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**Sent:** Wednesday, October 13, 2010 1:15 PM  
**To:** NFAamendrule4.5 <NFAamendrule4.5@CFTC.gov>  
**Cc:** Dave Kavanagh <dave@dearborncapital.com>  
**Subject:** Comment Letter  
**Attach:** CFTC Comment Letter 2010.10.12.pdf

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Dear Mr. Stawick:

Attached is Dearborn Capital Management, LLC's comment letter on the National Futures Association Petition to Amend Commission Rule 4.5.

Regards,

**Maureen O'Rourke**  
*Chief Financial Officer*

<<CFTC Comment Letter 2010.10.12.pdf>>

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October 12, 2010

**VIA E-MAIL ONLY**  
**NFAamendrule4.5@cftc.gov**

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

**Re: National Futures Association Petition  
to Amend Commission Rule 4.5**

Dear Mr. Stawick:

Dearborn Capital Management, LLC ("Dearborn Capital") would like to thank the Commodity Futures Trading Commission ("CFTC" or "Commission") for the opportunity to respond to the Commission's request for comment on the above referenced matter, published in the Federal Register on September 17, 2010.

Dearborn Capital is registered with the Commission as a commodity pool operator and commodity trading advisor under the Commodity Exchange Act ("CEA") and is a member in those capacities of the National Futures Association ("NFA"). Dearborn Capital is the general partner, commodity pool operator and sponsor for several commodity pools, including the Grant Park Futures Fund Limited Partnership. For the reasons set forth below, Dearborn Capital respectfully submits that while the Commission should be lauded for its past efforts to expand access to the commodity futures markets by a variety of participants, the exclusion which is the subject of the Commission's request for comment should be modified to meet with the objectives of the CEA.

CFTC Rule 4.5, which was adopted by the Commission in 1985 and amended in 2003, is based on two policy considerations: (i) without such exclusion, a registered investment company ("RIC") would effectively be subject to dual registration; and (ii) the use of futures and options by a RIC is limited under the Investment Company Act. While the intention behind the 2003 Amendment was fundamentally sound, certain issuers have recently brought funds to market using it yet in a way which allows them to trade extensively or even exclusively in regulated futures and options. When this fact is combined with the public nature of RICs and the relatively modest investment often required to participate in them, the result is that investors who may have little or no familiarity with the futures market are solicited to participate with often only a

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limited amount of information regarding the nature of futures and options and in particular, the risks associated with trading in such instruments. The oversight which the Commission brings to regulated commodity pools and the additional disclosures which potential investors in such pools have available to them are absent.

The objectives behind the Rule 4.5 exemption remain as valid today as they were in 2003 when the Commission adopted its latest amendment. However, RICs which trade in futures and options as a substantial or primary part of their business or which market themselves as a futures product should be subject to the same fundamental considerations which regulate commodity pools in general. They should operate pursuant to Commission oversight to the extent they trade instruments under the CFTC's jurisdiction and should provide the same disclosures which the Commission requires of commodity pools pursuant to Part IV of its rules.

The amendment to Rule 4.5 that the NFA is requesting the Commission adopt represents one possible avenue toward achieving these objectives. Alternatively, the Commission could revise its exemption to enable RICs to trade futures and options on a speculative basis and not restrict them to bona fide hedging, provided the RIC is subject to NFA rules on the use and content of promotional material and the offering document complies with Part IV of the CFTC's rules, including disclosures regarding fees, leverage and risk. Access to the futures and options markets should be encouraged and supported, but not at the risk of diminished customer protection.

Dearborn Capital is grateful to the Commission for giving it the opportunity to comment on the notice of proposed rule making. If there are any questions regarding these comments, please feel free to contact me at (312) 756-4450 or by e-mail at [dave@dearborncapital.com](mailto:dave@dearborncapital.com). Thank you for your attention to this matter.

Sincerely,

/s/

David M. Kavanagh

President

Dearborn Capital Management, LLC