

MEMO# 25971

March 9, 2012

Instruments Captured by Amended CFTC Rule 4.5

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TO: ACCOUNTING/TREASURERS COMMITTEE No. 6-12 RE: INSTRUMENTS CAPTURED BY AMENDED CFTC RULE 4.5

At its recent meeting the Accounting/Treasurers Committee discussed the amendments to CFTC Rule 4.5. The amendments will significantly limit the ability of advisers to SEC registered investment companies to rely on the rule's exclusion from CFTC regulation, and may require funds that invest in commodity futures, commodity options, and swaps to register as CPOs with the CFTC. The Committee discussed how "commodity futures" may include instruments such as broad-based stock index futures, security futures, and financial futures contracts. Attached is a document that provides some guidance on the types of financial instruments captured within the definitions of "commodity futures," "commodity option contracts," and "swaps" for purposes of applying the trading and marketing tests in amended Rule 4.5. [\[1\]](#)

The Committee also discussed the periodic reporting requirements for commodity pools. [\[2\]](#) Generally commodity pools must provide investors with a report containing a statement of operations and a statement of changes in net assets on a monthly basis. These monthly reports may be unaudited and must be provided to investors not more than 30 days after month end. The statement of operations must characterize brokerage commissions on portfolio transactions as an expense. The monthly reports must include an oath or affirmation made by a representative duly authorized to bind the pool operator that the information is accurate and complete.

Gregory M. Smith
Director - Operations/Compliance & Fund Accounting

[Attachment](#)

endnotes

[1] For a more complete description of the trading and marketing tests in amended Rule 4.5 see Accounting/Treasurers Members [Memorandum](#) No. 2-12 dated February 13, 2012 [25894].

[2] [CFTC Rule 4.22](#) describes the periodic reporting requirements for commodity pools.

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