and transfers of Units which would result in such 25 % limit being exceeded. However, there can be no assurance that an assignment of Units by a Limited Partner (even if the General Partner does not consent to

the admission of the assignee as substituted Limited Partner) would not result in a change of each Limited Partner's ownership percentage of units sufficient to cause the above-described 25 % limit to be violated. Similarly, there can be no assurance that the General Partner can prevent assignments of Units or interests therein for this purpose.

20.7 Furthermore, the purchase of Units with the assets of an employee benefit plan may still be a prohibited transaction under ERISA or the Code where there are circumstances indicating that (i) the investment in Units is made or retained for the purposes of avoiding application of the fiduciary standards or ERISA; (ii) the investment in Units constitutes an arrangement under which it is expected that the Partnership will engage in transactions which would otherwise be prohibited if entered into directly by an employee benefit plan purchasing Units; (iii) the investing plan, by itself, may cause the Partnership to engage in such transactions; or (iv) the person who is prohibited from transacting with the investment plan, only with the knowledge and intent of certain of its affiliates and the investing plan, may cause the Partnership to engage in such transactions with such person.

Thus, for example, Units should not be purchased by an employee benefit plan if the General Partner, any Selling Agent, or any of their respective affiliates either (i) has investment discretion with respect to the investment of such plan's assets or (ii) regularly gives investment advice with respect to such plan's assets for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such plan's assets and that such advice will be based on the particular investment needs of the plan; and as a result of exercising such discretion or giving such advice, that employee benefit plan acquires, sells, transfers or assigns Units.

20.8 Subscribing for Units in the Partnership does not create an employee benefit plan. Those considering the purchase of Units on behalf of an IRA or other employee benefit plan first must ensure that the plan has been properly established and funded.

20.9 The purchase of Units may give rise to "unrelated business taxable income" under Section 512 of the Code. Such income is subject to tax if it, when added to unrelated business income from all other sources, exceeds $1,000 in any year (See "21. UNRELATED BUSINESS TAXABLE INCOME ").

## 21. UNRELATED BUSINESS TAXABLE INCOME

21.1 Each otherwise tax-exempt Limited Partner is subject to tax on its unrelated business taxable income, and must file a tax return reporting such income. To the extent a tax-exempt Limited Partner is allocated unrelated business income from a partnership, it is generally subject to the same provisions as a taxable Limited Partner (whether a trust or corporation, as applicable) with respect to reporting and paying regular and minimum tax (including the requirement to make estimated tax payments) on such income. Private foundations may also be subject to additional income tax on their net investment income (including income from the Partnership), as well as various excise taxes, and should therefore consult their own tax advisors before investing in the Partnership.

21.2 "Unrelated business taxable income" is the gross income derived by an exempt organization from any unrelated trade or business regularly carried on by it or by a partnership of which it is a member, less specific deductions which are directly connected with the carrying on of such trade or business, computed with modifications. Any income produced by the Partnership

or by any commodity pool in which it invests may be unrelated business income to the tax-exempt Limited Partners to which it is allocated, unless such income is specifically exempted from such classification as described below. In addition, each tax- exempt Limited Partner is allowed a $1,000 annual exemption from tax on its aggregate unrelated business taxable income from all sources.

21.3 Unrelated business taxable income does not include interest, dividends or gains and losses from the sale, exchange or other disposition of property, including options to buy or sell securities, unless such property constitutes inventory or property held primarily for sale in the ordinary course of a trade or business or unless the property from which such income is derived is debt-financed.

Moreover, it would appear that gains or losses on commodity futures contracts and Section 1256 contracts market-to-market at the end of the taxable year, which are neither in the nature of inventory nor debt-financed, would also be excluded from the computation of unrelated business taxable income. (In order to avoid potential tax liability, certain types of tax-exempt entities must also set aside or reserve these types of specifically exempted income for purposes related to their tax-exempt status.) Interest, dividends and gains from the sale of property will, however, be characterized as unrelated business income if such income is attributable to debt-financed property of the Partnership or of any commodity pool investment, or if the tax-exempt Limited Partner's investment in the Partnership is debt-financed. An asset
of the Partnership or of any commodity pool investment, or a Unit owned by a tax-exempt Limited Partner, will be debt-financed (i) if indebtedness incurred before the investment would not have been incurred but for the investment, (ii) if the investment is actually made with the use of borrowed funds, or (iii) if the investment necessitates future borrowings and this eventuality was foreseeable at the time the investment was made. The IRS has issued a General Counsel Memorandum and private letter rulings, which indicate that the purchase or sale of Section 1256 commodity futures contracts on margin will not give, rise to "acquisition indebtedness" (assuming the funds used to make the margin deposits are not themselves borrowed). A private letter is issued to a particular taxpayer and cannot be used as precedent by, nor is it binding on the IRS with respect to, another taxpayer. It is possible that the IRS may assert a contrary position with respect to the Partnership, resulting in unrelated business taxable income for tax-exempt Limited Partners.

