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April 12, 2011

Mr. David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: **RIN Number 3033-AD30**
Commodity Pool Operators and Commodity Trading Advisers: Amendments to Compliance Obligations

On January 26, 2011, the Commodity Futures Trading Commission ("CFTC") proposed amendments to certain compliance obligations for commodity pool operators ("CPOs") and commodity trading advisers, including changes to CFTC Rule 4.5 ("Proposed Rule 4.5").[1] CFTC Rule 4.5 currently excludes certain entities, including registered investment companies (each, a "RIC"), from the definition of a CPO. Proposed Rule 4.5 would (i) require a RIC claiming exclusion from the definition of CPO under CFTC Rule 4.5 to limit its use of commodity futures and commodity options; (ii) broaden the application of existing trading restrictions in Rule 4.5 to include a RIC's swap positions; and (iii) require a RIC relying on Proposed Rule 4.5 to comply with certain marketing restrictions. A RIC that is unable to comply with the trading and marketing restrictions would be forced to revise its investment strategies or face registration as a CPO and dual regulation by the CFTC and the Securities and Exchange Commission ("SEC"). The CFTC believes that the proposed regulations are necessary to "effectively oversee its market participants and manage the risks that such participants pose to the markets."[2] We appreciate the opportunity to comment on certain aspects of Proposed Rule 4.5 as they apply to RICs.

Invesco Advisers, Inc. ("Invesco") is a registered investment adviser that, along with its affiliates, provides a comprehensive range of investment strategies through various types of investment vehicles to retail, institutional and high-net-worth clients. As of December 31, 2010, Invesco had approximately $215 billion in assets under management in its RICs and exchange-traded funds and, along with our affiliates, had over $616 billion in total assets under management over all.

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[1] *Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations*, 76 Fed. Reg. 7976 (Feb. 11, 2011).
[2] *Id* at 7977.

We strongly endorse the ongoing efforts of the CFTC, the SEC and other policymakers to bolster the oversight and risk management of market participants and appreciate the opportunity to provide our views with respect to certain aspects of Proposed Rule 4.5. We recognize that the CFTC's goal is to effectively oversee commodities markets participants and manage the risks that such participants pose to the commodities markets, and we support this goal. However, we believe that it is important to recognize that different participants pose different risks to the market. We recognize that unregulated entities using commodity futures, options and swaps could pose significant risks to the stability and integrity of the financial markets. RICs, however, are highly regulated and they do not pose the same risks to the markets or investors as unregulated entities. RICs are subject to SEC oversight and operate within prudent risk management principals. We believe that any potential reform must be analyzed within a framework that acknowledges that investment vehicles currently overseen by the SEC already operate within existing, prudent risk management principles. A RICs use of futures and options strategies, consistent with the SEC's regulatory regime, provides access to commodities exposure that might not otherwise be available to certain investors. We believe that promulgating the new Rule 4.5 as proposed could deter many RICs from using commodities, thereby restricting investors' access to these important markets and potentially disrupting markets as RICs seek to exit their existing commodities positions. Finally, we are concerned by the apparent inconsistencies between certain provisions of Proposed Rule 4.5 and other existing regulatory requirements under which RICs currently operate. We believe that reforms should be focused on measures that can effectively and efficiently improve oversight and risk management while avoiding burdensome, duplicative, ineffective and potentially conflicting regulations.

Our interest in commenting is driven by our fiduciary responsibility to the shareholders of the RICs that we manage and our belief that certain of the Proposed Rule 4.5 amendments could disrupt or jeopardize the orderly functioning of the commodities markets, frustrate the ability of certain RICs to achieve their investment objectives, and significantly diminish investors' options to gain commodities exposure. We strongly believe that further policy or regulatory action must be examined carefully not only to understand fully how they may further the CFTC's ability to effectively oversee its market participants and manage the risks such participants pose to the markets, but also to identify and evaluate any challenges they pose to the existing regulatory framework to which RICs are already subject. We strongly recommend that a revised proposal be submitted for additional comment. Any new proposal should, in our view, be revised to take into account the concerns identified below.

