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Filed Electronically

April 12, 2011

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

Re: Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, RIN 3038-AD30, 76 Fed. Reg. 7975

Dear Mr. Stawick:

Janus Capital Management LLC ("Janus Capital") appreciates the opportunity to provide comment to the Commodity Futures Trading Commission ("CFTC" or "Commission") regarding proposed rules which would amend the compliance obligations of commodity pool operators ("CPOs") and commodity trading advisors ("CTAs")[1].

Janus Capital is a leading asset manager offering investment strategies to individual and institutional investors through the firm's global distribution network. As of December 31, 2010, Janus Capital and its affiliates managed assets of $169.5 billion across asset management disciplines including growth, core, international, value, risk-managed, alternative, and fixed-income. Janus mutual funds are sold through advisors and financial intermediaries, institutional investors, and directly to retail investors. Janus Capital currently advises 48 mutual funds within the Janus fund complex, many of which utilize futures, swaps, and/or options for hedging and other investment purposes.

Janus Capital supports the comments submitted to the Commission by the Investment Company Institute ("ICI")[2] and the Investment Adviser Association ("IAA")[3], and would like to take the opportunity to highlight and emphasize certain views expressed in those letters relating

[1] Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 Fed. Reg. 7975 (Feb. 11, 2011).
[2] See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to David A. Stawick, Secretary, Commodity Futures Trading Commission regarding Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, RIN 3038-AD30 (April 12, 2011) ("ICI Letter").
[3] See Letter from Karen L. Barr, General Counsel, Investment Adviser Association, David A. Stawick, Secretary, Commodity Futures Trading Commission regarding Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, RIN 3038-AD30 (April 12, 2011) ("IAA Letter").

to proposed amendments to CFTC Rule 4.5, and the proposed rescission of the exemptions from CPO registration under CFTC Rules 4.13(a)(3) and 4.13(a)(4).

As proposed, CFTC Rule 4.5 would be amended to not only reinstate, but also to expand the pre-2003 operating criteria identified in the 2010 National Futures Association petition for rulemaking[4], and to further expand such criteria to include trading restrictions applicable to swaps. Under the Rule 4.5 proposal, a registered investment company ("Fund") claiming the exclusion from registration as a CPO will be required to represent that it: (i) will use commodity futures, commodity options contracts and/or swaps solely for bona fide hedging purposes, or, in cases of non-hedging purposes, limit the aggregate initial margin and premiums on such positions to 5% of the liquidation value of the portfolio (net of all unrealized profits and losses) (the "5% Limit") and; (ii) will not be marketed to the public as a commodity pool or a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures, commodity options and/or swaps markets (the "Marketing Restriction").

- ***Additional Regulatory Oversight is Unnecessary***. While Janus Capital supports the Commission's role in protecting market users and the public from abusive practices in the markets it oversees, it would like to emphasize that Funds are already subject to extensive regulation, including comprehensive disclosure and reporting requirements relating to Fund strategies and investments. The proposed amendments to Rule 4.5 would result in duplicative and unnecessary oversight of Funds and their investment advisers, and increase the costs of offering Funds which include commodity exposure as part of their overall investment strategy. Additionally, any dual disclosure regime may confuse investors, who already receive detailed disclosure pursuant to provisions of the Investment Company Act of 1940 ("1940 Act"). Janus Capital urges the Commission to carefully consider the issues identified in the above-referenced letters and the initial recommendations contained therein. If after review, the Commission still deems rulemaking necessary, Janus Capital urges the Commission to work with the Securities and Exchange Commission ("SEC") to harmonize any proposed rules in a new proposal and provide market participants with an opportunity for further comment.

