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April 12, 2011

BY EMAIL

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038-AD30 – Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations

Dear Mr. Stawick:

We are pleased to provide comments on the above-referenced amendments (the "Proposed Amendments") to the compliance obligations of commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") under the Commodity Exchange Act (the "CEA"), as proposed by the Commodity Futures Trading Commission (the "Commission").

The Proposed Amendments include, in relevant part, the repeal of (i) the exemption available under Rule 4.13(a)(3) for persons that trade futures or options on futures within specified limits and whose commodity pool interests are exempt from registration under the Securities Act of 1933, as amended (the "Securities Act") and are only offered to persons meeting specified financial sophistication standards and (ii) the exemption available under Rule 4.13(a)(4) for persons whose commodity pool interests are exempt from registration under the Securities Act and whose commodity pools are only participated in by persons reasonably believed to meet specified levels of financial sophistication and/or net worth. We represent several family offices that have been exempt from registration under the exemptions provided under Rules 4.13(a)(3) and 4.13(a)(4). From that perspective, we make the following comments for your consideration in assessing possible changes to the Proposed Amendments.

1. *A Family Office Exemption is a Critical Component of any "Regulatory Alignment."* As the Commission states in the release setting forth the Proposed Amendments,

"Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations (Notice of proposed rulemaking)", Federal Register 76:29 (February 11, 2011), p. 7978, (the "Proposing Release"), a primary aim of the Proposed Amendments is to "bring the Commission's CPO and CTA regulatory structure into alignment with the stated purposes" of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and "encourage more congruent and consistent regulation of similarly situated entities among Federal financial regulatory agencies." We applaud this goal and agree with the Commission that the Proposed Amendments, in general, make progress toward such consistency. However, there is one area in which the Proposed Amendments depart significantly from the tenor of the Dodd-Frank Act – the lack of a "family office" exemption. Far from compelling the elimination of all private registration exemptions, the Dodd-Frank Act recognizes the need to weigh regulatory goals against countervailing considerations, including those of family autonomy and privacy. This is why Section 409 of the Dodd-Frank Act mandates the creation of a new exclusion from the Investment Advisers Act of 1940 (the "Advisers Act") in section 202(a)(11)(G) thereof, under which "family offices," a term to be defined by the Securities and Exchange Commission (the "SEC"), will not be considered investment advisers subject to the Advisers Act.

Congress was clear about the reasoning behind this exemption: "the Advisers Act is not designed to regulate the interactions of family members, and registration would unnecessarily intrude on the privacy of the family involved" (*See* S. CONF. REP. NO. 111-176, at 38-39 (2010)). While this statement of principle was made in the context of securities law, there is no reason to believe that it applies with any less force to the commodities arena, and no indication that Congress is inclined toward the view that commodities regulation trumps family autonomy and privacy concerns in a way that securities regulation does not. Certainly there is nothing in the legislative history of Dodd-Frank that supports the inference that the Commission is required, expected or even encouraged to apply CTA and CPO regulation to family offices.

If the Commission is going to mirror the changes made by the SEC, we respectfully urge it to mirror those changes more precisely by including a family office exemption from CTA and CPO registration.

2. *Public Policy Considerations Favor a Family Office Exemption Under the CEA*. As noted in the Proposing Release, the Commission holds the discretionary power "to exempt from registration those persons who otherwise meet the criteria for registration . . . if, in the opinion of the Commission, there is no substantial public interest to be served by the registration" (p. 7977, citing H.R. Rep. No. 93-975, 93d Cong., 2d Sess. (1974), p. 20). We request nothing more than the reasonable and appropriate exercise of such discretionary power.

As the Commission itself acknowledges in the Proposing Release, "smaller operators, advisors, and pools are less likely to present significant risk to the stability of the commodities futures and derivatives markets and the financial market as a whole, and therefore, such entities should have a lesser compliance burden" (p. 7979). Family offices, with their relatively insignificant levels of market participation, are a subset of this category of "smaller operators" that pose a lower risk to market stability. Indeed, properly defined, a family office exemption will not extend to any person or entity that manages third party capital as a for-profit business and will be limited to entities which, in essence, manage assets exclusively for the families they serve. Family offices, as so defined, will not conduct activities that would be of interest to the Commission except in their role as customers of properly registered intermediaries, such as: CTAs who may advise a family office as well as other customers; CPOs in which the family office may invest; or futures commissions merchants ("FCMs") through which family offices may execute futures transactions. Thus, the position information relevant to family office holdings will be reported by the Commission registrants through which family offices execute their investment strategies. In light of this, there is no significant public policy interest in requiring *bona fide* family offices to register as CPOs or CTAs.

As noted above, the Dodd-Frank Act itself recognizes, in the context of securities registration, the public policy importance of preserving privacy and autonomy for family offices. It is noteworthy that the Commission acknowledges in the Proposing Release that registration would require CPOs and CTAs "to report a great deal of proprietary information that, if publicly disclosed, would cause substantial harm to the competitive positions of those entities" (p. 7982). The personal information of family offices that would be exposed through CPO or CTA registration is deserving of at least as much regulatory respect and deference as the potential competitive disadvantage cited in the Proposing Release.

Ultimately, adoption of the Proposed Amendments without a family office exemption could force many family offices to choose between the publicity and expense associated with registration and the utility associated with using the financial tools regulated by the Commission. That choice may put the fiduciaries for such family offices in an untenable position with respect to managing the family office in the best interests of the family. Indeed, given contemporary interpretations of the "prudent person" standard as applied to investment advisors, it may be impossible for such fiduciaries to manage family office portfolios without insisting on the expense of family office registration, if that is the only means by which their clients will have access to modern portfolio management techniques that can only be implemented through futures and derivatives regulated by the Commission. Although the rules as proposed would continue to exempt certain pools that deploy not more than ten percent (10%) of their net assets to commodities positions that are incidental to securities investment, that limitation may not be consistent with achieving the benefits of modern portfolio management or the most efficient way of achieving optimal allocations and risk profiles.

3. *Data Regarding Family Office Investment Activity Is Already Available*. The Proposing Release indicates that one purpose of the proposed registration requirements is to "facilitate a collection of data that will assist" the Financial Stability Oversight Council (the "FSOC"), "in the event that the FSOC requests and the Commission provides such data." As previously noted, family office investments in CPOs and directly in commodities will continue to be reported by CTAs, CPOs and FCMs and therefore be accessible to both the Commission and the FSOC. Thus, registration is unnecessary to gather position information from family offices.

In conclusion, if the Commission feels compelled to proceed rapidly to the promulgation of the Proposed Amendments, we urge that they be modified to include an exemption for those family offices that are exempted under the Advisors Act. There is no reason in principle why, in this area, the SEC and the Commission cannot continue the joint rule-making efforts commenced earlier this year in the proposed adoption of Form PF for joint reporting by private funds of their assets, liabilities and portfolio allocations. For both the SEC and the Commission, we believe that the family office exemption would provide the same opportunity to ensure the registration of private funds consistent with the regulatory mandates for both agencies as set forth by Congress, while preserving the privacy interests of *bona fide* family offices and avoiding the massive volume of requests to the Commission for specific exemptions and interpretive guidance that would accompany any failure to provide a reasonably broad exemption for family offices.

We appreciate the opportunity to comment on the Proposed Amendments. If you would like to discuss any of our comments, please call Thomas D. Balliett (212-715-9164) or Adam M. Busch (212-715-9231).

Very truly yours,

Thomas D. Balliett

cc: Adam M. Busch