AQR CAPITAL MANAGEMENT

Two Greenwich Plaza, 3rd Floor
Greenwich, CT 06830
Tel 203.742.3600 • Fax 203.742.3100
www.aqrcapital.com

October 18, 2010

Via E-Mail and Overnight Mail

Mr. David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: CFTC Request for Comment Regarding NFA Petition to Amend Rule 4.5

Dear Mr. Stawick:

This letter expresses the views of AQR Capital Management, LLC ("AQR") on the National Futures Association's ("NFA") petition to amend CFTC Regulation 4.5, which currently excludes registered investment companies ("RICs") from the "commodity pool operator" ("CPO") definition under the U.S. Commodity Exchange Act ("CEA").[1] The NFA has requested that the CFTC place limitations on the exclusion, thereby requiring the operators of RICs with greater than a certain level of non-hedging futures investments to register and be regulated as CPOs. Limitations similar, but not identical, to those the NFA has requested were in place prior to 2003. The NFA considers these requested changes necessary to protect investors in RICs that provide meaningful exposure to the futures markets.

AQR, a Delaware limited liability company formed in 1998, is an investment management firm employing a disciplined multi-asset, global research process (AQR stands for Applied Quantitative Research). AQR's investment products are primarily provided through a limited set of collective investment vehicles, separate accounts and mutual funds that deploy all or a subset of AQR's investment strategies. The AQR Funds were created to provide mutual fund investors access to these alternative, innovative and diversifying strategies.

[1] Letter from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA, to David Stawick, Office of the Secretariat, CFTC (June 29, 2010), *available at* http://www.nfa.futures.org/znews/newsPetition.asp?ArticleID=2491. On August 18, 2010, in a revised letter, NFA clarified that the rule amendment should only apply to RICs and not to the other entities eligible for exclusion under CFTC Regulation 4.5. Letter from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA, to David Stawick, Office of the Secretariat, CFTC (August 18, 2010), *available at* http://www.nfa.futures.org/znews/newsPetition.asp?ArticleID=3630 (hereinafter, the "Petition").

AQR acts as investment adviser to the AQR Funds, a Delaware statutory trust registered as an open-end management investment company under the Investment Company Act of 1940, as amended (the "1940 Act" or the "Investment Company Act"). AQR is registered with the U.S. Securities and Exchange Commission ("SEC") as an investment adviser under the Investment Advisers Act of 1940, as amended. With respect to certain of its products, AQR is also registered with the CFTC as a CPO as well as a commodity trading advisor and is a member of the NFA. In addition, the AQR Funds are governed by a Board of Trustees that is responsible for overseeing the business activities of each investment fund. AQR's activities as investment adviser to the AQR Funds are subject to the overall authority and oversight of the Board of Trustees.

Executive Summary

As adviser to the AQR Managed Futures Strategy Fund, a fund mentioned in the Petition, AQR has a particular interest in providing comments on the proposed amendment. As discussed in more detail below we would like to highlight the following points:

- We believe the regulatory changes suggested by the NFA, as set out in the Petition, are unnecessary and, in some cases, ultimately will lead to negative unintended consequences. Commodity-focused registered investment companies ("RICs") have been a fixture in the asset management space for several years and have, to our knowledge, operated without issue under a comprehensive Investment Company Act regulatory regime. We would challenge the perception that the Investment Company Act's regulation of a fund (as well as the Investment Advisers Act regulation of such fund's investment adviser) is somehow inferior to the regulation by the CEA of the persons operating a fund (as CPOs) when the underlying product involves futures (the regulations may be different, but they are equally effective);

- The proposed rule amendment refers to "commodity futures" but, to be clear, the rule would apply to *all futures, including equity index and financial futures*. The broad reach of the rule could cause industry participants to reduce or eliminate their usage of futures and thus hurt investors as such instruments are often used as a cost-effective means to equitize cash inflows and allow funds to meet daily liquidity requirements;

- The use of wholly-owned subsidiaries by RICs to provide exposure to commodities is a by-product of rules contained in the Internal Revenue Code. For virtually all of RICs we are aware of, there is significantly more transparency and oversight over these subsidiaries than that asserted in the Petition. We acknowledge there may be a few isolated examples of wholly-owned subsidiaries in RIC structures that currently do not provide the transparency we think is appropriate for investors. If so, the situation can easily be rectified by the SEC requiring that any wholly-owned subsidiary of a RIC be subject to substantially all of the provisions of the Investment Company Act without subjecting the RICs to a second regulatory regime;

