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Submitted via website
http://comments.cftc.gov/PublicComments/ReleaseswithComments.aspx

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

Re: Regulation 4.5 Harmonization

Dear Mr. Stawick:

On February 24, 2012, the Commodity Futures Trading Commission ("CFTC") promulgated in the Federal Register its proposed amendments to certain provisions of the rules in 17 C.F.R. Part 4.[1] The Proposal was referenced in, and serves as a companion to, the CFTC's regulation that, among other things, modified Rule 4.5 to require certain registered investment companies investing in derivatives to submit to CFTC regulation as commodity pools.[2] The Proposal was intended to harmonize the CFTC's commodity pool operator ("CPO") disclosure requirements embodied in 17 C.F.R. Part 4 with the Securities and Exchange Commission's ("SEC") requirements already applicable to registered investment companies.[3]

Invesco Advisers, Inc. ("Invesco") is a registered investment adviser that, along with its affiliates, provides a comprehensive range of investment strategies and investment vehicles to retail, institutional and high-net-worth clients. As of December 31, 2011, Invesco had approximately $374 billion in assets under management in its registered investment companies ("RICs") and, along with our affiliates, had over $625 billion in total assets under management.

We endorse the ongoing efforts of the CFTC, the SEC and other policymakers to bolster the oversight and risk management of market participants and are appreciative of the opportunity to provide our views with respect to the Proposal. We recognize that the

[1] *Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators*, 77 Fed. Reg. 11345 (Feb. 24, 2012) (the "Proposal").
[2] *Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,* 77 Fed. Reg. 11252 (Feb. 24, 2012); *correction notice published at* 77 Fed. Reg. 17328 (Mar. 26, 2012) (collectively, the "Adopting Release").
[3] 77 Fed. Reg. 11345 (Feb. 24, 2012), p. 11346.

CFTC wishes to work with advisers to RICs to achieve our mutual goals of clear and meaningful disclosure to RIC investors. However, we believe that many of the CFTC's proposals exceed what is necessary in order to inform investors about the risks and expenses related to investing in derivatives by RICs in light of the SEC's robust disclosure regime. As we stated in our April 2011 comment letter concerning Rule 4.5, we believe that "reforms should be focused on measures that can effectively and efficiently improve oversight and risk management while avoiding burdensome, costly and incrementally duplicative or ineffective regulations".[4]

Our interest in commenting on the Proposal is rooted in our fiduciary responsibility to our shareholders and our belief that the Proposal could disrupt Invesco's ability to provide timely and effective disclosure to our investors. We believe that any further policy or regulatory actions must be examined carefully to understand fully the potential benefits that they are expected to deliver together with a comprehensive understanding of the costs associated with their implementation. We strongly recommend that the CFTC consider the comments it receives, request more information from RIC advisers concerning the costs associated with implementing the requirements in the Adopting Release and the Proposal, and then either create a revised proposal that takes into account these concerns, or coordinate with the SEC to issue joint regulations that enable the registered investment company industry to operate in a predictable regulatory environment that addresses both the CFTC's and the SEC's concerns. Any new proposal should, in our view, be revised to take into account the concerns identified below, as well as those articulated in comment letters submitted by other market participants.

Invesco is concerned that some aspects of the Proposal could have unintended and adverse consequences. These possible consequences include, among other things, interruptions in Invesco's ability to offer our mutual funds for sale to investors while we attempt to reconcile conflicting comments on our funds' disclosure documents made by the NFA and the SEC.

As discussed below, we have particular concern with:

I) CFTC rule requirements that are not addressed in the Proposal;

II) The cost-benefit analysis and estimate of time spent;

III) Lack of a gap analysis to identify material CFTC disclosure elements missing in the current SEC disclosure regime;

IV) Prior performance disclosure requirement is inconsistent with SEC regulation;

V) Break-even calculations and tables;

VI) Placement of CFTC disclosure elements in the SEC prospectus document; and

VII) Coordinating dual regulator disclosure review.

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[4] Comment letter from Invesco Advisers, Inc. (April 12, 2011), page 2.

I. Unaddressed CFTC Rule Requirements

The Proposal discusses certain CFTC rule requirements located in 17 C.F.R. Part 4, and describes exemptions from some requirements. However, there are numerous CFTC rules not described in the Proposal. Many of those rules create additional burdens for RICs that will be treated as commodity pools under the Adopting Release. In effect, the Proposal hopscotches through the rules in Part 4, highlighting only certain sections for harmonization. The lack of a thorough discussion of the disclosure requirements found in Part 4 makes the Proposal's cost-benefit analysis an incomplete exercise.

