

COMMENT

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secretary

**From:** daron@MWE.com  
**Sent:** Friday, January 10, 2003 6:35 PM  
**To:** secretary@cftc.gov  
**Cc:** bgold@cftc.gov; ccummings@cftc.gov  
**Subject:** Advance Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions

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OFC. OF THE SECRETARIAT

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Dear Jean:

I am writing this comment letter to suggest one clarification to the preamble accompanying the proposed rules in the Federal Register. I am writing on my own behalf. Therefore, my comments do not necessarily represent the views of McDermott, Will & Emery or any of the firm's clients.

Footnote 15 contains an example illustrating the application, in the fund of funds context, of the "aggregate notional value" prong of the no-action relief available to CPOs during the pendency of the current rulemaking. The second paragraph of footnote 15, however, is not as clear as it could be. The end of the second sentence of that paragraph makes it appear that the liquidation value of the directly invested portion of the example's investor fund cannot exceed 50% of the liquidation value of the "Fund," which I take to mean the entire investor fund. In the example, the liquidation value of the entire investor fund is \$1,000,000, which would mean that the investor fund could meet the "aggregate notional amount" prong of the interim no-action relief if the aggregate notional value of the commodity interests in the directly invested portion of the investor fund did not exceed \$500,000. ! That seems like an odd result when each of the investee funds would be limited to an aggregate notional value of no more than \$400,000 (which is 50% of \$800,000, the amount invested in investee funds in the example). Continuing with this interpretation, the CPO of the investor pool would be permitted to claim the relief even though the aggregate notional amount of commodity interests in the investee (up to \$400,000) and investor (\$up to \$500,000) pools would equal as much as \$900,000, potentially far exceeding the \$500,000 amount that would constitute 50% of the liquidation value of the portfolio.

I believe the example meant to limit the aggregate notional value of the portion of the investor pool that is used to directly enter into commodity interest transactions ("Direct Portion") to 50% (i.e., \$100,000 in the example in fn 15) of the liquidation value of the Direct Portion (i.e., \$200,000 in the example), not 50% of the value of the entire investor fund (i.e., \$1,000,000).

The Commission should clarify the intent of the example in the preamble to the final rules. One possible way to do so would be to replace the following text at the end of the second paragraph of footnote 15

"fifty percent of the Fund's liquidation value, adjusted for unrealized profits and losses on positions directly entered into by the Fund."

with the following:

"\$100,000, which is fifty percent of the liquidation value of that portion of the Fund (\$200,000) used to trade commodity interests directly."

I appreciate this opportunity to comment and look forward to the final rules.

David E. Aron  
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