

02-14
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Webb, Jean A.

From: secretary
Sent: Monday, November 18, 2002 11:09 AM
To: Webb, Jean A.; Colbert, Edward W.
Subject: FW: Interim no-action relief for CPOs and CTAs (67 Fed. Reg. 68788-89 (Nov 13, 2002))

COMMENT

-----Original Message-----

From: Philip McBride Johnson [mailto:PJOHNSON@skadden.com]
Sent: Monday, November 18, 2002 10:30 AM
To: secretary@cftc.gov
Cc: bholum@cftc.gov; jnewsome@cftc.gov; sbrown@cftc.gov; terickson@cftc.gov; wlukken@cftc.gov
Subject: Interim no-action relief for CPOs and CTAs (67 Fed. Reg. 68788-89 (Nov 13, 2002))

In regard to the above initiative, I would like to encourage the Commission to consider two refinements:

1. Allow 100% Equivalency For Hedging and Risk Management Positions

The economics of hedging are such that a decline in the value of the underlying assets (their "liquidation value") will produce a comparable increase in the value (the "aggregate notional value") of the hedges. This means that the 50% limit is likely to be breached, the no-action relief to be withdrawn, and registration to be required, because of activity that the Commodity Exchange Act identifies as "a national public interest." I am not aware of any occasion in the Commission's history where disincentives to hedging have been embraced by the agency.

2. Allow Relief Where Investee Pools Have Registered CPOs

The relief is available to the operator of a "fund of funds" as long as the CPO for each investee pool also has such relief. But in many cases the investee pools are operated by fully-registered CPOs. It seems incongruous to grant relief to the operator of a fund of funds using investee pools operated by unregistered CPOs (having no-action relief) but not when the latter are fully registered. An extension of the relief to allow no-action relief under the second scenario would eliminate this anomaly.

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