We are concerned that some aspects of Proposed Rule 4.5 could have unintended and highly adverse consequences. These consequences include the establishment of a conflicting regulatory environment for RICs that would be overseen by both the CFTC and the SEC and, potentially, a forced and sudden exodus of RICs from the commodities markets. Such an exodus could lead to a reduction of appropriate investment options available to investors and could potentially threaten the stability of an already volatile commodities market. As discussed in detail below, we have particular concern regarding the following provisions of Proposed Rule 4.5:

I. Revised trading restrictions;

II. Proposed marketing restrictions;

III. Inclusion of swaps in the proposed trading restrictions;

IV. Areas of direct conflict between CFTC regulations and SEC regulations.

In addition, we would request that clarification be provided with respect to the following:

V. Clarification of required licensing; and

VI. Grandfathering of current exclusions under Rule 4.5.

Our comments on Proposed Rule 4.5 follow.

I. Revised Trading Restrictions

Proposed Rule 4.5 provides that a RIC may be excluded from the definition of a CPO if, among other things, the RIC will use commodity futures, commodity option contracts, and swaps solely for *bona fide hedging*[3] purposes except that the RIC may hold positions for non-bona fide hedging purposes if the aggregate initial margin and premiums required to establish such positions will not exceed 5% of the liquidation value of the portfolio taking into account unrealized profits and unrealized losses of any such contract and certain in-the-money contracts.[4] We have the following comments regarding this provision.

First, the 5% threshold should be amended to reflect current margin levels for derivatives in which RICs invest. Margin levels for broad-based stock index futures and security futures generally exceed 5% of notional value and are typically set in accordance with the volatility of the reference asset with some instruments requiring substantially higher margin. The current margin levels required would likely subject a RIC to unwarranted limitations on its use of commodity futures, commodity option contracts and swaps. A more comprehensive study analyzing current industry standard practices for margin and premium and consideration given to the margin and premium levels should be conducted prior to determining where the appropriate threshold should be set for RICs.

Second, establishing any threshold is premature in the light of the unresolved issues relating to the operation of the proposed central-clearing facility for swaps. It has yet to be determined exactly which swaps will be subject to central-clearing and what the margin levels for those centrally-cleared swaps will be. If "aggregate initial margin" remains a component of the test, it would be necessary to first understand what the requirements for "margin" would be for centrally cleared swaps. Without this information it is impossible to analyze the effect of this 5% threshold on any RIC. Until the CFTC and the SEC finalize rules clarifying which swaps will be subject to central-clearing and what the initial margin requirements will be, we believe attempting to set appropriate thresholds is not prudent.

Finally, the definition of "bona fide hedging" under Rule 1.3(z)(1) should be expanded to include certain risk management transactions used for non-speculative purposes. RICs use commodity futures, commodity options and swaps for a variety of reasons not contemplated under Rule 1.3(z)(1). They may use these instruments to equitize cash or maintain adequate liquidity. These are legitimate management techniques currently available to a RIC to help manage risk and provide for liquidity in its portfolio and, while not

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[3] 17 CFR 1.3(z)(1) ("Rule 1.3(z)(1)")
[4] *Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations*, 76 Fed. Reg. 7984 (Feb. 11, 2011)

considered to be "bona fide hedging" under Rule 1.3(z)(1), they do not pose the type of risks that we believe would warrant a RIC's registration as a CPO.

For these reasons we believe the CFTC should re-propose this provision and give the public the opportunity to comment after additional important information bearing on this analysis becomes available.

II. Proposed Marketing Restrictions

Proposed Rule 4.5 marketing restriction reinserts problematic issues the CFTC recognized and identified in 2003. Proposed Rule 4.5 would prevent a RIC from being marketed "to the public as… a commodity pool or otherwise as… a vehicle for trading in *(or otherwise seeking investment exposure to)*[emphasis added] the commodity futures, commodity options, or swaps markets".[5] Prior to 2003, Rule 4.5 contained a representation that the RIC would not be marketed to the public as a commodity pool.[6] In 2003, the CFTC deleted this marketing prohibition indicating that "the 'otherwise regulated' nature of the qualifying entities *** would provide adequate customer protection, and further, that compliance with the subjective nature of the marketing restriction could give rise to the possibility of unequal enforcement across different types of products where commodity interest trading was restricted".[7] Proposed Rule 4.5 not only returns to the pre-2003 rule which the CFTC has already found lacking but also adds the following new problematic language "or otherwise seeking investment exposure to".[8] This language is so broad and encompassing that it has the potential to compel most RICs to register as CPOs and once again raises the unequal treatment issues identified by the CFTC in 2003.

