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July 28, 2011

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

Re: CFTC Proposed Rulemaking to Amend Regulation 4.5 and Related Issues – RIN number 3038-AD30

Dear Mr. Stawick:

Equinox Fund Management, LLC (“**Equinox**”) appreciates the opportunity to submit this comment letter at the request of the Commodity Futures Trading Commission (“**CFTC**”) following its public roundtable on July 6, 2011 (“**Roundtable**”) to discuss issues relating in part to proposed changes to CFTC Regulation 4.5 (“**Regulation 4.5**”).¹ Equinox is the registered investment adviser to MutualHedge Frontier Legends Fund (“**MutualHedge**”). MutualHedge is one of the mutual funds referenced in a petition for rulemaking submitted June 29, 2010 by the National Futures Association (“**NFA**”) to amend CFTC Regulation 4.5 (“**Petition**”).² Equinox is also a commodity pool operator (“**CPO**”) registered with the CFTC and the NFA and is the sponsor of The Frontier Fund, a family of public commodity pools with approximately 30,000 retail investors. As a market participant regulated by both the Securities and Exchange Commission (“**SEC**”) and the CFTC, Equinox is uniquely situated to offer its views on the issues related to the CFTC’s proposed amendments to Regulation 4.5.

¹ 17 C.F.R. § 4.5. See also 7 U.S.C. § 1a(5).

² Letter from Thomas W. Sexton, III, Senior Vice President and General Counsel, NFA, to David Stawick, Office of the Secretariat, Commodity Futures Trading Commission (August 18, 2010), available at <http://www.nfa.futures.org/news/newsPetition.asp?ArticleID=3630>. The NFA withdrew its original June 29, 2010 Petition for Rulemaking to Amend CFTC Regulation 4.5 by separate letter dated August 18, 2010 and resubmitted its petition on August 18, 2010.

Background

During the Roundtable, the NFA stated that it filed the Petition after it became aware of a number of mutual funds that were being marketed to retail investors as commodity futures investments. The NFA further stated that it believes these types of investments should be subject to the protections provided by the CFTC's Part 4 regulations.³ The NFA has also stated that its intent is not to eliminate such products from the marketplace.⁴

Equinox is of the view that the current proposal to amend Regulation 4.5 as it applies to mutual funds is too broad. Rather, Equinox respectfully submits the following proposal regarding Regulation 4.5 in an attempt to:

- (1) preserve the existing regulatory oversight of mutual funds by the SEC;
- (2) fully address the concerns expressed by the CFTC and NFA regarding the protection of retail investors; and
- (3) provide a fair and competitive marketplace for all mutual fund and commodity pool sponsors and participants.

Most importantly, we believe our proposal would benefit retail investors, in a cost-efficient manner, by providing all of the regulatory protections and required disclosures and information afforded to investors in both SEC and CFTC regulated regimes.

Equinox's Proposal

As many comments in response to the CFTC's proposed changes to Regulation 4.5 have argued,⁵ the amendments to Regulation 4.5 would effectively subject a mutual fund to both SEC and CFTC statutes and regulations. The costs and burdens of dual registration would be significant. More importantly, these costs would be borne largely by the mutual fund's investors. A dual-registration regime would also require, among other things, a full-scale regulatory harmonization effort by the CFTC and SEC. Such an effort, while ambitious, is likely to involve significant time and resources at a time when each regulator has no shortage of tasks to complete in connection with the implementation of recent financial reform.

In order to avoid (i) an undue burden on mutual fund managers and their investors and (ii) the complexity of a difficult process to harmonize two competing regulatory regimes with proud

³ 17 C.F.R. § 4.1 through § 4.41.

⁴ See Statement of the National Futures Association submitted to CFTC Public Roundtable (July 6, 2011).

⁵ See, e.g., Letter from Dechert LLP to David Stawick, Secretary, CFTC (April 12, 2011), available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=42183&SearchText=dechert>; Letter from Karrie McMillan, General Counsel, Investment Company Institute to David Stawick, Secretary, CFTC (April 12, 2011) available at <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=42191&SearchText=>.

traditions and different points of view on many key issues,⁶ Equinox proposes an additional CPO exclusionary category under existing Regulation 4.5. The new category would only be available to mutual funds that obtain their commodity interest investment exposure solely through direct or indirect equity investments in one or more commodity pools that are fully subject to regulation by the CFTC and NFA. Further to the benefits discussed below, this proposal would provide the CFTC with additional oversight and increased transparency in respect of those mutual funds participating in the commodity interest markets.