21.4 The Partnership does not anticipate having to incur any indebtedness in connection with the acquisition of any commodity futures contracts or other property. Therefore, a tax-exempt Limited Partner's share of such income produced by the Partnership generally should not be unrelated business income to the tax-exempt Limited Partner unless (i) such income is of a character which is specifically excluded from an exempt classification; or (ii) such income is in fact derived from debt-financed property either of the Partnership or of any commodity pool(s) in which it invests; or (iii) the Limited Partner incurs indebtedness in connection with, or related to, its purchase of Units; or (iv) the Partnership or any commodity pool investment is treated as publicly traded, but is not subject to tax as a corporation. As previously discussed in the section titled "Partnership Classification," the Partnership is not expected to be considered publicly traded, although no assurances to this effect can be given. However, commodity pools in which the Partnership invests may be publicly traded but not taxed as corporations, in which case all net income allocable to tax-exempt Limited Partners through the Partnership from such pools would be unrelated business income. If the Partnership's investments do not result in unrelated business taxable income, tax-exempt Limited Partners may not receive any Federal income tax benefit with respect to their share of Partnership expenses or losses, although any such expenses or losses

will reduce the Net Asset Value per Unit and the amount of money they may receive from distributions or upon redemption of their Units.

21.5 The receipt of unrelated business income by a tax-exempt entity generally has no effect on that entity's tax-exempt status or on the exemption from tax on its other income. However, for certain types of tax-exempt entities, the receipt of any unrelated business income may have extremely adverse consequences. For example, for a charitable remainder trust (defined under Code Section 664), the receipt of any such taxable income during a taxable year results in the taxation of all of the trust's income from all sources for such year. Accordingly, for these and other reasons, each prospective tax-exempt Limited Partner is urged to consult its own adviser regarding the possible repercussions of an investment in the Partnership.

21.6 Tax-exempt Limited Partners also generally are exempt from state and local taxation except as to any unrelated business income. However, Limited Partners should consult with their own tax advisors concerning the applicability and impact of state and local tax laws.

The person with investment discretion on behalf of any employee benefit plan should consult his attorney or other tax advisor with regard to whether the purchase of Units might give rise to "unrelated business taxable income" under Section 512 of the Code. Although the Internal Revenue Service has issued favorable private letter rulings to taxpayers in somewhat similar circumstances, other taxpayers may not use or cite such rulings as precedent.

ACCEPTANCE OF SUBSCRIPTIONS ON BEHALF OF EMPLOYEE BENEFIT PLANS IS IN NO RESPECT A REPRESENTATION BY THE GENERAL PARTNER THAT THIS INVESTMENT MEETS ALL RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO INVESTMENTS BY ANY PARTICULAR PLAN OR THAT THIS INVESTMENT IS APPROPRIATE FOR ANY PARTICULAR PLAN.

**22. POWER OF ATTORNEY:** Each Limited Partner, by the execution of a Subscription Agreement to purchase Units in this Partnership, does hereby irrevocably constitute and appoint the General Partner, with power of substitution and re-substitution, his true and lawful attorney-in-fact to act in his place and stead to perform, execute, acknowledge, swear to and file all statements of interests and record the Limited Partner Agreement for **HORIZON COMMODITY FUND, LP** in the form attached to the Confidential Offering Memorandum and Disclosure Document and all amendments and certificates thereto, and such other and further documents, instruments, or statements necessary to carry on the indicated business of the Partnership required by brokers, advisors, or by the Exchanges as may be necessary or convenient to the formation or confirmation of the Partnership. Each of the Limited Partners agree to be bound by any representations of the attorney-in-fact in such statements and waives any and all defenses which may be available to the Limited Partner to contest, negate or disaffirm the actions of the attorney-in-fact under this Power of Attorney. This is a special Power of Attorney, and, coupled with an interest, shall be irrevocable, shall survive the death or disability of the undersigned, and shall bind the undersigned's heirs, successors and assigns and is limited to those matters herein set forth.