- As currently drafted, many funds in scope of the Petition would not be able to satisfy both the rules of the Investment Company Act and the CEA due to the conflicting nature of their rules and regulations. If it is determined that additional regulation by the CFTC is necessary, we urge the CFTC to defer issuance of any final rule until harmonization of the two regimes is established, and to provide operating relief from certain provisions of Part 4 of the CFTC Regulations; and

- Given the difficult task of harmonizing CFTC and SEC regulatory requirements and the potential additional burdens and costs placed on the CFTC, particularly after the enactment of Dodd-Frank, considerable thought should be given to whether this is a prudent use of limited resources and taxpayer dollars, and whether the additional costs of compliance likely to be born by RIC shareholders are justified by anticipated benefits and protections.

The NFA's proposed expansion of the "no marketing" restriction to include any RIC providing exposure to commodity interests has the potential to affect every commodity-focused RIC in the industry. Any RICs that provide futures exposure through securities or exchange-traded and over-the-counter derivatives would no longer be able to rely on the CFTC Regulation 4.5 exclusion from CPO registration and regulation. Despite the fact that these RIC operators have spent considerable time, effort and resources building their trading, compliance and operational infrastructure in full compliance with the law, operators of such RICs and their principals and associated persons (including the individual members of the RICs Board of Trustees/Directors) would likely need to register with the CFTC and NFA and be subject to the full panoply of applicable marketing and operating laws and regulations, including the disclosure, reporting, recordkeeping, advertising and promotional material, and other operating and compliance restrictions and requirements. We believe these additional burdens would lead many fund complexes to reduce or eliminate their usage of futures or to turn to more expensive, more risky and less transparent alternatives.

Our comments set forth below will attempt to address the NFA's concerns, clarify some of the misconceptions in the Petition, and highlight some of the unintended consequences of the proposed removal of the current CFTC Regulation 4.5 exclusion. We will then dispute the need for a dual regulatory regime and outline the challenges to be confronted in attempting to develop such a regime involving both the CEA and the 1940 Act. Finally, despite our strong belief that the proposed change of Rule 4.5 is neither necessary nor appropriate, in the event that the CFTC were to decide that there truly is a need for a dual regulatory regime, we discuss the need for harmonization as well as the CFTC's grant of appropriate, operational relief from certain of the Part 4 Regulations.

The NFA's Concerns Regarding the Use of a Wholly-Owned Subsidiary

According to the Petition, the NFA has "customer protection concerns relating…to the use of a wholly-owned and controlled subsidiary for investment in commodity futures transactions on behalf of [a] fund" and that "while these funds' offering materials indicate that the subsidiaries are subject to certain investment restrictions applicable to

the funds themselves, these subsidiaries…are not subject to the Investment Company Act of 1940's customer protection regime." Also, the Petition indicates that "the subsidiaries' daily operations, including their actual derivatives positions (including the positions' leverage amounts) and fees charged are not entirely transparent."

Although the subsidiary structure serves a useful function given current tax law (as described herein), it can be operationally burdensome, less tax efficient and serve to increase costs. Nonetheless, due to the tax considerations and restrictions under Subchapter M of the U.S. Internal Revenue Code (the "Code"), we have been left no choice but to use a subsidiary structure for certain of the AQR Funds, including the AQR Managed Futures Strategy Fund, in order to gain exposure to commodities. Under current law, a RIC must derive at least ninety percent (90%) of its income from certain enumerated sources of "good income" (e.g., dividends, interest, gains from the sale or other disposition of stock, etc.). Under current tax law, commodities are not one of these enumerated sources. As a result, a RIC cannot derive more than ten percent (10%) of its gross income from commodities. It is well known that financial advisors encourage clients to diversify across a broad range of asset classes, including commodities. This aspect of current tax law effectively prevents shareholders from accessing commodity investments directly through mutual funds in the absence of a subsidiary structure.[2]

It is important to note that the Code's definition of "commodities" applies only to physical commodities such as energy and sugar futures, whereas income from financial futures, such as equity and bond index futures, are deemed to provide "good income." Consequently, the AQR Managed Futures Strategy Fund and most other RICs that invest in financial futures contracts own these instruments directly in the RIC. Typically only the contracts related to physical commodities are held in the wholly-owned subsidiary.