For instance, if a RIC were structured as a fund-of-funds in reliance on Section 12(d)(1)(G) of the Investment Company Act of 1940 it might not have any direct investment in commodity futures, commodity options, or swaps but may none-the-less be required to register as a CPO. In this example, the fund-of-funds would invest a portion of its assets in other RICs that do have direct exposure to commodity markets (an "Underlying Fund") such that the proposed marketing restrictions could apply. Because the SEC rules require a RIC to disclose its principal investment strategies in its prospectus,[9] if a fund-of-funds invested a meaningful portion of its assets in an Underlying Fund that had as a principal investment strategy significant direct exposure to the commodities markets, the fund-of-funds itself may be required to disclose exposure to commodities markets as one of its own principal investment strategies not-with-standing the fact that the fund-of-funds has no direct exposure to commodities. Accordingly, the need to comply with the SEC prospectus disclosure requirement might cause the fund-of-funds to run afoul of the marketing restrictions under Proposed Rule 4.5 and be required to register as a CPO even though the fund-of-funds does not invest directly in the commodities markets. Similarly, a RIC may also run afoul of the marketing restriction *even if* every commodity future, commodity option or swap was held by the RIC solely for bona fide hedging purposes. If these positions were to be considered a "principal investment strategy" for purposes of Form N-1A disclosure the RIC would be required to disclose this strategy in its prospectus[10] which would seemingly lead to the need to register the RIC as a CPO even though the commodity exposure was held solely for bona fide hedging purposes.

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[5] *Id.* at 7989
[6] *Id.* At 7983
[7] *Id.*
[8] *Id.* At 7989
[9] Form N1-A, Item 4 and Item 9.
[10] *Id.*

For these reasons we believe the CFTC should re-propose this portion of the amendments and give the public the opportunity to comment.

III. Inclusion of Swaps in the Proposed Trading Restrictions

The proposal to apply the revised trading restrictions discussed above to swaps is premature and should be re-proposed after the definition of "swap" has been clarified and the margin levels to be required by the central-clearing facilities have been determined. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") the CFTC was given jurisdiction over non-security based swaps. However, the CFTC and the SEC have not yet adopted rules regarding the central clearing of swaps. In addition, it is not yet clear if foreign exchange swaps and foreign exchange forwards will be considered "swaps". Section 721(a)(21) of the Dodd-Frank Act added section 1a(47)(E) of the Commodity Exchange Act and permits the Secretary of the Treasury to issue a determination exempting foreign exchange swaps and foreign exchange forwards from the definition of a "swap" under the Commodity Exchange Act.[11] Until this determination is made we believe that it is premature and extremely difficult to evaluate the effect of the proposed amendments on any existing RIC.

Before any effective analysis can be done on the trading restrictions, including the 5% limitation, it is important to know which swaps will be subject to central clearing and what the margin requirements will be. Depending on the margin requirements, the 5% limitation could be too high to be effective or so low as to be ineffective. Without knowing if foreign exchange swaps and foreign exchange forwards will be included in the definition of swaps and what the margin requirements for these instruments will be, the ability to accurately evaluate the consequences of these proposed amendments to any RIC extremely difficult.

For these reasons we believe the CFTC should re-propose this provision and give the public additional opportunity to comment.

IV. Areas of Direct Conflict Between CFTC Regulation, SEC Regulation and the Internal Revenue Code

We request that the CFTC amend provisions within Proposed Rule 4.5 that conflict with existing provisions of SEC regulation or the Internal Revenue Code. RICs are highly regulated and offer extensive protections to shareholders. RICs are subject to robust limits on leverage, strict antifraud prohibitions, extensive oversight by independent directors who are fiduciaries, and extensive requirements to provide investors with comprehensive disclosure regarding a RICs' investment objectives and investment strategies, risks, fees and expenses.[12] This includes annual and semi-annual disclosure of each investment held by a RIC. We believe that information, which is already publicly available for RICs, should be sufficient to provide the CFTC with the information it needs to discharge its market oversight and risk management responsibilities. Even if the CFTC disagrees with this assessment, Proposed Rule 4.5 creates direct conflicts with existing rules and regulations of the SEC with which RICs are obligated to comply. These conflicts would have to be resolved prior to any adoption of Proposed Rule 4.5. While we have highlighted a few of these conflicts below, we note that the Investment Company Institute's ("ICI") comment letter

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[11] Section 1a(47)(E) of the Commodity Exchange Act, as amended by the Dodd-Frank Act.
[12] Form N-1A

contains a detailed comparison of these conflicts and suggested remedies.[13] We support the remedies proposed by the ICI in their comment letter.