- ***Rulemaking Relating to Swaps Should be Deferred***. The application of the proposal to swaps is premature, as neither the Commission nor the SEC has adopted Dodd-Frank Act mandated rules with respect to the definition of "swap" and it remains unclear whether foreign exchange swaps and foreign exchange forwards will be considered "swaps" subject to Commission oversight. Additionally, the Commission and SEC have not yet adopted rules specifying which swaps will be subject to central clearing and identifying margin requirements. Without a clear definition of "swap" and certainty regarding which swaps will be subject to central clearing and what margin requirements will be, it is not possible to determine the implications of, or properly provide thoughtful comment to, the proposals relating to Rule 4.5. As such, Janus Capital believes that the Dodd-Frank Act mandated regulatory framework for swaps should be established prior to any Commission rulemaking related to Rule 4.5, and market

[4] See NFA Petition to amend Rule 4.5, dated August 18, 2010.

participants should be afforded an opportunity to comment on any Commission proposal which includes swaps following such swaps-related rulemaking.

- ***The 5% Limit Broadly Implicates Funds***. The 5% Limit that would be imposed on Funds for positions taken for non-bona fide hedging purposes, especially as it would apply to swaps, futures, and options used for non-speculative purposes, would result in a large number of Funds being unable to rely on the Rule 4.5 exclusion. More importantly, the proposal would affect a large number of Funds that are not engaging in investment activity in which the Commission has expressed concern, but instead use futures, options, or swaps to implement various investment strategies. Janus Capital urges the Commission to consider initial recommendations contained in the ICI Letter to address the 5% Limit, and provide an opportunity for further comment on any appropriate limit following Dodd-Frank Act mandated swaps-related rulemaking.

- ***Marketing Restriction Requires Clarification***. The Marketing Restriction appears to be so broad on its face that Funds that utilize futures, options and swaps even to a nominal extent (and regardless of the purpose) may not be able to satisfy the Marketing Restriction given disclosure obligations to investors under the federal securities laws, including required disclosures in a Fund's registration statement. Helpful disclosures to investors in offering documents regarding the use of swaps, futures, and options for risk management, asset allocation, and efficient portfolio management purposes could all run afoul of the Marketing Restriction as proposed. It is doubtful that this potential impact was the intent of the Commission for the Marketing Restriction, and Janus Capital urges the Commission to narrow the Marketing Restriction and allow market participants an opportunity to comment on any test or definitions that the Commission determines necessary to address specific concerns.

- ***Wholly-Owned Subsidiary Structures Do Not Raise Concerns***. The requirements and practices currently followed by Funds with respect to wholly-owned subsidiary structures provide sufficient transparency and accountability relating to commodity-related investments by such subsidiaries. Such structures are established for an appropriate tax purpose, and applicable tax law effectively limits Fund investments in wholly-owned subsidiaries to no more than 25% of a Fund's assets. The SEC has issued no-action letters that require Funds to comply with key substantive provisions of the 1940 Act.[5] Funds generally adhere to the requirements of the 1940 Act relating to fee structures and disclosures, liquidity and leverage limits, custody, recordkeeping, audit requirements and pricing procedures. Fund offering documents include detailed disclosures in prospectuses and statements of additional information regarding the subsidiary structure and its purpose. As such, wholly-owned subsidiaries should continue to be permitted to rely on exemptions that exist under the current CFTC rule regime.

The Commission is also proposing to rescind the exemptions from registration as a CPO contained in Rules 4.13(a)(3) and 4.13(a)(4). If adopted, operators of private funds that wish to

[5] See, e.g., *South Asia Portfolio*, SEC No-Action Letter (Mar. 12, 1997).

continue to invest in futures contracts, commodity options and swaps will be required to register as CPOs. As highlighted in the IAA Letter, most advisers relying on these exemptions currently are, or will be registered investment advisers subject to SEC oversight. Rescission of the exemptions may result in dually-registered firms subject to duplicative and costly regulation, as detailed in the IAA Letter.

Janus Capital believes that the Rule 4.5 and Rule 4.13 proposals should not be adopted as proposed, as they would impose unnecessary, duplicative regulatory requirements on otherwise regulated entities. If the Commission continues to believe that amendments to the rules are necessary, Janus Capital requests that any rulemaking be subject to a new proposal once issues identified in the ICI Letter and IAA Letter have been addressed. If you have any questions about these comments or would like any additional information, please contact me at (303) 336-7849.

Respectfully submitted,

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Janus Capital Management LLC