



FUTURES INDUSTRY ASSOCIATION

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Ms. Jean A. Webb
Secretary to the Commission
Commodity Futures Trading Commission
1155 21ST Street NW
Washington DC 20581

COMMENT

Re: Advanced Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions

Dear Ms. Webb:

The Futures Industry Association ("FIA")¹ is pleased to submit this response to the request of the Commodity Futures Trading Commission (the "Commission") for comments on the National Futures Association proposal ("NFA Proposal"), the Managed Funds Association proposal ("MFA Proposal") and the No-Action Relief contained in the Commission's Advanced Notice of Proposed Rulemaking on CPO and CTA Registration Exemptions as published in the Federal Register on November 13, 2002 ("ANPR").

FIA applauds the Commission's action in publishing the MFA and NFA Proposals and in creating the interim No-Action Relief. FIA believes that adoption of useful exemptions from registration for CPOs and additional exemptions for CTAs will have beneficial effects on the exchange-traded futures markets. Most importantly, these exemptions should encourage the participation of collective investment vehicles in these markets, thereby enhancing liquidity for all users.

Moreover, adoption of such exemptions will ease a burden previously placed on futures commission merchants ("FCMs"). National Futures Association By-law 1101 generally prohibits members from carrying accounts, accepting orders or handling transactions for persons who should be, but are not, registered with the Commission. Pursuant to this By-law, an FCM cannot carry an account for a CPO who should be, but is not, registered as such. Prior to ANPR, no useful exemption from CPO registration

¹ FIA is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 40 of the largest futures commission merchants ("FCMs") in the United States. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States contract markets.

existed for operators of privately offered collective investments vehicles. As a result, an FCM was prohibited from taking the accounts of such collective investment vehicles unless the CPO was registered with the Commission. As a practical result in many cases, the FCM, after explaining to the CPO the Commission registration requirements, then had to deny the CPO access to the markets if it was not registered. Adoption of the No-Action Relief and the proposals in ANPR may not obviate the practical need for the FCM to explain Commission requirements. However, in many cases, the result of such explanation may be an exemption for the CPO, a new account for the FCM and additional liquidity for the exchange-traded markets².

In addition to FIA's general support for the proposals and relief in ANPR, FIA has the following specific recommendations. These recommendations assume that the Commission will adopt both the NFA Proposal and the MFA Proposal.

1. Final rule 4.13 should be conformed to the final version of rule 4.5. Rule 4.13 was modeled on current rule 4.5. Rule 4.5 is proposed to be amended to add an alternative limitation on speculative use of futures and options on futures. Therefore, whatever alternative limitation on speculative use of futures and options and futures is adopted for rule 4.5 should also be adopted for rule 4.13.

2. Rule 4.13 as proposed should be amended to delete the word "prospective" in 4.13(a)(3)(iv) or otherwise to clarify that the exemption is available to the CPO of an existing pool that meets the requirements of the rule, files the required statement and becomes exempt from registration. Thus, the rule would specifically permit "conversion" of the status of the CPO from registered to exempt.

3. Rule 4.14(a)(10)(i)(A) as proposed should be amended to include pools that are operated by CPOs excluded from the definition of CPO or exempt from registration under any Commission exemption. Thus, a CTA meeting the other criteria of rule 4.14 could be exempt from registration if its clients were 4.5 entities or other pools the operators of which are exempt from Commission registration under 4.13, 4.9 or some other exemption from the Commission.

4. The definition of "qualified eligible person" ("QEP") in rule 4.7 currently includes an "exempt pool", meaning a pool for which exemption has been claimed under rule 4.7. The Commission should consider whether rule 4.7 should be amended so that the definition of QEP includes a pool, the operator of which has claimed the exemption available in rule 4.9 or rule 4.13. In this way, a pool with respect to which a claim of exemption under rule 4.9 or rule 4.13 has been made could more easily invest in a pool with a Commission-registered CPO.

FIA appreciates this opportunity to comment on the proposed exemptions from registration with the Commission for CPOs and CTAs. If the Commission has any

² In order to maximize the market benefits that may result from these exemptions, the Commission should guard against disadvantaging by adoption or interpretation of other Commission rules CPOs or CTAs that claim these exemptions or the FCMs that carry their accounts. For example, CTAs exempt from registration should be included in any relief provided with respect to allocation of bunched orders.

questions concerning the comments in this letter, please contact Barbara Wierzynski, FIA's General Counsel, at (202) 466-5460.

Sincerely,

John M. Damgard
President