CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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

Re: 17 CFR Part 4 Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators (77 Fed. Reg. 11345)

Dear Mr. Stawick:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of over three million companies of every size, sector and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. The CCMC appreciated the opportunity to provide input to the Commodity Futures Trading Commission ("the CFTC") regarding the notice of proposed rulemaking for the harmonization of compliance obligations required to register as commodity pool operators ("harmonization of Rule 4.5") with Securities and Exchange Commission regulations.

In general, the CCMC believes that an effort by multiple regulators to harmonize regulations in the same subject area is a worthwhile endeavor to rationalize legal certainty in the capital markets. However, because of the unique circumstances that exist with Rule 4.5 and procedural issues regarding the underlying rule, the CCMC believes that a harmonization of Rule 4.5 with the rules of other regulatory bodies is not ripe and should be withdrawn for the following reasons:

1. **The underlying CFTC amendments to compliance obligations for commodity pool operator ("Rule 4.5 amendments") are too broad;**
2. **In considering the Rule 4.5 amendments the CFTC failed to provide a cost-benefit analysis;**
3. **The Rule 4.5 amendments failed to adequately consider the adverse economic impacts upon investors, mutual funds, and financial markets resulting from the restriction of futures contracts by mutual funds;**
4. **Regulations needed to complete the implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") are still not finalized;**
5. **The harmonization of Rule 4.5 fails to prevent duplication and conflict amongst regulators; and**
6. **The CFTC should stay any consideration of the harmonization of Rule 4.5 while there is pending litigation over the Rule 4.5 amendments.**

Our concerns are addressed in detail below.

Discussion

The goal of the CCMC is to modernize the financial regulatory structure to allow businesses to raise capital in a 21st century global economy. Correcting regulatory blind spots and minimizing duplicative or overlapping regulations is an important part of that process. However, as will be discussed more fully, while the CFTC has good intentions in issuing this proposed harmonization of Rule 4.5 with the SEC's regulation of the mutual fund industry, the flaws in the underlying Rule 4.5 amendments—which are the subject of litigation—do not provide a proper basis for moving forward with this effort.

Accordingly, the CCMC respectfully requests that the proposed harmonization of Rule 4.5 be withdrawn.

I. The Underlying Rule 4.5 Amendment

On April 12, 2011 the CCMC had commented upon the CFTC's proposed amendments to compliance obligations for commodity pool operators (Rule 4.5 amendments). The Chamber advocated that the Rule 4.5 amendments should be withdrawn because:

1. The scope of the Rule 4.5 amendments was too broad;

2. Process failures on the part of the CFTC failed to allow commenters to assess the costs, burdens and economic impacts of the Rule 4.5 amendments;

3. The Rule 4.5 amendments did not adequately consider the adverse impacts upon the mutual fund industry, the investors who use mutual funds, or the financial markets as a whole if the mutual fund industry was restricted in its legitimate use of futures contracts; and

4. Regulations needed to implement Title VII of the Dodd-Frank Act were not completed.

The CCMC believes that these issues were not addressed when the Rule 4.5 amendments were finalized by the CFTC. Indeed, as will be discussed later, the Chamber believes that this failure to address the defects in the rulemaking was so serious, that it is currently challenging the Rule 4.5 amendments in court. Because those flaws were not addressed in the underlying Rule 4.5 amendment, the CCMC believes that this harmonization effort is premature and is insufficient to correct the agency's error in adopting the Rule 4.5 amendment.

II. Failure to Prevent Regulatory Duplication and Conflicts Between the CFTC and SEC

Mutual funds are already the most highly-regulated investment products as they are subject to stringent SEC and FINRA regulations and are governed by all four of the major federal securities laws. The Rule 4.5 amendments create a competing scheme of regulatory oversight by the CFTC and also require registration with a self

regulatory organization, the National Futures Association, which entails additional oversight, licensing, costs, disclosures and rules that must be followed. Under the amendments to Rule 4.5, countless advisers overseeing mutual funds would be hit by a vast array of red tape and regulatory burdens that largely duplicate the oversight already provided by the SEC and FINRA. Therefore, as was noted in our earlier comments, the Rule 4.5 amendments morph a dual regulatory structure into a quadruple tiered layering of conflicting rules and oversight. This creates competing and conflicting structures that will have adverse impacts for businesses and investors. The harmonization effort cannot be successful because the underlying Rule 4.5 amendment creates the regulatory layering, conflicts, and competing regulatory burdens. The fundamental flaw in the underlying regulations cannot be fixed through harmonization.

III. Harmonization with SEC Regulations Should be Suspended Pending Conclusion of Litigation of the Underlying Rule 4.5 Amendments

On April 17, 2012, the Chamber and Investment Company Institute ("ICI") filed a lawsuit challenging the CFTC's issuance of the Rule 4.5 amendments. Among the bases for the legal challenge to the Rule 4.5 amendments was a failure by the CFTC to conduct an adequate cost-benefit analysis and to properly justify imposition of the new CFTC regulatory requirements, as required by the Administrative Procedure Act.

When faced with a similar challenge to the Proxy Access Rule in the ***Business Roundtable and U.S. Chamber of Commerce v. SEC***, the SEC voluntarily issued a stay of the final rule pending completion of the final rule. Subsequently, the SEC lost the case, the Proxy Access Rule was vacated and the SEC has not revisited the issue.

The Commission erred in adopting the Rule 4.5 amendments and compounded that error by failing to define at that time what the registration and disclosure requirements would be for regulated entities. For these reasons and others the Rule 4.5 amendments have been challenged in court. Consequently, because of that litigation, one must question the legitimacy of the harmonization efforts. We believe that at a minimum, the proper course is to suspend the current rulemaking so that, if the challenge to the Rule 4.5 amendments is successful, Rule 4.5 and the proposed harmonization requirements can be considered holistically.

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The CCMC believes that the inherent flaws in the Rule 4.5 amendments were not addressed by the CFTC when the original proposal was finalized. For the CFTC and SEC to attempt to harmonize the flawed rule will only entrench the unforeseen consequences and the adverse impacts to the financial markets and economy as a whole. As has been discussed, the harmonization effort fails to eliminate duplicative and competing regulatory schemes. Finally, the underlying Rule 4.5 amendments are being challenged in court by the Chamber and Investment Company Institute. A harmonization effort at this stage is a misuse of taxpayer dollars and a diversion of resources by the CFTC that may best be used elsewhere.

While we appreciate the intent of the harmonization effort, the timing is not appropriate pending judicial review.

Sincerely,

Tom Quaadman