**23. OTHER MATTERS**

23.1 Acquired Interests. A person or entity acquiring an interest in this Partnership shall be subject to, and bound by, the terms and conditions of this Agreement.

23.2 Alabama State Law Applies. The laws of the State of Alabama shall govern the application or interpretation of this Agreement.

23.3 Arbitration Controversies, claims, or differences among Partners pertaining to this Limited Partnership Agreement or its application shall be settled by arbitration following the rules and practices of the American Arbitration Association.

23.4 Amendments. This Agreement may be amended at the recommendation of the General Partner and affirmative vote of the Limited Partners holding a majority in interest of the Limited Partners. No amendment shall be made which will alter the business's status as a Limited Partnership.

23.5 Notices. All notices hereunder shall be sent by registered mail, return receipt requested, addressed as follows: If to the General Partner, as set forth at the end of this Agreement: and if to a Limited Partner, as set forth in the Application or Subscription Agreement executed by such Limited Partner. Any party may, from time to time, give notice of changing his address.

23.6 Subscription Deposits. Customers' subscriptions shall be made payable in certified funds to **"HORIZON COMMODITY FUND, LP."** The escrow account will be held at a bank to be decided upon by the General Partner. Interest, if any, paid on these funds, will be retained by the Partnership. The maximum amount of time these funds can be held is 90 days, unless the offering period is extended. At the end of this time, if $100,000 has not been raised in subscriptions, the money on deposit will be returned. Upon the cumulative receipt of $100,000 or more, all existing funds and any forthcoming funds will be transferred to our segregated trading account held by our authorized Futures Clearing Firm (FCM) or Introducing Broker (IB) for the Trading Account of **HORIZON COMMODITY FUND, LP.**

**24. VOLUNTARY DISSOLUTION:** The General Partner shall give to each Limited Partner notice by certified mail, return receipt requested, that said General Partner is electing to terminate and dissolve the Partnership. In the event that the election is made by the General Partner to terminate the Partnership business pursuant to this section, the Limited Partners shall vote to elect a substitute General Partner with limited authority for the purposes of winding up the Partnership business, Liquidating any Partnership investment accounts and valuing the Partnership's interest, with authority to disburse the partner's capital contribution and any profits in the account of the partners to the respective partners in their pro rata share.

**25. ENTIRE INSTRUMENTS:** This instrument contains the parties' entire agreement with respect to the subject matter hereof, and the parties agree and acknowledge that any and all agreement and discussion heretofore or contemporaneously made by the parties with respect to

the subject matter are heretofore set forth in this instrument. This instrument cannot be modified in any respect, except by the General Partner executing in writing and after a majority vote of the partners.

**26. AMENDMENTS:** This Agreement, except with respect to vested rights of the partners, may be amended at any time by majority vote of the partners, provided the amendment is memorialized in writing, as required under Section 25. No amendment shall, without the unanimous consent of the all Partners, modify the Partnership interest of the Partners, or the allocation of profits or losses or distributions, change the compensation provided the General Partner, or amend this section. No amendments shall be made that require any additional assessment of the Limited Partners or increase the Liability of the Limited Partners beyond the amount they invested.

**27. SEVERABILITY:** In the event that any provision of this instrument, agreement or offering memorandum is found invalid, unenforceable or illegal it shall be deemed deleted from the instrument and the balance of the provisions of this instrument shall be valid and enforceable as to the parties as if the deleted provisions were never a part hereof.

**28. BINDING AFFECT OF AGREEMENT:** This Agreement shall be binding on the parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, this Agreement has been executed and duly adopted on this date,

X Steven R Crutchfield
Signature of General Partner

STEVEN R. CRUTCHFIELD
*for* General Partner
Crutchfield Asset Management, LLC

Date: MARCH 11, 2005
Accepted this day

Beatrice M. Crutchfield
Witness

Date: MARCH 11, 2005

BEATRICE M. CRUTCHFIELD
Print Name