An example of this hopscotch approach is the Proposal's requirement that the standard cautionary statement mandated by Rule 4.24(a) be built into the cover page of a prospectus, and combined with the SEC's required disclosure under the Securities Act of 1933 Rule 481(b)(1).[5]

As the Proposal indicates, the CFTC's disclosure statement reads "THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT." [6]

The SEC's rule language reads "The Securities and Exchange Commission has not approved or disapproved these securities or [passed upon the adequacy of this prospectus/determined if this prospectus is truthful or complete]. Any representation to the contrary is a criminal offense".[7]

If the statutory prospectus for RICs required to be registered as commodity pools were to contain a combined risk disclosure, as recommended by the CFTC in the Proposal[8], it might read something like "The Securities and Exchange Commission and the Commodity Futures Trading Commission have not approved or disapproved these securities, which also represent a commodity pool; the Securities and Exchange Commission and the Commodity Futures Trading Commission have not passed upon the adequacy or accuracy of this prospectus disclosure document".

This simple example illustrates the different terminology used by the SEC and the CFTC, which can lead to confusion for investors. The standard CFTC risk disclosure refers to "participating in pools"; the SEC disclosure statement contemplates "securities". The CFTC describes the commodity pool offering document as a "disclosure document", while the SEC uses the more familiar term "prospectus". In order to capture the terminology of both regulators, our hypothetical disclosure example uses all of those terms. It shows the difficulties inherent in blending the terms of art of multiple regulators. Many mutual fund investors will not be familiar with the sort of language used by CPOs offering more traditional commodity pools. Investors may also be confused by seeing references to both the SEC and CFTC on the front page of the prospectus.

By contrast, the CFTC did not address other standard disclosures in the Proposal. Rule 4.24(b)(1) states that a "Risk Disclosure Statement must be prominently displayed

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[5] 77 Fed. Reg. 11345 (Feb. 24, 2012), p. 11347.
[6] Id.
[7] 17 C.F.R. 230.481
[8] 77 Fed. Reg. 11345 (Feb. 24, 2012), p. 11347.

immediately following any disclosures required to appear on the cover page of the Disclosure Document"[9]. This statement comprises three paragraphs of disclosure in capital letters, including the following language at the end of the first paragraph: "IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL"[10]. Generally, open-end mutual fund investors understand that they have the right to redeem shares on a daily basis. Because the ongoing right to redeem shares is so fundamentally understood by mutual fund investors, they would be confused by a risk disclosure statement that indicates otherwise. The word "may" does not alter the effect of the language; it raises the specter that an investor may not be able to redeem shares his or her from a RIC.

In addition, even if the CFTC shortened the Rule 4.24(b)(1) risk disclosures, and omitted the language applicable only to other types of commodity pools, the length and prominence of such disclosures, written in all capital letters (a style of disclosure discouraged by the SEC), would take up more than a single page of a prospectus. The cost of additional prospectus pages, when many mutual fund investors still receive printed prospectuses, is not negligible. The CFTC should also consider the possible cost associated with frightening investors by over-disclosing risk. For example, consider the effect of an entire page of prominent, capitalized risk disclosure delivered to an investor in an investment grade credit, short-term fixed income mutual fund that uses bond futures to manage the fund's duration, in amounts slightly over the de minimis exemption in Rule 4.5. The CFTC's standard risk disclosures could mislead investors into thinking a particular RIC required to register as a commodity pool exposes them to greater risk than actually exists within that RIC's portfolio.

II. Cost Benefit Analysis

The Proposal contains a cost-benefit analysis that concludes that each commodity pool RIC will require only 2 hours per year to comply with the new CFTC disclosure regulations.[11] The CFTC's belief that the entire range of new regulations could be incorporated into the existing SEC requirements for a RIC required to register as a commodity pool in as little as two hours per year is especially surprising, given that Invesco estimates that merely completing Form CPO-PQR may require more than two hours per fund per year.

Invesco has estimated the time that will need to be spent by Invesco employees and external service providers on additional analyses caused by the need to comply with CFTC regulations as well as ongoing monitoring and reporting.

Invesco estimates that our initial evaluation of just our mutual funds to determine how they are affected by the Adopting Release could require 300 total hours to complete. That estimate is based on spending 3 hours per fund analyzing a group of approximately 120 funds, which include those advised by Invesco as well as those sub-advised by Invesco. Invesco believes an appropriate cost per hour would be $300. This effort represents a cost of $108,000 for the initial evaluation process alone.

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[9] Rule 4.24(b)(1)
[10] Id.
[11] 77 Fed. Reg. 11345 (Feb. 24, 2012), p. 11349.

