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January, 2003

COMMENT

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

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

Dear Ms. Webb:

The Committee on Futures Regulation of the Association of the Bar of the City of New York ("Association") is pleased to submit the following comments on the above referenced proposed rule (the "Proposal"), concerning the proposed addition of an alternative limitation on the non-hedging trading of qualifying entities who claim relief under Commission Rule 4.5

The Association is an organization of over 22,000 lawyers. Most of its members practice in the New York City area. However, the Association has members in 48 states and 51 countries. The Committee consists of attorneys knowledgeable in the regulation of futures contracts and other derivative instruments, and has a history of publishing reports analyzing regulatory issues critical to the futures industry and related activities. The Committee appreciates the opportunity to comment on the Proposal and stands ready to assist the Commission and its staff if further clarification is required on any of the points raised in this letter.

The Committee supports the Proposal and believes that it is an appropriate regulatory response to the advent of security futures and the development of various trading strategies since Rule 4.5 was first adopted. The Committee supports retention of the existing "Five Percent Test" and the adoption of the "Notional Test," as those terms are employed in the Proposal.

The Committee also believes that the Commission should clarify the content of the representation that a qualifying entity is required to make concerning the Five Percent

Jean A. Webb, Secretary

January 7, 2003

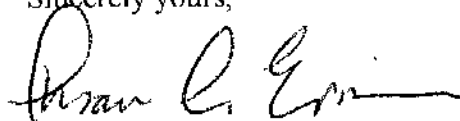
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Test or the Notional Test. Currently, the Proposal states, by the use of "or" to link Rule 4.5(c)(2)(i)(A) and (B), that a qualifying entity may represent that it either satisfies the Five Percent Test or the Notional Test. It is unclear from the language of the Proposal and the proposed representation therein, however, whether an eligible person must specify which test it elects to satisfy and if it may state that it will satisfy one of the two tests at all times, so that permanent election of one alternative is not required. The Committee believes that the usefulness of Rule 4.5 and of the proposed alternative would be expanded if qualifying entities could make such a general representation. The point could be addressed by modifying the last line of (i) to read "...a qualifying entity may represent that at all times:...", with the two tests following as in the Proposal.

In addition to that proposed change to the language in proposed Rule 4.5(c)(2)(i), the Committee believes that this point should also be addressed in the adopting release by including a sentence such as "The qualifying entity does not have to specify in its notice of eligibility which of the two criteria it intends to satisfy, and may, after making a general representation in its notice that it will satisfy one or the other of the tests at all times, satisfy the Five Percent Test at certain times and the Notional Test at others in its actual trading operations."

The Committee appreciates the opportunity to comment on the Proposal and stands ready to assist the Commission and its staff if further clarification is required on any of the points raised in this letter.

Sincerely yours,



Susan C. Ervin

Association of the Bar of the City of New York
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** Chair of Subcommittee who drafted this letter of comments.

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