

**CFTC letter No. 02-107**  
**October 30, 2002**  
**Interpretation**  
**Division of Clearing and Intermediary Oversight**

Re: Rule 4.5 Exclusion from the CPO Definition

Dear:

This is in response to your letter dated July 18, 2002, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By your letter you request that the Division confirm it will not recommend that the Commission commence enforcement action against “X”, “Y”, and certain clients of “X” and “Y” (the “Clients”) if, in lieu of complying with the current non-hedge trading criterion of Rule 4.5<sup>[1]</sup>, “X” and “Y” manage the assets of the Clients in compliance with an alternative non-hedge trading criterion as described in your letter (the “notional test”).

On October 22, 2002, the Commission issued a proposed amendment to Rule 4.5 and also took a “no-action” position to permit the use of the proposed criterion – *i.e.*, the notional test – pending final action on its proposed amendment to Rule 4.5.<sup>[2]</sup> Accordingly, action by the Division on your July 18, 2002 letter is no longer necessary.

If you have any questions concerning this letter, please contact me or Barbara S. Gold, Associate Director, at (202) 418-5430.

Very truly yours,

Jane Kang Thorpe  
Director

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<sup>[1]</sup> 17 C.F.R. § 4.5(c)(2)(i) (2002).

<sup>[2]</sup> 67 Fed. Reg. 65743 (October 28, 2002). The comment period on the proposal expires December 12, 2002.