First, Proposed Rule 4.5 would require that any positions in commodity futures, commodity options or swaps be held by a qualifying entity (such as a RIC). RICs regularly hold these types of positions through a wholly-owned subsidiary for tax reasons. Under Sub Chapter M of the Internal Revenue Code, a RIC is required to realize at least 90% of its annual gross income from investment related sources ("Qualifying Income"). The Internal Revenue Service ("IRS") takes the position that income received from a direct investment in commodity related instruments is not Qualifying Income. The IRS has, however, issued private letter rulings that recognize as Qualifying Income certain commodity related income derived from investments made by a wholly-owned subsidiary of a RIC. These rulings generally require the RIC to comply with Section 18 of the Investment Company Act regarding leverage and coverage. We, and others in the industry, have gone further than required by the terms of these private letter rulings and operate the wholly-owned subsidiaries of our RICs pursuant to substantially all of the same SEC rules applicable to the parent RIC. The CFTC's proposal to require a RIC to hold these commodity positions directly (as opposed to through a wholly-owned subsidiary) would be tantamount to instructing the wholly-owned subsidiaries of RICs that hold these positions to liquidate which could cause unknown harm to investors and the commodities market as these positions are unwound. If the CFTC is concerned that the wholly-owned subsidiary structure may impede oversight, transparency and investor protection, we believe that there are a number of effective ways to achieve these goals without eliminating the use of wholly-owned subsidiaries. Requiring a RIC to publish consolidated financial statements could provide the CFTC with the transparency it is seeking. In addition, requiring that the RIC's wholly-owned subsidiary operate under certain of the same rules applicable to the parent RIC would provide investor protection in the areas of leverage, coverage, and disclosure of investment policies and restrictions. Finally, the ability of the CFTC to audit and review the books and records of a RIC's wholly-owned subsidiary would provide the oversight mechanism the CFTC desires.

Another area of conflict between Proposed Rule 4.5 and existing SEC rules and regulations applicable to RICs concerns disclosure documents and their update and delivery requirements. If RICs were to be subject to dual registration they would experience significant conflicts in attempting to satisfy numerous SEC requirements. Three broad examples include:

(i) The form of disclosure documents;

(ii) The timing of the delivery of disclosure documents; and

(iii) The presentation of performance information.

<u>The Form of Disclosure Documents</u>

The risk disclosure required under Proposed Rule 4.5 fails to adequately take into consideration the variety of ways a RIC may use a commodity instrument and how that

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[13] See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to David A. Stawick, Secretary, Commodity Futures Trading Commissions regarding Commodity Pool Operators and Commodity Trading Advisors:
Amendments to Compliance Obligations, RIN 3038-AD30 (April 12, 2011)

instrument, used in that manner, within that specific portfolio, might affect the RIC. On the other hand, the SEC requires a RICs' disclosure to "be tailored specifically to how a RIC expects to be managed and should address those strategies that the RIC expects to be the most important means of achieving its objective and that it anticipates will have a significant effect on its performance."[14] The provisions in the CFTC's proposed risk disclosure address risks that may, or may not, be applicable to any one RIC. Requiring all RICs to include this generic risk disclosure language squarely conflicts with the SEC's requirement that risk disclosure be clear and tailored to the specifics risks presented by a RIC's investment strategy.

The Timing and Delivery of Disclosure Documents

Rule 4.26(a)(2) would require that a RIC's disclosure documents be dated no more than nine months prior to its use whereas the SEC generally requires updating of a RICs' prospectus every twelve months. Requiring a RIC to comply with both requirements would be costly to the RIC with no tangible added benefit to investors or the regulators. Finally, Rule 4.21(b)(1) would require the delivery of a RIC's disclosure documents, and acknowledgement by the investor of their receipt of that information, prior to the time the RIC receives any funds from the investor. RICs have traditionally delivered these documents alongside confirmations and we request that the CFTC grant RICs exemptive relief from this requirement.