The U.S. Internal Revenue Service ("IRS") has been willing to issue private letter rulings ("PLRs") stating that income arising from investments by RICs in controlled foreign corporations ("CFCs") that invest in commodities and commodity-linked investments constitutes qualifying income under Subchapter M of the Code. In order for a RIC to rely on this relief but still be considered "diversified" under Subchapter M, only 25% of the RIC's total assets may be invested in its CFC, or subsidiary. The Petition interprets some RIC prospectuses to disclose that the RIC leverages its investment in its CFC 4-to-1 to achieve a managed futures exposure equal to the full net asset value of the RIC.[3] This is simply not the case. PLRs issued, such as the one for the AQR Managed Futures Strategy Fund, explicitly require that "although [the] Subsidiary will not be registered as an investment company under the 1940 Act, [the] Subsidiary will comply with the requirements of Section 18(f) of the 1940 Act, Investment Company Act Release No. 10666, and related SEC guidance pertaining to asset coverage with respect to transactions in commodity futures and other transactions in derivatives."[4] Those requirements would

[2] *See* Section 851(b)(2) of the U.S. Internal Revenue Code.
[3] *See* Petition, *supra* note 2.
[4] Section 18(f)(1) of the 1940 Act prohibits open-end investment companies from issuing "senior securities," other than borrowings from a bank where there is asset coverage of at least 300%. While "senior security" is defined as "any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness," as well as certain classes of stock, the term has been construed far

not permit the CFC to borrow amounts in excess of its assets, as suggested by the Petition. Nonetheless, we acknowledge that the Investment Company Act would allow a CFC, or subsidiary, to have notional exposures that exceed the value of its assets.

In addition, on a voluntary basis, through the review and comment process with the SEC's Division of Investment Management staff prior to the issuance of its prospectus, the AQR Managed Futures Strategy Fund agreed to comply with the requirements of Section 17 of the 1940 Act relating to affiliated transactions and custody and Section 18 of the 1940 Act relating to capital structure, as well as the 1940 Act requirements relating to pricing of securities and accounting.[5] The AQR Managed Futures Strategy Fund also agreed to disclose in its registration statement the types of investments that would be made through the CFC, consistent with the requirements of Section 8 of the 1940 Act. Furthermore, the AQR Managed Futures Strategy Fund agreed that the CFC's financial statements would be consolidated with the audited financial statements of the fund and included in the fund's annual reports to fund shareholders. The AQR Managed Futures Strategy Fund and the CFC have complied in all respects with the representations made to the SEC's Division of Investment Management. Consequently, although the AQR Managed Futures Strategy Fund and the CFC are separate legal entities, for purposes of compliance with the provisions of the Investment Company Act and the SEC's regulations thereunder, they are treated as one regulated entity. No investor protections are compromised by this structure.

Moreover, as a wholly-owned entity, the CFC is under the complete control of the AQR Managed Futures Strategy Fund, as its sole shareholder. The CFC cannot take any extraordinary action without the approval of the AQR Managed Futures Strategy Fund and its Board of Trustees, which oversees the operations of the CFC. The Directors of the subsidiary are also officers of the Fund and are appointed by, and serve at the pleasure of, the AQR Funds' Board of Trustees. The operations of the CFC are subject to the review and oversight of the AQR Funds' Chief Compliance Officer and the fund's compliance policies and procedures, which are approved and reviewed by the fund's Trustees, the majority of whom are independent.

---

more broadly by the SEC. In a seminal release issued in 1979, the SEC concluded that Section 18 "governs trading practices that have the potential for leveraging an investment company's assets." *Securities Trading Practices of Registered Investment Companies: General Statement of Policy, Investment Company Act Release No. 10666 (Apr. 18, 1979) ("Release 10666").* In the SEC's view, "[l]everage exists when an investor achieves the right to a return on a capital base that exceeds the investment which he has personally contributed to the entity or instrument achieving a return." The SEC indicated that if a registered investment company that engages in a transaction of the type described in Release 10666 (or uses certain other instruments such as forwards, futures and written options) establishes and maintains a segregated account to "cover" the transaction, the transaction should not be deemed to implicate the provisions of Section 18 of the 1940 Act, meaning that the asset coverage requirement of Section 18 would not apply.

[5] Section 17 of the Investment Company Act serves to prohibit certain affiliated transactions, including acceptance of compensation in connection with the sale of the RIC's securities, as well as mandating custody of securities with a "qualified independent custodian", requiring bonding requirements for officers and employees having access to securities or funds of the RIC as well as the adoption of a code of ethics to prevent fraudulent, deceptive or manipulative courses of conduct. As mentioned above, Section 18 of the Investment Company Act restricts issuance of "senior securities," other than borrowings from a bank where there is asset coverage of at least 300%. The AQR Managed Futures Strategy Fund also agreed that the CFC would comply with the 1940 Act's pricing and accounting requirements.