After the initial evaluation, Invesco will need to build a process to monitor those funds that appear to qualify for the *de minimis* exemption under Rule 4.5. The funds that currently appear to meet the requirements to be exempt from registration under Rule 4.5, estimated at 80 funds, will require ongoing monitoring, estimated at 50 hours per fund per year, to ensure that the funds either remain eligible for the exclusion or, if not, that appropriate registration filings are made. Invesco multiplied the aggregate number of monitoring hours by $150 per hour, for a total of $600,000 per year. That total does not include the cost of any additional computer software or other fixed expenses that Invesco may incur in order to establish its monitoring process for the Rule 4.5 exempt funds.

Invesco has also estimated the cost of complying with the new regulatory regime for RICs required to be registered as commodity pools. We believe that approximately 40 RICs will be affected by the new rules and will require at least 250 hours per year to maintain their registration, disclosure, compliance and shareholder reporting obligations under the dual regulatory regime. At an estimated hourly rate of $300 per hour, the annual ongoing cost could be as much as $3,000,000.

Invesco believes that the requirement to provide monthly account statements for RICs required to register as commodity pools, which will require the adviser to calculate expenses, such as brokerage costs, in a manner different from otherwise similar calculations for SEC reporting purposes, will not only result in increased expenses for the affected funds, but also raise the likelihood of confusion for investors.

Additionally, Invesco will incur a great deal of additional expense if the CFTC requires RICs that are required to register as commodity pools to maintain their books and records in a manner which will not allow Invesco to use professional records maintenance and storage companies. Transferring records to a different third party recordkeeper, or returning those records to our main business location would be expensive for the affected funds. Maintenance of records for RICs required to register as commodity pools at an alternate location would in many cases result in higher cost. Invesco also believes that there may be confusion and inefficiencies associated with maintaining certain RIC books and records at a professional storage company, and records of RICs required to register as commodity pools at a different location.

Ultimately, much of the cost of implementing the Adopting Release and the Proposal will be borne by RIC shareholders. The CFTC has not yet articulated in any compelling manner the additional benefits that the shareholders will receive in exchange for the increased costs they will likely incur.

III. Comparison of SEC Existing Disclosure with CFTC Requirements ("Gap Analysis")

Invesco concurs with other commenters that the CFTC should take the opportunity to reflect further on the existing disclosure regime required of RICs by the SEC. It would be helpful for the CFTC to produce a comprehensive gap analysis which identifies all of the disclosures in Part 4 that it believes investors require and that are not adequately addressed through the SEC's existing disclosure regime.

Like the Rule 4.24(b)(1) standard risk disclosures discussed above, Invesco believes that requirements designed for commodity pool investors who invest in private placement or hedge fund vehicles may not be necessary or even appropriate for investors who purchase

shares of heavily-regulated RICs. If the CFTC believes the SEC disclosure requirements do not address specific information that the CFTC believes is important for investors to receive, it should propose specific disclosure requirements designed to obtain that information, explain why the information is necessary and appropriate for investors, and provide the industry with an opportunity to comment.

IV. Prior Performance Disclosure

The Proposal states that, under Rule 4.25, a CPO must provide pool performance disclosure for pools in existence for less than three years that includes performance data for certain other pools that the CPO operates.[12] Disclosure of performance for other RICs in a RICs prospectus is not generally permitted by the SEC[13]; such disclosure is generally permitted only in very limited circumstances.[14]

The Proposal requests comment as to whether this prior performance disclosure should appear in the RIC's Statement of Additional Information ("SAI") rather than its prospectus. Invesco believes that the SEC's long-standing prohibition of comparing or including the performance of dissimilar investment products is not limited to a comparison which appears in the prospectus. For example, if a RIC adviser introduced a mutual fund that had as one of its principal investment strategies investments in agricultural and energy commodities, and the adviser was forced to compare it to a fund that gained all its derivatives exposure from S&P 500 futures, one can imagine that the amount of disclaimer information that the SEC and FINRA might require to facilitate such a performance comparison would likely dwarf the performance reporting.

In some cases, investment managers may have only non-mutual fund commodity pool performance in order to demonstrate their prior performance. Invesco believes that the SEC would find troubling any comparison of a newly launched RIC to the past performance of a non-RIC investment vehicle, given that non-RIC investment vehicles operate with different parameters on the types of derivatives they may be able to purchase, the amount of leverage they may employ, and how they segregate assets or otherwise provide "cover" for their derivatives holdings. It is difficult to imagine what meaningful conclusions an investor could draw from performance comparisons among dissimilar investment vehicles trading dissimilar derivatives.

