



Nasdaq Liffe Markets

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January 22, 2003

*By Electronic Mail and FedEx*

Ms. Jean A. Webb  
Secretary of the Commission  
Office of the Secretariat  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

COMMENT

Re: Advance Notice of Proposed Rulemaking on CPO and CTA Exemptions

Dear Ms. Webb:

Nasdaq Liffe Markets, LLC (NQLX), a contract market designated by the Commodity Futures Trading Commission (Commission or CFTC), appreciates the opportunity to comment on the CFTC's Advance Notice of Proposed Rulemaking (ANPR) on commodity pool operator (CPO) and commodity trading advisor (CTA) registration exemptions.

NQLX commends the CFTC for its proactive, pragmatic approach to the regulation of the managed funds industry, as evidenced in the ANPR. NQLX generally supports the several approaches to regulatory streamlining set forth in the ANPR and believes that a combination of these approaches should be carried forward in the final rules. We believe that the Commission has fashioned extremely timely and constructive no-action relief to facilitate the participation of managed funds in the new markets for security futures products established by NQLX and others. The optimal regulatory approach for the Commission to establish in final rules is, in our view, one that will preserve the relief granted in the no-action relief, while providing additional, appropriate relief with respect to funds offered only to qualifying investors. As discussed more fully below, this can be achieved by combining a modified version of the quantitative-based proposal of the National Futures Association (NFA Proposal) with the qualified investor-based proposal of the Managed Funds Association (MFA Proposal).

Prior to addressing the substance of the proposals, however, NQLX wishes to highlight the urgency of the marketplace need for a definitive and secure exemption from registration that will enable hedge fund managers to enter the security futures markets, subject to appropriate parameters, without CFTC registration and without concern that the regulatory ground rules of their participation may change in short order. The temporary no-action position incorporated in the ANPR, while an important step, does not provide

the permanence of a final rule, and a number of market participants have hesitated to enter the security futures markets without a more settled foundation for proceeding. Consequently, while we applaud the CFTC for its initiative and ingenuity in crafting the temporary no-action position, we urge the Commission to proceed expeditiously to provide a longer-term resolution that will quell the current uncertainty in the marketplace concerning the permanence of this regulatory relief.

#### Modification of the NFA Proposal to Incorporate Alternative Notional Value Standard

NQLX supports a combination of approaches set forth in the ANPR to address the evolution of derivatives markets and their use by asset managers. The NFA Proposal, as set forth in the ANPR, rests upon a quantitative measure of futures activity based upon the Rule 4.5 standard currently in existence, prior to modification as proposed by the Commission in its Federal Register release of October 28, 2002.<sup>1</sup> The latter standard, limiting permissible futures positions to those for which required margins do not exceed five percent of portfolio liquidation value, has, as the Commission has recently recognized, become unduly restrictive given the margin levels for some futures contracts. As the Commission noted in proposing revisions to Rule 4.5 to create a new, alternative notional value test, margin levels for certain stock index futures have come to significantly exceed five percent of current value and the required margin for security futures products is twenty percent of contract value, with actual margin levels imposed by brokers often exceeding forty percent. The existing Rule 4.5 test limiting futures contracts to a five percent ceiling on margin deposits will differentially constrain activity in stock index and security futures products as compared to other types of futures products. NQLX believes that the purpose of the Commission's proposed modification of Rule 4.5, to establish a notional value standard as an alternative to the five percent margin test, applies equally to the proposed exemption and that the addition of a notional value standard to the NFA proposal would produce important benefits.

By incorporating a notional value standard in the NFA proposal, the Commission would enable CPOs who are currently relying, or during the pendency of this rulemaking will rely, upon the temporary no-action set forth in the ANPR to continue to rely upon that relief after the adoption of final rules. The notional value measure proposed to be included in Rule 4.5 is an important innovation that takes into account the current margin environment for security futures and other equity-related futures products. It is a simple, logical and clear standard which industry participants understand and can readily apply. The Commission's proposed one hundred percent notional value standard for Rule 4.5 qualifying entities would provide a uniform benchmark identifying regulatory relief for funds that have at least equivalent assets in non-futures investments. Further, employing the same or similar standards in Rule 4.5 and in the CPO exemption will provide a clear

<sup>1</sup> 67 FR 65743 (October 28, 2002).

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and consistent standard for all investment vehicles and will simplify the Commission's regulatory approach to collective investment vehicles.

#### The MFA Proposal

NQLX also supports the MFA Proposal as a means of reducing regulatory burdens upon the operators of commodity pools offered exclusively to qualified eligible persons (QEPs) and other highly-accredited investors. Because the MFA's proposed exemption focuses upon pools offered only to qualifying investors, it appropriately includes no limitation upon the amount of futures trading in which the exempt pool may engage. Given the MFA Proposal's particularized focus upon pools whose investors can be presumed to have the sophistication and resources to protect themselves, it is appropriate that the pools subject to this exemption not be restricted in their use of futures.

NQLX therefore believes that a combination of the NFA and MFA approaches, which focus upon different aspects of the funds industry -- one with limited futures involvement (NFA) and the other with highly-qualified investors (MFA) -- represents the most constructive and effective approach to the evolving managed funds marketplace.

#### CTA Issues

NQLX believes that the same compelling needs for regulatory relief which support the CPO exemption proposals discussed above also support comparable relief for CTAs advising managed accounts. Particularly in the context of CTAs advising managed accounts that would satisfy the quantitative restrictions of the NFA proposal or the no-action relief, the case for exemption is at least as compelling as for CTAs advising pools subject to the same quantitative restrictions.

NQLX appreciates the Commission's commitment to facilitating the participation of the managed funds industry in the futures markets and enthusiastically supports this rulemaking initiative. NQLX stands ready to provide any relevant assistance to the Commission and its staff in this proceeding.

Sincerely,



David Harris  
Executive Vice President  
General Counsel

**NQLX**

Nasdaq Liffe Markets