



October 18, 2010

Via e-mail: NFAamendrule4.5@cftc.gov

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW,
Washington, DC 20581

Re: National Futures Association Petition to Amend Commission Rule 4.5

Dear Mr. Stawick:

National Futures Association (NFA) applauds the Commodity Futures Trading Commission's (Commission) decision to publish and seek comment on NFA's Petition to Amend Commission Regulation 4.5. NFA believes this is an important first step in the process, and for the reasons explained in our August 18, 2010 Petition we encourage the Commission to move forward with appropriate amendments to Rule 4.5 after carefully considering the comments received.

NFA strongly believes that Commission Regulation 4.5 should be amended to require that registered investment companies ("RICs") offering exposure to actively managed futures strategies to retail investors with in some cases minimum investment amounts of as little as \$1,000 be within the regulatory purview of both the CFTC and NFA. NFA's petition proposes certain amendments to Rule 4.5 to ensure that RICs engaging in more than a *de minimis* amount of futures trading and that are offered to retail customers or are marketed to retail customers as a commodity pool or otherwise as or in a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures or commodity options markets are subject as CPOs to the appropriate regulatory requirements and oversight by regulatory bodies with primary expertise in commodity futures. The CFTC alone has the Congressional mandate to regulate retail managed futures trading and products, and over the years has developed the specialized body of skill and knowledge necessary to fulfill this mandate.

The Commission should be advised, however, that while NFA does not waiver in its regulatory policy objective, we are not necessarily tied to the exact language in our proposal. For example, while our petition proposes restoring the no



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more than 5% non-*bona fide* hedging operating restriction contained in Regulation 4.5 prior to August 2003, we recommend that the Commission carefully consider whether 5% is the appropriate level for this restriction. As NFA's May 1, 2003 comment letter to the Commission noted when it first proposed the changes to Rule 4.5 in 2003, NFA supported eliminating the 5% operating restriction provided that the "no marketing" restriction remained in place. Therefore, NFA encourages the Commission to carefully consider comments relating to this particular restriction.

At this time, NFA also wishes to again emphasize the last few paragraphs of its Petition. In filing our Petition, NFA did not seek to eliminate these RIC product offerings as long as they are subject to appropriate regulatory oversight and applicable CFTC Part 4 requirements. As stated in our petition, NFA recognizes that since 2003, a number of persons have filed notices of eligibility pursuant to Regulation 4.5(c) on behalf of RICs, and those entities may no longer be eligible for exclusion from CPO registration in the future if certain operating restrictions similar to those proposed in NFA's Petition are adopted. Therefore, NFA not only encourages the Commission to provide adequate time for these RICs to comply with the Commission's applicable regulations if certain operating restrictions are adopted but more importantly consider as part of any proposed rulemaking what, if any, relief may be appropriate for CPOs offering these RICs as pools subject to the CFTC's jurisdiction. In granting such relief, NFA also encourages the Commission to consider granting similar relief to public commodity pools to avoid giving one structure a competitive regulatory advantage over other similar structures in the marketplace.

For example, as noted in NFA's August 2010 petition, to the extent that the Commission has granted operational relief from certain Part 4 Regulations (e.g. disclosure document, reporting and recordkeeping requirements) to exchange traded funds ("ETFs") - that are commodity pools organized as Delaware statutory trusts - NFA encourages the CFTC to determine whether it is appropriate to grant similar and/or other relief to commodity pools operating as RICs. We also recognize, however, that the CFTC is not the only regulator that may have to be flexible in granting certain relief for these RIC/pool product offerings to continue, and we encourage you to work with the Securities Exchange Commission ("SEC") and the RICs in determining what relief may be appropriate under the federal securities laws. To that end, NFA applauds the CFTC and SEC with regard to the dual regulatory regime applicable to commodity ETFs and certainly believes that it could serve as a model for the dual regulation of commodity-related RICs/pools. NFA encourages the Commission to consider the comments received regarding this issue and, as stated in our petition, NFA is more than willing to participate in future discussions on this issue if the Commission believes it would be helpful.



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In conclusion, NFA appreciates the Commission's decision to publish and seek comment on NFA's Petition and the speed in which it did so. NFA remains deeply concerned that a number of CPOs who currently operate public pools will avail themselves of this alternative RIC structure. Given our concern with this structure's lack of adequate retail customer protections in some areas comparable to those afforded prospective investors in a public commodity pool subject to Part 4, NFA does not believe that retail futures customers would be served well if this migration continues to occur without appropriate oversight by the regulatory bodies with primary expertise in commodity futures. At this time, we encourage the Commission to move forward with the appropriate amendments to Rule 4.5 after carefully considering the comments received.

Very truly yours,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Thomas W. Sexton, III
Senior Vice President and
General Counsel

(caw:Regulatory/comment letter petition to amend 4.5)