As a condition of eligibility, a mutual fund seeking this proposed exclusion would be required to provide its investors with comprehensive disclosure and information on each underlying commodity pool.⁷ The condition would be satisfied by meeting a threshold test determined by the CFTC, but would undoubtedly require ample disclosure in the mutual fund's offering documents that (i) the fund has invested directly or indirectly in a commodity pool and (ii) the offering document and reports for the underlying commodity pool are available for inspection and review. By providing the commodity pool disclosure and reports that the CFTC envisions (through, for example, the mutual fund's website), the mutual fund could ensure that its investors would have access to the same disclosure and information that these investors would receive had they been direct investors in the underlying commodity pools themselves. The tremendous scale of the mutual fund industry, and its reliance on Internet-based technology, would allow a mutual fund to provide its investors with extensive commodity pool disclosure and information in an inexpensive and cost-efficient manner.

In addition, to the extent that current CFTC regulations are inadequate from a market monitoring or retail protection standpoint, we believe that it is fully within the CFTC's mandate to supplement and/or revise those existing regulations in order to address any deficiencies.

For the following reasons, Equinox believes that this proposal draws the regulatory line where it belongs and, at the same time, is an optimal solution for all concerned parties:

- (1) The CFTC would maintain primary regulatory responsibility and oversight for the investment vehicle that accesses commodity investment exposure. At the same time, the CFTC would achieve its stated goals of increasing its ability to oversee market risk through data gathering and would gain the means to collect such data for a variety of regulatory purposes.

⁶ To date, the CFTC has received approximately 80 sets of comments addressing these and related issues from market participants, industry organizations and law firms.

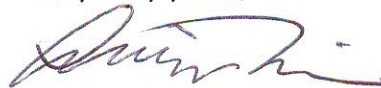
⁷ This is one area where the efforts of the CFTC and the SEC should be harmonized. We envision an accompanying requirement that a prescribed provision be included in the mutual fund's prospectus in order for the issuer to rely on the exclusion. We note that a somewhat similar requirement is used in connection with a well-known seasoned issuer's use of a free writing prospectus following the SEC's security offering reforms.

- (2) Both the CFTC and NFA would be able to provide their direct oversight and expertise over the entities (i.e., commodity pools) conducting the actual commodity interest trading, thus effectively regulating the managed futures products for the mutual fund's investors.
- (3) Existing oversight from the SEC would remain unaffected, as these mutual funds would continue to benefit from the long-standing and successful oversight of their traditional regulator.
- (4) This proposal would not require any amendments to the disclosure and information requirements of each regulator and would avoid any need to expend time and resources on a regulatory harmonization effort.
- (5) Both mutual funds and commodity pools would enjoy and benefit from a competitive marketplace that treats all participants, regardless of form or regulator, on an equal and impartial basis.
- (6) Mutual fund investors would continue to receive the protections afforded not only by the SEC, but also the extensive protections provided by the CFTC and NFA, in a timely, cost-efficient and minimally disruptive manner. The CFTC, as well as the SEC, would have enforcement jurisdiction over commodity mutual fund offerings in the case of fraud.

For further explanation of our proposal, we attach, as Annex A, a diagram of a typical structure for a mutual fund and its investment in its offshore subsidiary. We also include, for your reference, suggested amending language for Regulation 4.5 as Annex B.

To the extent we can be helpful in answering any questions the CFTC and/or the NFA may have, and/or participate in any other way, we would welcome such an opportunity. By virtue of our position as both a registered investment adviser to a commodity mutual fund and separately as a CPO to a public commodity pool, we feel we are in a unique position to offer the foregoing proposal and otherwise contribute meaningfully to the discussion of these issues relating to the CFTC's proposed amendments to Regulation 4.5. Should you have any questions regarding this letter and the proposal described herein, please do not hesitate to reach me by telephone at (303) 837-0600 and by email at pliu@equinoxllc.com.