It is important to underline that two of the main concerns raised in the Petition, namely the lack of transparency of fees and lack of transparency of holdings, do not apply to the AQR Managed Futures Strategy Fund or, to our knowledge, to virtually all of RICs that utilize a CFC subsidiary structure. Specifically, each individual position held by the AQR Managed Futures Strategy Fund and its subsidiary is disclosed in the fund's quarterly regulatory filings, as well as in the fund's annual and semi-annual reports, and the fees charged by the subsidiary are fully disclosed and included in the overall expense ratio for the fund. In the case of the AQR Managed Futures Strategy Fund, all of this information, including an evergreen prospectus, can be obtained from the fund's disclosure documents on the AQR Funds' website.[6]

Based on the discussion above, we believe that the subsidiary, as utilized by the AQR Managed Futures Strategy Fund and virtually all similar RICs, is *de facto* operating in compliance with all the material rules that apply to a RIC. Thus, we are of the belief that the premise on which the Commission's 2003 amendments to Regulation 4.5 were based, namely the "otherwise regulated nature" of the qualifying entities, continues to be valid.

While we do not believe lack of transparency to be market practice for actively managed futures products, as suggested in the Petition as well as in CFTC Commissioner O'Malia's statement issued on September 1, 2010, we understand that certain funds may not be wholly transparent at the subsidiary level. We believe this to be an isolated exception rather than the norm among RIC structures utilizing subsidiaries. To this extent, we agree with the NFA that this is an issue that needs to be addressed and encourage the CFTC to work with the SEC to require that any wholly-owned subsidiary of a RIC be subject to substantially all of the provisions of the Investment Company Act.[7] Another potential approach to ensuring transparency of the subsidiary would be to amend Regulation 4.5 to clarify that it applies to "otherwise regulated entities, so long as any wholly-owned subsidiaries provide a level of transparency and disclosure equivalent to that of the regulated entity".

Finally, we note that the House of Representatives on September 28, 2010 passed a bill, "The Regulated Investment Company Modernization Act of 2009", which would remove the "non-qualifying" income characterization for commodities, thereby obviating much of the need for use of a subsidiary to gain exposure to commodities.[8] As of the date of this letter, the bipartisan bill, passed by voice vote in the House, now moves to the Senate where all reports indicate that it is expected to pass without opposition. Since many of the NFA's customer protection concerns involve the use of the subsidiary, this change to the tax law may make the NFA's concerns moot for mutual funds that liquidate their CFC's and trade in the fully regulated top-tier RIC. If the bill becomes law, AQR (and probably other mutual fund advisers) would likely seek to liquidate RIC subsidiaries being used.

---

[6] *See* http://aqrfunds.com/Reference_Materials/Prospectus_and_Fund_Information/Content/default.fs.

[7] As discussed above, to avoid additional complexity and expense, officers of the AQR Funds serve as the Board of Directors of the CFC. We do not believe that the CFC or similar subsidiaries should be required to comply with Section 10 and 16 of the 1940 Act with respect to the makeup of the Board of Directors.

[8] *See* H.R. 4337, "The Regulated Investment Company Modernization Act of 2009": http://waysandmeans.house.gov/media/pdf/111/MA_Summary.pdf.

Unintended Consequences of the Petition and Potential Harm to Investors

Under the proposed rule amendment, in order to rely on CFTC Regulation 4.5, an investment company would be required to represent that its use of futures and options on futures would be limited to (i) bona fide hedging transactions and (ii) speculative futures positions "that may be held by a qualifying entity only," provided that futures margin and option premiums for such speculative positions do not exceed 5% of the liquidation value of the qualifying entity's portfolio. The Petition also proposes reinstating an enhanced version of the marketing restrictions that were in the prior version of CFTC Regulation 4.5. The NFA believes that any commodity futures investment that is marketed to retail customers as a commodity pool or otherwise as or in a vehicle for trading or investing in (or otherwise seeking exposure to) the commodity futures or commodity options markets should be subject to the regulatory requirements and protections contained in the CFTC's Part 4 Regulations.

