



INVESTMENT COMPANY INSTITUTE

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COMMENT

December 11, 2002

Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Proposed Amendment to
Rule 4.5 For Non-Hedge Activity

Dear Ms. Webb:

The Investment Company Institute⁷ appreciates having the opportunity to comment on the amendments the Commodity Futures Trading Commission (CFTC) has proposed to Rule 4.5 under the Commodity Exchange Act (CEA). As proposed, Rule 4.5, which provides an exclusion from the definition of "commodity pool operator" (CPO) to certain regulated entities including registered investment companies, would be amended to permit an entity to qualify for the exclusion under a new alternative test. In particular, this alternative test would exclude from the definition of CPO any entity that represents that the aggregate notional value of non-hedge commodity interest positions does not exceed the liquidation value of the entity's portfolio. This revision is intended to address concerns that the current restrictions in the rule may unduly limit the use of security futures and stock index futures by these regulated entities.

The Institute supports the proposed amendments. We commend the CFTC for recognizing the need to update Rule 4.5 to accommodate investments in security futures and stock index futures by regulated entities, such as registered investment companies, without subjecting them to additional, and possibly conflicting or duplicative, regulation under the CEA. We believe the amendments will provide registered investment companies additional flexibility to invest in these products where such investments are consistent with their investment objectives and policies, which should benefit investment company shareholders. As such we believe this proposal is consistent with the provisions of the Commodity Futures Modernization Act that seek to strike an appropriate balance between the regulatory roles of the CFTC and the U.S. Securities and Exchange Commission in the regulation of futures on securities products.

Sincerely,

Tamara K. Salmon
Senior Associate Counsel

⁷ The Investment Company Institute is the national association of the American investment company industry. Its membership includes 8,949 open-end investment companies ("mutual funds"), 527 closed-end investment companies and 6 sponsors of unit investment trusts. Its mutual fund members have assets of about \$6.045 trillion, accounting for approximately 95% of total industry assets, and 90.2 million individual shareholders.