April 14, 2011

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

Re: RIN number 3033-AD30 – CFTC Request for Comment Regarding Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations (76 Fed. Reg. 7976)

Dear Mr. Stawick:

The Security Traders Association ("STA") welcomes the opportunity to comment on the CFTC proposed amendment to rule 4.5. We hope that the opinions of our membership will assist the Commission with their decisions regarding Rule 4.5.

With 26 local affiliates throughout the major cities of North America, STA is the leading trade organization for individual professionals in the securities industry. We work to improve the ethics, business standards and working environment for our members and equity markets in general. The STA represents individuals in equity and derivative trading from every business model – buy-side, sell-side, hedge funds, exchange traders and market makers.

Before the amendments made to Rule 4.5 in 2003, registered investment companies ("RICs") investing in commodity futures were restricted to using futures only for bona fide hedging purposes or were limited to only using 5% of the liquidation value of the fund towards aggregate initial margin required to establish a position and required to not market the fund as a CPO to the public. Regulation 4.5 currently provides an exemption from registering as a Commodity Pool Operator ("CPO") for investment companies registered with the Security and Exchange Commission ("SEC") under the Investment Company Act of 1940. On January 26, 2011, the CFTC proposed amendments to Rule 4.5 that would repeal the exclusions set forth in 2003.

The STA believes that adopting sweeping regulations that potentially forces dual registration on 1940 Act funds trading futures would substantially affect RICs and their ability to invest in futures products which provide portfolio managers a tool for strategic diversification and risk reduction. To repeal the exemptions without extensively considering the long-term ramifications of the change would most likely lead to unnecessary filings, which would in turn increase costs to be borne by individual investors.

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We urge the CFTC to consider the following points:

1) **The scope of the proposed changes is too broad and needs clarification.**

The NFA petition[2] to amend CFTC Regulation 4.5 identified just three registered investment companies out of over 8000 registered mutual funds[3] with which NFA has concerns with regard to their marketing to customers as commodity futures investments. However, the sweeping change suggested by the amendment to the exclusions from the definition of "commodity pool operator" in rule 4.5 would have implications on all RICs, many who use futures trading to reduce risk and lower costs. A simpler solution and less invasive approach may be to address futures-only funds as opposed to funds that use futures along with equity and fixed income to enhance returns and minimize risk. In addition, the definition of a "Bona Fide" hedge is vague in the current release, and we urge the Commission to provide more clarity.

2) **The potential regulatory changes have not been fully vetted and analyzed as to their effect on the mutual fund industry.**

When Rule 4.5 was adopted by the CFTC, it was after almost a year of research and debate among a broad and diverse group of investment experts. The CFTC afforded market participants a longer comment period and held a roundtable to better understand the potential long term effects of Rule 4.5.[4] We urge the CFTC to take the time to study the impact on registered investment companies if the exceptions in Rule 4.5 were to be removed.

We concur with views of the Investment Company Institute ("ICI") in its October 18th 2010 letter [5] in response to CFTC's request for comment regarding the NFA petition to amend rule 4.5. [6]. We agree with ICI that there is not sufficient rationale for imposing additional regulation on RICs that are already registered entities.

Questions by the CFTC in the proposing release

With the CFTC's request for comment five questions were asked regarding the changes to Rule 4.5. Two of the five questions concern the marketing of mutual funds which we feel lie outside our particular expertise since we feel as an organization of trading professionals STA is best positioned to advise the Commission from an investment perspective and not the selling of mutual funds.

Question No. 2: The Commission asked for comment as to the particular types of funds would be impacted by the proposed rule. As of this time, it is not completely clear which types of funds might be impacted and to what degree. We reiterate the need for more analysis and research to understand the types of funds that the changes to rule 4.5 would adversely affect. STA feels

[2] http://www.nfa.futures.org/news/newsPetition.asp?ArticleID=3630
[3] http://www.icifactbook.org/fb_ch1.html
[4] http://www.cftc.gov/opa/press02/opa4700-02.htm
[5] http://www.ici.org/pdf/24625.pdf
[6] http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2011-2437.html

that the repeal of the exemptions could have broad and far reaching affects on a large variety of mutual funds, perhaps in ways not contemplated or desired by the Commission, and we urge the CFTC to extensively research this question to better understand the range of potential adverse implications of these changes.

Question No. 4: The Commission asks which rules and regulation are in conflict and how the CFTC and SEC could address the conflicts. We urge both commissions to see that the potential for dual registration potentially puts ***all*** the rules in conflict, leaving funds answering to two regulators. The result would force mutual fund companies to constantly be monitoring two sets of regulators that could potentially conflict with each other. We do not see any countervailing policy value benefitting the investing public from creating a situation in which mutual funds have two sets of regulations from the two regulators.

Question No. 5: The Commission asks for opinions regarding the "5% test" and whether the percentage should be higher or lower. We urge the CFTC to not impose any limitation at all and allow the current exemptions to stand as they are written without addition of a percentage test.

Conclusion

In closing, we urge the CFTC not to adopt the proposed amendment but rather to let the existing exemptions stand as written in the current regulation. Dual registration, coupled with the lack of clarity in the rules as presented, would result in a burdensome cost to investment companies. These additional costs, be it from registering as a CPO or from monitoring the need to register as a CPO vis-a-vis the proposal's new criteria, would ultimately have to be passed through to the investors in the mutual fund. We do not see that the incurring of these costs translates into better protection of mutual fund customers or the market as a whole compared to the existing regulatory regime which has worked very well to date. We do not believe the CFTC should fix a regulatory regime that has not been demonstrated to be broken.

The STA appreciates the opportunity to comment on the CFTC Request for Comment Regarding Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations. We look forward to establishing a dialog with the CFTC on these and other critical regulatory changes.

Respectfully submitted,

James Toes

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