It is important to note that the 5% limit under the proposed rule amendment would apply to *all futures, including equity and financial futures* -- not just physical commodity futures -- as many in the mutual fund industry believe. This could affect any fund that uses futures in any meaningful way (e.g., gaining exposure to equity markets, commodity funds, replication strategies and other international funds increasing exposure to markets). Equity, stock index and bond futures are often used by advisers to "equitize" cash inflows in order to build and rebalance the portfolio, gain access to global markets and allow funds to meet daily liquidity requirements under the Investment Company Act. In addition, the "no marketing" condition would mean that an entity complying with CFTC Regulation 4.5 could not be marketed to the public as a vehicle seeking *exposure to* commodity futures or commodity options markets. This "no marketing" condition could be read broadly to encompass mutual funds that seek commodity exposure indirectly through the use of swaps or structured notes. Finally, the Petition could lead industry participants to increase the use of other synthetic instruments to gain exposure rather than through the use of "futures" or swaps, thereby introducing more counterparty risk to a portfolio, less transparency and higher costs, contrary to the ultimate goal of the Petition and contrary to the interest of fund shareholders, the CFTC and the NFA.

Reasons Why a Dual Regulatory Regime is Not Necessary

Given the comprehensive nature of customer protections and extensive provisions in the 1940 Act and the rules and forms adopted thereunder, particularly the items mandated by Form N-1A[9], we understand why the CFTC felt comfortable amending Regulation 4.5 in 2003. Indeed, the 1940 Act's purpose, as stated therein, is "to mitigate and...eliminate the conditions...which adversely affect the national public interest and the interest of investors." Specifically, the 1940 Act is intended to regulate conflicts of interest in investment companies and protect the public primarily by legally requiring disclosure of

[9] Form N-1A is a registration statement used by open-end investment companies to register their shares. *See* http://www.sec.gov/about/forms/formn-1a.pdf.

material details about the investment company (including instruments such as commodities and commodity-linked instruments).

In an appendix to this letter, we provide a comparison of the major disclosure requirements under both the 1940 Act and the CEA. While some differences exist, there are many similarities, and we believe that either regulatory regime provides comprehensive protection to investors.

Further, RICs, like the AQR Funds, and unlike CPOs, are overseen by a Board of Trustees/Directors, who supervise the funds' normal business operations and generally act as "watchdogs" of the shareholders' interests.[10] The 1940 Act requires that at least 40% of a fund's trustees/directors must not be "interested" persons of the fund as defined in the 1940 Act. The 1940 Act also has several statutory requirements that a majority of a fund's disinterested trustees/directors approve certain important fund matters, including the approval of the fund's investment advisory agreements, the selection of the fund's independent auditors, and the approval of the fund's distribution agreements and plans.

Operating Relief

We believe strongly that the Investment Company Act provides comprehensive investor protection, and that a dual regulatory regime is unwarranted. However, should the current exemption be modified, we believe there are several areas of operating relief that would be required. As the Petition itself makes clear, the intent is not to prevent the operation of RICs that invest primarily in commodity futures, but rather to modify the current rules in a manner that would enable these funds to operate both as RICs subject to the Investment Company Act, as well as commodity pools subject to the CEA.

As the appendix comparing the disclosure requirements under the 1940 Act and the CEA demonstrates, harmonizing the two regulatory regimes will be a difficult task, especially given the number and scope of mismatches in terms of disclosure[11], recordkeeping, reporting, advertising and marketing, in addition to the limited resources of both the SEC and CFTC in the wake of the Dodd-Frank Act. We would suggest that any new rule that would require a RIC to also register with the CFTC contain provisions to the following effect:

1) Until such time as the disclosure requirements of the two regulatory regimes are effectively harmonized, RICs would not be required to comply with the requirements under the CEA so long as they fully comply with all 1940 Act requirements.

---

[10] *See e.g., Burks v. Lasker, 441 U.S. 471, 484-85, 99 S. Ct. 1831, 1840-41, 60 L. Ed. 2d 404, 416-17 (1979)* (citations and internal quotation marks omitted). The U.S. Supreme Court stated that disinterested directors are intended to serve as the "independent watchdogs who would furnish an independent check upon the management of investment companies" and who have "the primary responsibility for looking after the interests of the funds' shareholders."

[11] Note also the difficulty of separating out any managed futures fund Prospectus and Statement of Additional Information given the new summary prospectus, delivery and order of information requirements. *See* Release Nos. 33-8998; IC-28584; File No. S7-28-07, "Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies", also available at http://www.sec.gov/rules/final/2009/33-8998.pdf.

2) Any RIC that utilizes a CFC subsidiary structure would be required to have the CFC subsidiary operate in such a manner as to ensure its compliance with the relevant requirements of the 1940 Act, including the full and transparent disclosure of individual holdings, the full and transparent disclosure of fees, and the inclusion of any fees at the CFC level in the overall expense ratio of the RIC (as is already required for any investment by a RIC in an exchange-traded fund, or ETF).