Invesco requests that RICs required to register as commodity pools be provided with an exemption from the prior performance reporting requirement. The CFTC should consider the likelihood of investor confusion before it requires Rule 4.25(c) prior performance reporting for RICs required to register as commodity pools that have traded commodity interests for less than three years. To the extent that the CFTC believes that investors need unrelated prior performance, the CFTC should consider whether Rule 4.25 could be modified to prohibit the use of dissimilar pools for comparison, or to create a disclaimer to accompany dissimilar pool performance, perhaps in consultation with the SEC and FINRA.

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[12] 77 Fed. Reg. 11345 (Feb. 24, 2012), p. 11347.
[13] *MassMutual Institutional Funds*, SEC No-Action (Sept. 25, 1995).
[14] *Nicholas Applegate Mutual Funds*, SEC No-Action Letter (August 6, 1996).

V. Break Even Calculations and Tables

Invesco believes that it would be confusing to shareholders accustomed to the type of fee disclosures required by Form N1-A to include additional tables to show the CFTC break-even calculations. If the CFTC feels strongly that the fee examples required by the SEC do not provide enough information to commodity pool investors about how expenses, particularly brokerage expenses, impact performance, then the CFTC should work directly with the SEC to modify the current N1-A fee table requirements to include additional elements in a way that does not disrupt the basic approach to prospectus fee disclosure.

VI. Placement of CFTC Disclosure Elements

The SEC has created a disclosure regime that involves a layered approach. The layers begin with the most important and standardized information in the summary prospectus, additional detail in the statutory prospectus, and even more information for those who are interested in the SAI. The SEC's Form N1-A provides guidance to registrants on the appropriate level of detail to include in each section of the registration statement. The SEC takes into consideration that some information required by it (summary and statutory prospectus) is intended primarily for investors, some is meant to assist the regulator (Form N-SAR or Part C of Form N1-A), and some information serves both purposes. This disclosure regime has been honed over decades, with input from investors, self-regulatory organizations, the regulator, and registrants.

Introducing elements of the CFTC disclosure regime into the SEC's disclosure regime without coordination between the regulators to ensure that any additional disclosure elements thoughtfully fit within the whole context of that disclosure regime will lead to a de-evolution of the prospectus disclosure document.

VII. Coordinating Dual Regulator Disclosure Review

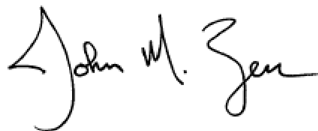
Invesco shares the industry's concern that coordinating the review of disclosure documents between the SEC and the NFA will make it difficult to continue the current seamless transition from one year's prospectus to another. One significant concern of Invesco's is that an NFA examiner will seek to make a change in the prospectus disclosure of a RIC required to register as a commodity pool at a time when Invesco planned to file that RIC's registration statement with the SEC under Rule 485(b) of the Securities Act of 1933 on a date which is close to the effective date. A comment from the NFA examiner at that time could raise uncertainty about the RIC's ability to use of Rule 485(b), and potentially cause the RIC to wait at least 60 days before its new prospectus became effective. If that were to happen, Invesco could no longer sell that RIC's shares using the old prospectus, so we would have to suspend sales. Such a suspension could create operational and legal risks for Invesco and the affected RIC.

This concern could be alleviated if the CFTC would work with the NFA and the SEC to implement an approach similar to its "instant filing" procedure that would mirror rule 485(a) and (b) filings under the Securities Act of 1933; that way, Invesco could determine that a particular commodity pool RIC filing qualified under the NFA "instant filing" criteria as well as Rule 485(b). Invesco believes it would also benefit the entire industry if the CFTC and the SEC acknowledge the possibility that the two regulators may have conflicting comments on a registrant's disclosure and create a way to resolve those conflicts that does not leave any registrant caught between the two regulators.

Invesco requests that the CFTC further consider the possibility of offering relief from its Rule 4.26 requirement that commodity pools file amendments within 21 calendar days of the CPO becoming aware of a "defect" requiring the amendment, and then deliver the amendment to existing investors. This is inconsistent with, and far more rigid than, the prospectus delivery requirements under the Securities Act, the SEC's summary prospectus rules, and current practices funds use for supplementing or "stickering" prospectuses. Invesco believes that these new requirements would impose additional logistical and other costly burdens without serving a meaningful investor protection purpose.

In summary, we respectfully urge the CFTC to engage in a re-assessment of the information already provided by RICs to the SEC and investors. If the CFTC continues to believe that further disclosure is necessary to protect investors, Invesco encourages the CFTC to work with the SEC to create a new joint proposal identifying all of the required disclosure items in detail, as well as how the regulators propose to integrate them into the existing disclosure regime. Finally, we request that the CFTC engage with the registered investment company industry to develop a more comprehensive cost-benefit analysis concerning such additional disclosure.

Sincerely,



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