The Presentation Of Performance Information, And Presentation Of Fees And Expenses.

Rule 4.25 requires that commodity pool performance disclosure must include performance data for certain other pools that the CPO operates.[15] By contrast, disclosure of performance for other RICs is not generally permitted by the SEC[16] and such disclosure is generally permitted only in very limited circumstances when the RICs have substantially similar investment policies.[17] The SEC's staff has expressed concern that the presentation of the performance of other RIC's and accounts can be potentially misleading for investors. Compliance with both the CFTC's requirements and the SEC's requirements on this point would be problematic so we request that the CFTC provide RICs with an exemption from this requirement and allow the current SEC disclosure rules to prevail.

In addition, the CFTC has not addressed the costs and burdens of dual registration in Proposed Rule 4.5. We urge the CFTC to make a reasonable judgment concerning the estimated costs of implementing this aspect of the changes to Rule 4.5 and weigh these costs against the perceived benefits to the investing public.

We believe that the CFTC, the SEC and the IRS must resolve these regulatory and policy conflicts, re-propose this regulation and give the public the opportunity to comment.

V. Clarification of Required Licensing

We believe that, even if a RIC is required to register as a CPO, the CFTC should clarify that (i) no director or trustee of the RIC should be required to register with the CFTC; (ii) any individual soliciting investment for a RIC should be exempt from Series 3 or Series 31 licensing requirements or should be able to satisfy those requirements by virtue of

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[14] *Derivatives Related Disclosures by Investment Companies*. SEC letter to ICI (30July 2010) at 4.
[15] 17 C.F.R. §4.25.
[16] *MassMutual Institutional Funds*, SEC No-Action (Sept. 25, 1995).
[17] *Nicholas Applegate Mutual Funds*, SEC No-Action Letter (August 6, 1996).

complying with his or her licensing requirements under Financial Industry Regulatory Authority ("FINRA") rules[18], and (iii) certain individuals should not be deemed "principals".

A. Independent Directors or Trustees of RICs Should Not Be Required to Register with the CFTC

The primary role of independent directors or trustees of RICs ("Independent Trustees") is to oversee the functions of a RIC's service providers, including the adviser, for the protection of the interests of RIC shareholders. As such, Independent Trustees are not called upon to engage in the day-to-day management of RICs. Consequently, as discussed more fully below, any requirement that Independent Trustees register with the CFTC in any capacity is incompatible with their role as overseers. We request that the CFTC clarify by rulemaking or interpretation that Independent Trustees will not be required to register with the CFTC (or the NFA) in any capacity.

The CFTC should clarify that Independent Trustees of RICs will not be deemed CPOs in their own right. The definition of CPO includes "any person engages in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, who in connection therewith, solicits, accepts, or receives from others, funds…"[19] Independent Trustees may be assumed to be "engaged" in these activities in fulfilling their obligations under the 1940 Act and state law thereby resulting in their designation as CPOs. In addition, the CFTC has previously treated trustees of a commodity pool as CPO's in their own right, rather than as principals or associated persons of the CPO. In CFTC Staff Letter 10-06, the CFTC staff reiterated its position that "where a commodity pool is organized as a trust, each trustee of the pool is a CPO and, absent relief, would be required to register as a CPO under Section 4(m)(1)" of the Commodity Exchange Act. Although the CFTC staff granted relief from registration in the letter, the relief was conditioned upon representations that "Trustees will have no authority or responsibility to direct or manage the affairs of the Fund." Obviously, because the 1940 Act requires Independent Trustees to oversee the management of the Fund, such relief would not be available for them.

We do not believe that an Independent Trustee is an "associated person" under the CTFC's rules nor would they be under the Proposed Rule 4.5. A RIC is typically structured as a trust with no employees. The RIC has a board of trustees a majority of whom generally must be independent of the adviser and certain other entities and, as stated above, serve to oversee the adviser and service providers to the RIC. It is the adviser to the RIC who performs the day-to-day duties related to managing the RIC. The activities contemplated under Rule 3.12 are simply not applicable to a RIC's trustees.[20] An Independent Trustee would not be directly involved in the solicitation of funds, securities, or property for a participation in a commodity pool or the day-to-day supervision of any person or persons so engaged.[21] We would ask that it be clarified that no trustee, including the Independent Trustees, of a RIC would be considered an associated person.