Very truly yours,



Philip Liu
General Counsel

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott D. O'Malia, Commissioner
Elizabeth Ritter, Counsel, Office of Commissioner Chilton
Kevin P. Walek, Assistant Director
Amanda L. Olear, Special Counsel
Douglas J. Scheidt, Chief Counsel, Division of Investment
Management, Securities and Exchange Commission

Annex A

Diagram

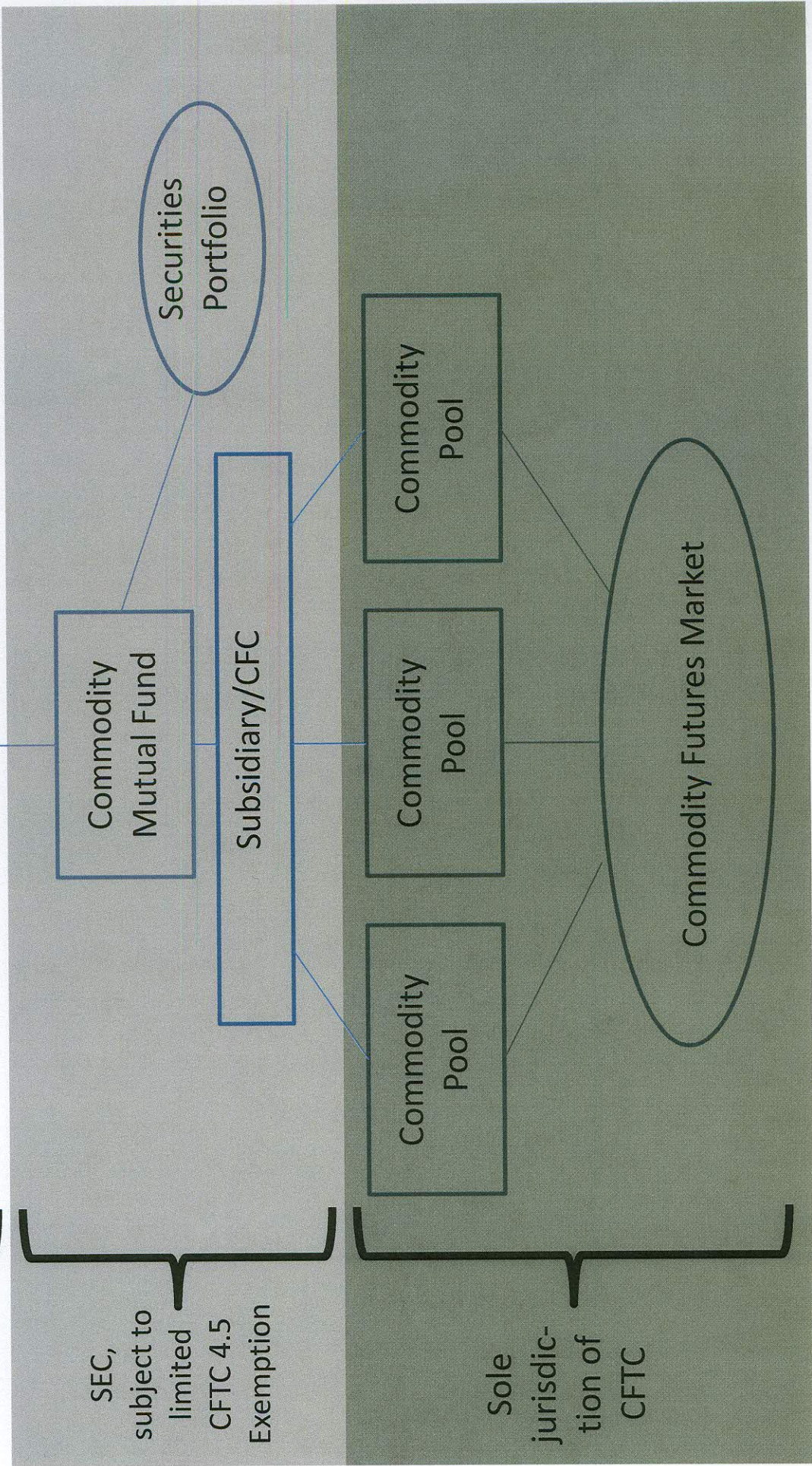
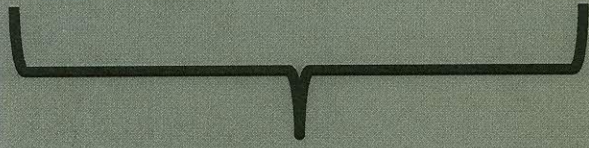
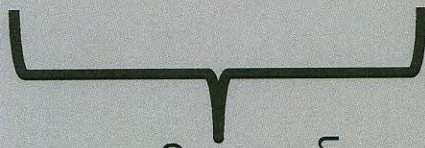
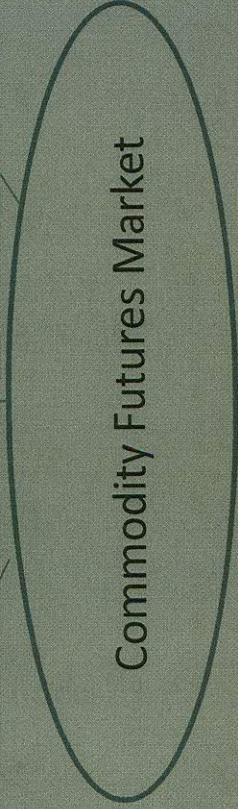
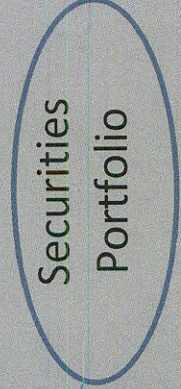
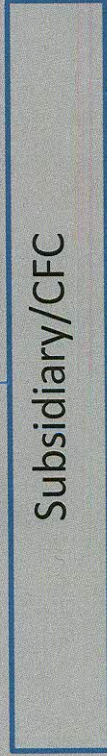
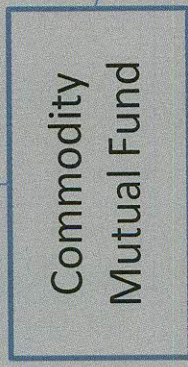
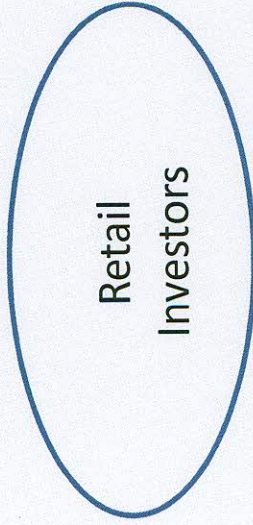
Joint
CFTC
and
SEC