3) Grant operational relief from certain Part 4 Regulations (specifically, CPO registration of a fund's board members, and the disclosure document delivery and acknowledgment requirements of CFTC Rule 4.21). As the Petition noted, similar operational relief has been granted to commodity pools organized as Delaware statutory trusts,[12] and there is a similar exemption currently being proposed by the CFTC with respect to commodity ETFs.[13]

4) The CFTC may also wish to consider requiring offering materials to include substantial disclosures that would otherwise be mandated by Part 4 of the CFTC Regulations, including detailed information about the fund's futures commission merchants, potential conflicts of interest, and performance information for the fund or other funds operated by the investment adviser. This level of detail could also be provided at the subsidiary level.

The Petition requests that any RIC include in its notice of eligibility a representation that the RIC's qualifying entity will not have the initial margin and premiums required to establish any commodity futures or commodity options not used for bona fide hedging purposes exceeding five percent of the liquidation value of the qualifying entity's portfolio. We would request that, given market conditions, this threshold be raised to no lower than ten percent so as to allow long-only equity funds to be able to operate and equitize their portfolios around investor flows without being adversely affected by the rule.

Conclusion

AQR shares the NFA's goal that all fund managers, whether registered with the CFTC as commodity pool operators or with the SEC as investment advisers, should meet high standards of customer protection and transparency. However, the proposal suggested by the NFA to achieve these objectives is not necessary and, in some cases, ultimately will lead to negative unintended consequences. The task of harmonizing CFTC and SEC regulatory requirements would be a difficult one, and while a dual regulatory regime may be possible if the operating relief outlined above is provided, we just don't think the facts

[12] *See* CFTC letter No. 08-01, January 11, 2008, Exemption, Division of Clearing and Intermediary Oversight, Regulations 4.21, 4.22 and 4.23 – Request for exemption from certain Disclosure Document, reporting and recordkeeping requirements in connection with the operation of the Fund.

[13] See Federal Register Comment File: 10-013: 17 CFR Part 4 Commodity Pool Operators: Relief From Compliance With Certain Disclosure, Reporting and Recordkeeping Requirements for Registered CPOs of Commodity Pools Listed for Trading on a National Securities Exchange; CPO Registration Exemption for Certain Independent Directors or Trustees of These Commodity Pools.

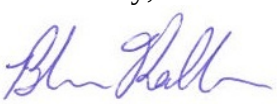
show that it is necessary given the investor protections provided by the Investment Company Act. The alternative solutions we have proposed may achieve the objectives stated in the Petition without the need to roll back Rule 4.5 in its entirety to its pre-2003 status.

Commodity funds and other funds that utilize futures can be an important part of an individual's diversified investment portfolio. As part of the mutual fund industry's attempt to offer investors the ability to include commodities as part of their overall investments, the IRS has issued over 30 private letter rulings approving RIC investments in commodities through such indirect means. Our firm's goal is to deliver such products while also ensuring the public receives the benefits of investor protection, low fees and transparency associated with investing through registered investment companies. We are deeply committed to working with both the CFTC and NFA to ensure that the benefits of such funds are preserved for investors.

Request for Meeting

AQR appreciates the opportunity to comment on the Commission's notice and request for comment on the Petition. The changes outlined in the Petition, if adopted by the CFTC, would directly affect one or more of our funds. As such, we respectfully request and would appreciate the opportunity to meet with the CFTC, members of its staff, as well as the NFA to further discuss our comments and perhaps present our portfolio implementation process and how futures may be utilized to gain certain exposures in our funds.

Sincerely,



Brendan R. Kalb
Co-General Counsel

cc: The Honorable Gary Gensler, Chairman
The Honarable Michael V. Dunn, Commissioner
The Honorable Jill E. Sommers, Commissioner
The Honorable Bart Chilton, Commissioner
The Honorable Scott D. Omalia, Commissioner

Ananda Radhakrishnan, Director
Kevin P. Walek, Assistant Director
Daniel S. Konar II., Attorney-Adviser
Division of Clearing and Intermediary Oversight

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

Appendix: Commodity Exchange Act as Compared to Investment Company Act

This appendix highlights some of the key similarities as well as differences between the SEC and CFTC regulatory regimes. While the technical requirements may differ in places, there are many areas of similarity as well as a shared spirit of investor protection.

The technical differences between the two regulatory regimes underscore the extensive harmonization of CFTC and SEC regulatory requirements that would be required if dual regulation would be required.

