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COMMENT

June 8, 2011

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

Re: RIN 3038-AD30-Proposed Rules: Commodity Pool Operators and Commodity Trading Advisers: Amendments to Compliance Obligations

Dear Mr. Stawick,

AlphaSimplex Group (ASG) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC) proposed rulemaking related to Commodity Pool Operator (CPO) and Commodity Trading Advisor (CTA) compliance obligations [*See Commodity Pool Operators and Commodity Trading Advisors; Amendments to Compliance Obligations*, 76 Federal Register 7975 (February 11, 2011)].

In the interest of full disclosure, ASG manages three Natixis mutual funds that make use of futures contracts, including commodity futures, and also manages a hedge fund and several overlay strategies that employ futures contracts. ASG is dually registered as an Investment Adviser with the SEC and as a CTA with the CFTC.

We support the CFTC's ultimate goals of this rulemaking proposal. However, we are concerned that the unintended consequences of the proposed rules may be that ordinary investors lose access to the diversifying benefits of commodities in their investment and retirement portfolios.

The Benefits of Commodity-Related Investments

ASG believes that commodity futures (as well as options and swaps) offer investors significant benefits in terms of effective diversification for improved risk management when included in broadly-diversified managed mutual funds. The low correlation of managed futures strategies with traditional investments such as stocks and bonds provides an important tool for diversification, as evidenced most recently in 2008 when managed futures was among the handful of investment categories that provided a positive return for investors in that year.

Some policymakers may believe that the loss of potential diversification resulting from ordinary investors losing access to commodity-related investments would be offset by less volatile commodity markets. The belief that speculative interest, rather than the fundamental forces of supply and demand, is responsible for rising commodity prices and increased volatility in commodity markets is not new, but neither is it correct. The same argument was made in 1958 when, in the wake of a market-manipulation scandal, onions became the only commodity for which futures trading was banned (7 U.S.C. Chapter 1 § 13-1), and this ban remains in effect to this day. However, the price volatility of onions before and after the ban demonstrated conclusively that futures are more likely to stabilize market prices. This case study was cited explicitly by CFTC Commissioner Joseph B. Dial in a speech on March 7, 1997:

> When those economists later studied this case, they found more cash market volatility in onion prices before and after the period of futures trading than there was while the onion futures market was operating. In other words, futures markets don't cause volatility, they respond to and decrease volatility.

The price volatility of onions provides a cautionary tale of misguided regulatory oversight, and is a reminder of the beneficial role that speculators and hedgers jointly play in stabilizing commodity prices.

Threatened Access to Commodity-Related Investments

Institutional and high net-worth investors have long had access to the investment benefits of commodities through hedge funds. However, the CFTC's proposed rules have the potential to effectively deny ordinary investors access to professionally managed commodity-related investment strategies in mutual funds. Mutual funds continue to be the most popular investment vehicle for ordinary investors due to their professional management, transparent investment process, liquidity, and simple tax-reporting. The CFTC's proposed rules imply that mutual funds (and potentially their boards of trustees) must be regulated as CPOs in order to invest in commodity derivatives. Rather than be subjected to the additional cost and administrative burden of CFTC registration (as well as the existing cost and administrative burden of Securities and Exchange Commission registration), mutual funds are likely to simply discontinue including commodity-related derivatives as permissible investments.

Even if mutual funds and their boards were willing to accept the additional cost and administrative burden of registering with the CFTC, they still would be compelled to discontinue including commodity-related derivatives as permissible investments because the CFTC's proposed rules make it virtually impossible for mutual funds to hold commodity-related investments without losing the pass-through tax treatment currently afforded mutual funds. The proposed rules effectively prohibit the use of non-hedge commodity futures within mutual funds because they require that non-hedge commodity futures be held directly by the fund rather than through an offshore, wholly-owned subsidiary. Compliance with the proposed rule would cause a mutual fund holding non-hedge commodity futures to lose its qualification for pass-through tax treatment under Sub-chapter M of the IRS code.

While mutual funds might still be able to gain access to commodities through structured notes issued by investment banks, the incremental expense of such a strategy would pose a very significant and unnecessary cost to investors. If broadly adopted, such a strategy would not only be an unintended gift to Wall Street at the expense of Main Street, but it could potentially create distortions in the commodity markets since such structured notes are based on broad commodity indices that effectively link commodity prices (unlike the commodity-by-commodity approach to decision-making by professional managers within a subsidiary structure).

Recommendations

We believe the CFTC's ultimate objectives can be achieved without causing ordinary investors to lose access to the investment diversification benefits of commodities enjoyed by wealthy individuals and institutions through hedge funds. To that end, we ask the CFTC to consider the following recommendations:

1. Specify that the mutual fund's investment adviser—not the fund itself—be required to register as a CPO, since it is the investment adviser that furnishes investment supervision and management to the fund's investment portfolio. This clarification would avoid the additional costs (which fund shareholders would bear) and administrative burdens resulting from dual registration with both the SEC and the CFTC as well as mitigate the risk that mutual funds would reduce the diversification of their holdings by excluding commodity-related investments.

2. Permit mutual funds to use offshore subsidiaries for commodity-related investments as long as the adviser/CPO makes the RIC's subsidiary's books and records available for inspection upon request by the CFTC and NFA.

3. Delay implementation of the new rules until SEC and CFTC rules have been harmonized.

We appreciate this opportunity to offer our thoughts on this matter. If you have any questions concerning the above comments and recommendations, please do not hesitate to contact us at (617) 475–7141 or at jchafkin@alphasimplex.com and alo@alphasimplex.com.

Sincerely,

Jeremiah Chafkin
President
AlphaSimplex Group

Andrew W. Lo
Chairman and Chief Investment Strategist
AlphaSimplex Group

cc: Commodity Futures Trading Commission
The Honorable Gary Gensler
The Honorable Michael Dunn
The Honorable Jill E. Sommers
The Honorable Bart Chilton
The Honorable Scott D. O'Malia