SEC,
subject to
limited
CFTC 4.5
Exemption

Sole
jurisdic-
tion of
CFTC

Retail investors will be required to receive:

- 1) Mutual fund prospectus and disclosures under the 40 Act
- 2) Full access to disclosure documents and information about the underlying commodity pools per the CEA



Annex B

Text of Proposed Rule Amendment

§ 4.5 Exclusion from the definition of the term “commodity pool operator.”

* * * * *

(c) * * *

(2) * * *; and

(iii) If the person claiming the exclusion provided by this section is a person specified in paragraph (a)(1) of this section,

- (A) Will obtain its exposure to commodity interests through direct or indirect investments in a commodity pool, the commodity pool operator and commodity trading advisor of which are registered pursuant to the Act and the Commission’s regulations and such commodity pool operator complies with the requirements of Secs. 4.21 through 4.26 of the Commission’s regulations,
- (B) Will cause each such commodity pool’s Disclosure Document and all reports required to be provided to participants in such commodity pool under this Part 4 to be readily accessible on an Internet Web Site maintained by the qualifying entity or its authorized persons, and
- (C) Will disclose to existing and prospective participants in the qualifying entity the Internet address of such Web Site; *Provided*, the qualifying entity may make such disclosure by including the Internet address in any document that its other federal or state regulator requires to be furnished routinely to such participants.