

MEMO# 28590

December 17, 2014

Draft Sample Disclosure on Joint Transactions - Your Comments Requested by January 5; NFA Proposes Amendments to Compliance Rule 2-45, Holds Board Elections

[28590]

December 17, 2014

TO: REGISTERED FUND CPO ADVISORY COMMITTEE
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 88-14 RE: DRAFT SAMPLE DISCLOSURE ON JOINT TRANSACTIONS - YOUR COMMENTS REQUESTED BY JANUARY 5; NFA PROPOSES AMENDMENTS TO COMPLIANCE RULE 2-45, HOLDS BOARD ELECTIONS

This memorandum seeks your comments on sample disclosure that ICI wishes to propose to the CFTC staff, summarizes a recent NFA development, and reminds you about current NFA board elections.

Sample Disclosure on Joint Transactions

As you know, we recently held a member call to discuss providing the staff of the Commodity Futures Trading Commission ("CFTC") with sample disclosure regarding exemptive or no-action relief that certain commodity pool operators ("CPOs") of registered investment companies ("registered funds") have received from the Securities and Exchange Commission ("SEC") or its staff with respect to transactions that may implicate CFTC Regulation 4.20(c). You may recall that in December 2012 and September 2013, ICI requested confirmation from the CFTC staff that transactions and arrangements permitted by exemptive orders and no-action letters issued by the SEC and its staff under Section 17 of the Investment Company Act of 1940 ("1940 Act") would not be deemed to implicate CFTC Regulation 4.20(c), which prohibits commingling of property by a CPO. [\[1\]](#) The CFTC staff has indicated that it may not be comfortable providing the confirmation ICI requested unless registered funds that have received applicable SEC exemptive orders, or are relying on applicable SEC no-action letters, provide some disclosure to shareholders regarding the SEC relief on which they are relying. In order to address the staff's concerns, we have attached for your review draft sample disclosure that could be tailored by registered funds for their use in their prospectus or statement of additional information. Please provide your

written comments on the attached draft disclosure by Monday, January 5, 2015 to sarah.bessin@ici.org and rgraham@ici.org.

Proposed Amendments to NFA Compliance Rule 2-45

The National Futures Association (“NFA”) recently proposed amendments to its Compliance Rule 2-45, which prohibits a CPO from permitting a commodity pool to use any means to make a direct or indirect loan or advance of pool assets to the CPO or any other affiliated person or entity. In response to the requests of ICI and others, NFA amended the Interpretive Notice to NFA Compliance Rule 2-45 in September 2013 to, among other things, exclude from the rule’s prohibitions transactions permitted by the 1940 Act and its exemptive rules, and exemptive orders and no-action letters issued by the SEC and its staff under Sections 17 and 57 of the 1940 Act. NFA now proposes to further amend the Interpretive Notice to NFA Compliance Rule 2-45 to permit two additional types of transactions made between a commodity pool and a wholly-owned subsidiary of the pool generally for tax efficiency purposes. [2] These transactions generally would not be permitted under the 1940 Act for registered funds. The existing exclusions under Compliance Rule 2-45 for registered fund transactions are not proposed to be amended. The first type of transaction involves causing a commodity pool to capitalize a wholly-owned subsidiary with debt rather than equity to facilitate trading in foreign markets. The second type of transaction involves capitalizing a wholly-owned subsidiary of a commodity pool using loans from the commodity pool, which the subsidiary would then utilize to capitalize a registered broker-dealer or registered futures commission merchant formed solely to provide clearing and other prime brokerage services to the pool or pools that made the loan. These proposed exclusions are subject to strict conditions. Consistent with the Commodity Exchange Act, NFA plans to make the proposed amendments effective ten days after receipt of the proposed amendments.

NFA Elections

The following is an excerpt from NFA Notice to Members I-14-35 (December 12, 2014): [3]

This year, NFA has two contested elections to elect representatives in the CPO/CTA category on NFA’s Board of Directors. . . . NFA is a membership organization and each Member’s vote is very important.

Each NFA Member firm that has designated its primary voting category as either a CPO or a CTA can cast a ballot to vote for one individual only running in each election to serve on NFA’s Board. All ballots must be completed and mailed to Grant Thornton LLC in the postage-paid, pre-addressed envelope that is enclosed. The ballot must be received by Grant Thornton no later than Tuesday, January 20, 2015. Ballots that are either received after January 20, 2015 or submitted in an envelope other than the one provided will be considered void.

. . .

If you do not have the return envelope or have any questions, please contact Christine Makino at (312) 781-1391 or Margaret Vandermyde at (312) 781-1435. [4]

BOARD OF DIRECTORS
CPO/CTA CATEGORY

VOTE FOR NO MORE THAN ONE INDIVIDUAL IN EACH ELECTION

Vote for One Individual Only --

Brendan R. Kalb, Managing Director & General Counsel, AQR Capital Management, LLC

John L. Roe, President, Roe Capital Management, Inc.

Vote for One Individual Only --

George R. Berbeco, President, The Devon Group, Inc.

Bernard H. Denis, III, Director, Head of Compliance (US), Winton Capital Management, Ltd.

James L. Koutoulas, Chief Executive Officer, Typhon Capital Management LLC

We believe that it would benefit ICI and its members tremendously to have Brendan Kalb, an ICI member, as an industry representative on the NFA Board of Directors, in order to get in front of certain issues affecting the registered fund industry. AQR has been actively involved in ICI's CPO and CTA efforts for many years. Attached for your consideration is Brendan's candidate statement. The deadline for Grant Thornton to receive all votes is January 20.

Sarah A. Bessin
Senior Counsel Rachel H. Graham
Senior Associate Counsel
[Attachment](#)

endnotes

[1] See Letter to Mr. Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, from Karrie McMillan, General Counsel, Investment Company Institute, dated September 16, 2013, available at <http://www.ici.org/pdf/27569.pdf>; Letter to Mr. Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, from Karrie McMillan, General Counsel, Investment Company Institute, dated December 21, 2012.

[2] See National Futures Association: Prohibition of Loans by Commodity Pools to CPOs and Related Entities – Amendments to the Interpretive Notice to NFA Compliance Rule 2-45 (Dec. 12, 2014), available at http://www.nfa.futures.org/news/PDF/CFTC/InterpNotc_CR2-45_ProhibitLoansByCPOsRelatedEntities_112014.pdf.

[3] Available at: <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4509>.

[4] Members, this means that if you did not receive a ballot from NFA in the mail with a postage-paid envelope pre-addressed to Grant Thornton, you must contact Christine Makino or Margaret Vandermyde of NFA to get the envelope to submit the ballot (although the ballot is available through the link included in note 3, above).

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