B. Distributors of RIC Shares Currently Regulated by FINRA Should Not Be Required to Register with the CFTC

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[18] *NASD* Rule 1031

[19] *CEA§1a(5)*

[20] "Associated person" means a natural person who serves a commodity pool operator as a partner, officer, employee, consultant, or agent, in any capacity which involves (i) the solicitation of funds, securities, or property for a participation in a commodity pool or (ii) the supervision of any person or persons so engaged. 17 CFR §1.3(aa).

[21] *Id.*

A RIC typically retains a separate entity for the distribution of its shares. The distributor of a RIC is required to register with the SEC under the Securities Exchange Act of the 1934 and is typically a member of FINRA and its associated persons are licensed with FINRA.[22] The CFTC has specifically recognized, and codified, this distinction by exempting these associated persons from NFA registration under Rule 3.12.[23] Under CFTC Rule 3.12 any person associated with a CPO must be registered under the Commodity Exchange Act as an associated person and pass any required examination. However, under Rule 3.12(h)(ii) the CFTC has exempted a person from registration as an associated person of a CPO if that person is "engaged in the solicitation of funds, securities, or property for a participation in a commodity pool, or the supervision of any person or persons so engaged, pursuant to registration with the National Association of Securities Dealers [FINRA] as a registered representative, registered principal, limited representative or limited principal, and that person does not engage in any other activity subject to regulation by the Commission."[24] The CFTC has already recognized the unique structure of RICs and the method of distribution of RIC shares call for this exemption to be retained; we believe nothing would suggest that any of these licensing requirements should be altered.

C. Certain Individuals Should Not be Deemed "Principals"

Under Proposed Rule 4.5, if a RIC is required to register as a CPO any individual who directly or indirectly owns more than ten percent of the RIC could be required to register with the National Futures Association as a principal.[25] This could be particularly problematic for exchange-traded funds ("ETFs"). ETF shares are purchased by Authorized Participants ("APs") in the primary market in a minimum number of shares or multiples thereof (each, a "Unit"). APs, in turn, deconstruct the Unit and sell each ETF share on a regulated exchange. While the investment by a *beneficial owner* in the ETF (i.e., the investor who trades shares on the exchange) accounts for smaller percentage portions of the portfolio, the Authorized Participant, who is the ETF's shareholder of record, will typically hold more than ten percent of ETF assets. These APs are acting as a service provider to the ETF rather than an investor and should be exempt from registration.

VI. Grandfathering of Current Exclusions Under Rule 4.5

Lastly, we would like to strongly recommend that the CFTC grandfather the current exclusion from the definition of a CPO for RICs that have filed a notice of eligibility under Rule 4.5 prior to the effective date of Proposed Rule 4.5. Since the CFTC's amendments to Rule 4.5 in 2003, RICs have relied on this exclusion and, even more importantly, investors have placed their confidence in the operation of these RICs which has resulted in significant asset growth for these RICs. Years of reliance on the well established regulatory framework provided by Rule 4.5 supports the continued and uninterrupted availability of this exclusion from the definition of CPO for those RICs that have filed a notice of eligibility under Rule 4.5 prior to the effective date of Proposed Rule 4.5. The removal of this exclusion would force a RIC to either register as a CPO along with the incumbent regulation and costs or to liquidate. If a RIC determined that liquidation was the only reasonable alternative, not only would the advisers who sponsors the RIC forfeit the time and resources it had placed in the RIC based on established regulations, but also shareholders would incur the adverse

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[22] *NASD* Rule 1031
[23] 17 CFR 3.12(h)(ii)
[24] *Id.*
[25] *CFTC Rule* 3.1

consequences brought about by liquidation, including the premature recognition of taxable gains.

VII. Summary

After careful consideration of the issues raised herein we respectfully believe that Proposed Rule 4.5 requires significant revision and a subsequent re-proposal. Due to the significance of these issues, we believe that the public should be afforded an additional opportunity to comment on a re-proposed rule.

Sincerely,

/s/ John M. Zerr

John M. Zerr
Senior Vice President