Similarities

- Reporting Requirements: The CFTC requires periodic distribution of "Account Statements" pursuant to Regulation 4.22. Such Account Statements are to include a Statement of Operations and Statement of Changes in Net Assets presented in accordance with GAAP. Each CPO must deliver an Account Statement to each participant in each pool that it operates, within 30 calendar days of (i) each regular monthly period if the pool had net assets of $500,000 or more at the beginning of the pool's fiscal year, or (ii) each regular quarterly period for all other pools. Each periodic Account Statement must contain an oath by a representative duly authorized to bind the pool operator that, to the best of the knowledge and belief of the individual making the oath, the information contained in the document is accurate and complete. In addition, a "Disclosure Document" for the pool prepared in accordance with the CFTC rules must be filed for review by a CPO with the NFA. This Disclosure Document must contain required disclosures about the investment objectives, investment strategies, risks, conflicts, fees and expenses, performance data, margin requirements and certain other information. The pool's disclosure language must be written using "plain English principles." An annual GAAP audit is also required for each pool. *In comparison, Rule 30b1-5 under the 1940 Act requires every RIC to file a quarterly report on Form N-Q within 60 days after the close of the first and third quarters. The Form N-Q requires the provision of a schedule of investments, among other items, as well as an oath from an officer of the RIC that the information contained in the document is accurate and complete to the best of that person's knowledge. Rule 30e-1 and Rule 30b2-1 under the 1940 Act require a RIC to send to its shareholders at least semi-annually a report containing: a balance sheet accompanied by a statement of the aggregate value of investments on the date of the balance sheet; a list showing the amounts and values of securities owned by the company; an itemized income statement; an itemized surplus statement; a statement of aggregate remuneration paid to officers and directors during the period covered by the report; and a statement regarding purchases and sales of securities. Each semi-annual report to shareholders must be mailed within 60 days after the close of the period covered by the report. Every*

registered management investment company must file a semi-annual report on the Form N-CSR within 10 days of transmitting such report to stockholders. Similarly, as mandated by the Investment Company Act, a fund's registration statement must contain information about the investment company's policies on each of the following activities: borrowing money; issuing senior securities; underwriting securities; concentrating investments in an industry or industries; purchasing and selling real estate and commodities; making loans; and portfolio turnover. The registration statement also must include a statement of the company's policies, other than those listed above, which cannot be changed without a shareholder vote, and those policies that the company deems "fundamental." The investment company's disclosure documents must be written using "plain English" principles, such as: presenting information in an easily readable format; using everyday language that investors can understand; and eliminating repetitive disclosure. An annual GAAP audit is also required for each RIC.

- Expenses of the Fund: The CFTC-required Disclosure Document must include a complete description of each fee, commission and other expense which the commodity operator knows or should know has been incurred by the pool for its preceding fiscal year and is expected to be incurred by the pool in its current fiscal year. There is a non-exhaustive list of fees that must be included in CFTC Regulation 4.24(i)(2), including management fees, brokerage fees and commissions, fees paid in connection with trading advice provided to the pool, incentive fees, commissions that may accrue in connection with the solicitation of participants in the pool, professional and general administrative fees and expenses (including legal, accounting and office supplies expenses), organizational and offering expenses, clearance fees and any other direct or indirect cost. *By comparison, a RIC must include a fee table and expense example disclosing its fees and expenses. Fees and expenses are to be calculated according to the methodologies prescribed in Form N-1A. The fee table generally discloses shareholder fees (maximum sales charge imposed on purchases, maximum deferred sales charge, maximum sales charge imposed on reinvested dividends, redemption fee, exchange fee and maximum account fee) and annual operating fund expenses (management fees, distribution and/or service fees, other expenses) on a percentage basis. The portfolio turnover rate as a percentage of the average value of its portfolio must also be provided.*

Differences

- Advertising & Marketing:
  - **Pre-effective Advertisements:** Pre-effective advertisements for CPOs are generally prohibited *whereas Rule 482 under the 1933 Act provides that a RIC may use advertisements prior to the effectiveness*

of its registration statement as long as the advertisements include "Subject to Completion" red herring language.

- **Performance Data:** NFA Compliance Rule 2-29 prohibits the use of specific numerical or statistical information about past performance of any actual accounts (including rate of return) unless such information is and can be demonstrated to be representative of the advisor's actual performance for the same time period of all reasonably comparable accounts**,** and in the case of rate of return figures are calculated in a manner consistent with regulations. This rule also states that inclusion of performance data requires that one mention that past results are not necessarily indicative of future results. *For a RIC, Rule 482 advertisements may include data about a fund's historical investment performance. The advertisements must include the prescribed legend and disclosures required by the rule. If any performance data is included, the data must be prepared pursuant to the methodologies for calculating performance as set forth in Form N-1A. An income fund may include a quotation of standardized 30-day yield as of the most recent practicable date, which must be accompanied by standardized quotations of 1-year, 5-year and 10-year average total return for the fund, which is given equal prominence. Equity funds may include a standardized quotation of total return for 1-year, 5-year and 10-year periods. A fund advertisement is also permitted to include, in addition to standardized total return quotations, any other historical measure of fund performance that includes "all elements of return" (which cannot be given more prominence than the standardized quotations). However, distribution rates cannot be included in Rule 482 advertisements. These standardized performance data requirements are triggered by the use of charts, graphs, tables and price fluctuation charts in an advertisement. Performance of other accounts of the investment adviser generally cannot be included in a fund's prospectus unless the comparative performance is "relevant" and is generally prohibited by FINRA from sales materials.*

- **Hypothetical Performance Data:** Under CFTC Rule 4.41(b), no person may present the performance of any simulated or hypothetical commodity interest unless such performance is accompanied by a legend stating that the results are based on simulated or hypothetical performance results, among other things. Hypothetical results cannot be presented for any trading program that has at least three months of actual trading results. *With respect to RICs, hypothetical performance is generally not permitted for investment company advertisements and disclosure documents (requirement for a registered managed futures mutual fund is more strict here than under the CEA).*

- **Filing Requirements on Advertising:** Under NFA Compliance Rule 2-29(f), NFA Compliance Director may require any member for any

specified period to file copies of all promotional material with the NFA promptly after its first use. *For a RIC, FINRA Rule 2210 (material filed with FINRA is generally deemed to satisfy SEC filing requirements) treats virtually every type of member communication with an investor to be sales materials subject to filing within 10 days of first use or publication. FINRA members that have been filing advertisements for less than 1 year must file their advertisements 10 days in advance of first use. This pre-filing requirement applies to all members no matter how long they have been filing if an advertisement contains bond fund volatility rankings or performance rankings. Communications distributed only to institutional investors are not subject to the filing requirements. Filing is not required if a member uses previously filed sales material without change, or merely updates performance or financial data. There are certain other limited exemptions from the filing requirement. A mutual fund is excepted from the requirements of approval of the advertisement by a principal. Section 24(b) of the 1940 Act and Rules 24b-1 and 24b-2 requires funds to file the text of sales material (other than Rule 482 advertisements) intended for distribution to prospective investors of publicly offered securities with the SEC upon or after use of that material. Generally, every written communication made by a fund or underwriter with the intent of inducing, procuring, or facilitating the inducement or procurement of any sale of any fund shares should be filed with the SEC. Rule 482 advertisements are deemed to be filed if the advertisement is filed with FINRA. Rule 31a-2(3) under the 1940 Act requires a fund to preserve any advertisement for a minimum of 6 years from the end of the fiscal year last used.*

- Return Performance Data: CFTC Rule 4.24(n) requires the inclusion of past performance of the pool and in some cases, of the CPO's other pools, as set forth in CFTC Rule 4.25. There is a significant amount of data required under this rule that is different from that required or permitted under Form N-1A. A snapshot of such required performance data includes the largest monthly decline during the most recent five calendar months and year-to-date, expressed as a percentage of the pool's net asset value; the worst peak-to-valley decline during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value; the rate of return of the offered pool must be presented on a monthly basis, either in a numerical table or bar graph. The CPO also must disclose such information for the performance of each other pool operated by the pool operator (and by the trading manager if the offered pool has a trading manager) if the applicable pool has less than three years of actual performance. In addition, if the pool operator (or if applicable, the trading manager) has not operated for at least three years any commodity pool in which seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the

CPO, the trading manager, the pool's commodity trading advisors or their respective principals, the pool operator must also disclose the performance of each pool operated by and account traded by the trading principals of the pool operator. The performance of any accounts (including pools) directed by a major commodity trading advisor must also be disclosed. The CPO must also disclose the performance of any major investee pool. *In contrast,, Item 4(b)(2) of the Form N-1A requires the inclusion of a bar chart showing the Fund's annual total returns for each of the last 10 calendar years, but only for periods subsequent to the effective date of the registration statement. Following the chart, the investment company must disclose the highest and lowest quarterly return during the 10 years covered by the chart (or since inception if less than 10 years). If the investment company has changed investment advisers during the last 10 calendar years, the fund may choose to have the bar chart only show performance from the date the current adviser began providing advisory services. A fund can include "related performance" of funds/accounts with like policies and strategies under certain circumstances, but this is not required.*