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David A. Stawick
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: CFTC Proposed Rulemaking in respect of CFTC Regulations 4.13(a)(3) and (a)(4)

Dear Mr. Stawick:

Dechert LLP welcomes the opportunity to submit our comments in response to a notice of proposed rulemaking ("Proposal") submitted by the Commodity Futures Trading Commission ("CFTC") on January 26, 2011.[1] The Proposal seeks to rescind the exemptions from registration widely used by private investment funds ("Private Funds") for commodity pool operators ("CPOs") offering commodity pools to sophisticated, creditworthy, and/or otherwise regulated investors under CFTC Regulations 4.13(a)(3) and (a)(4) ("Private Fund Exemptions"), and further expands existing compliance obligations for certain CPOs and commodity trading advisors ("CTAs").

For the reasons discussed below, we are of the view that the rescission of the Private Fund Exemptions will have an extremely negative impact on a large segment of the asset management industry that is, or will be**,** otherwise adequately regulated following enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), and will discourage the use of the commodity interest markets by many Private Funds. However, in the event that the CFTC determines to rescind or narrow the Private Fund Exemptions, careful consideration should be taken to avoid duplicative and potentially conflicting regulations of the CFTC and Securities and Exchange Commission ("SEC") and to minimize unnecessary disruptions of participant operations and markets and additional costs to commodity market participants.

[1] Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 FR 7976 (Feb. 11, 2011).

**Background**

The CFTC adopted the Private Fund Exemptions in 2003 for the purposes of reducing regulatory barriers applicable to professional investment managers seeking to use exchange-traded futures, options on futures and commodity options for their qualified investors. Under the current regulations, a person is exempt from registration as a CPO with respect to a pool if interests in the pool are exempt from registration under the Securities Act of 1933, as amended ("Securities Act"), are not marketed to the public in the United States, and where:

(i) the pool's use of commodity interests is very limited,[2] and the interests are offered only to sophisticated investors referred to as "qualified eligible persons" ("QEPs"), as defined in CFTC Regulation 4.7(a)(2), "accredited investors" as defined in Regulation D under the Securities Act and "knowledgeable employees" as defined under the Investment Company Act of 1940, as amended ("Investment Company Act"), ("Rule 4.13(a)(3)" or "Limited Trading Exemption"); or

(ii) the pool's use of commodity interests is not limited, but the operator of the pool reasonably believes that the pool participants are all members of certain categories of QEPs ("Rule 4.13(a)(4)" or "Sophisticated Investor Exemption").[3] The Sophisticated Investor Exemption does not impose any limitations on a pool's trading in commodity interests, presumably because the "qualified purchaser" standard for natural persons that is generally applicable to Rule 4.13(a)(4) pool is higher than the accredited investor standard that is generally applicable to Rule 4.13(a)(3) pools.[4]

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[2] In this instance, "very limited" means either that: (a) the pool's aggregate initial margin and premiums attributable to commodity interests do not exceed 5% of the liquidation value of the pool's portfolio after taking into account unrealized profits and unrealized losses on any such positions it has entered into, provided that, in the case of an option that is in-the-money at the time of purchase, the in-the-money amount may be excluded in computing such 5%; or (b) the aggregate net notional value of such positions does not exceed 100% of the liquidation value of the pool's portfolio after taking into account unrealized profits and unrealized losses on any such positions it has entered into. Both tests do not differentiate as to whether the positions are held for *bona fide* hedging purposes or otherwise. 17 C.F.R. § 4.13(a)(3)(ii).

[3] "Non-United States persons" are eligible to participate in pools without limit because they are QEPs under § 4.7(a)(2)(xi).

[4] "Qualified purchasers," as defined in Section 2(a)(51)(A) of the Investment Company Act, are QEPs under § 4.7(a)(2)(vi).

Additionally, CFTC Regulation 4.14(a)(8)(i)(D) ("CTA Exemption")[5] exempts from CTA registration Private Fund advisers that provide commodity advice to pools that have claimed an exemption from registration under the Private Fund Exemptions. A Private Fund adviser may claim this exemption if it is registered as an investment adviser with the SEC or one or more states or is excluded or exempt from such registration, provided that its commodity interest trading advice is "solely incidental" to its securities advice or other investment advice to Rule 4.13(a)(3) or Rule 4.13(a)(4) funds, and provided further that it does not hold itself out as a CTA.

Since the adoption of the Private Fund Exemptions, many sponsors of and advisers to Private Funds, including managers of hedge funds, private equity funds and other pooled investment vehicles that invest in commodity interests to hedge or as a complement to their funds' securities portfolios, have relied on one or both of the Private Fund Exemptions.[6] The Private Fund Exemptions have been successful in achieving their stated objective: "to encourage and facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit to all market participants of increased liquidity."[7] Increased Private Fund purchases of commodity interests in lieu of privately negotiated derivatives have enhanced fund transparency, lowered transaction costs, alleviated concerns over counterparty credit risk, and increased participation in and liquidity of the exchange-traded commodity markets. Moreover, there is no suggestion in the Proposal or otherwise that the Private Fund Exemptions were a significant contributing factor to the 2008 financial crisis; and Dodd-Frank did not address the Private Fund Exemptions or mandate any changes to them.

**Proposal**

The Proposal seeks to completely rescind both Rule 4.13(a)(3) and Rule 4.13(a)(4). If the Proposal were to be adopted, many sponsors of and advisers to Section 3(c)(1) and Section 3(c)(7) funds[8] and other private pools that invest in commodity interests, including any

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[5] Additionally, under CFTC Regulation 4.14(a)(5), there is an exemption for a manager that is also exempt from registration as a CPO and provides commodity trading advice directed solely to, and for the sole use of, the pools which it is so exempt.

[6] The CFTC states in the Proposal that over 10,000 exemption notices have been filed under the Private Fund Exemptions since 2003.

[7] Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors, 68 Fed. Reg. 12622 (March 17, 2003) ("2003 Release").

[8] Such funds rely on exclusions from investment company status under the Investment Company Act. 15 U.S.C.A. § 80a-3(c)(1) and § 80a-3(c)(7).

commodity for future delivery, security futures product, commodity option or swap (after July 21, 2011)[9] (collectively, "commodity interests"), would have to register as CPOs with the CFTC and become members of the National Futures Association ("NFA") or claim a different exemption from registration as CPOs, if available. This would be the case even if a fund is investing in a limited amount of commodity interests and the manager is registered with the SEC as an investment adviser. As a registered CPO, a fund manager must comply with all applicable CFTC and NFA rules, including disclosure, reporting, recordkeeping, advertising and business conduct requirements, and be subject to periodic examinations by NFA staff. Additionally, a CPO's personnel are subject to registration, fingerprinting, testing and training requirements. As proposed, registration as a CPO or CTA would be required notwithstanding that the investment manager also may be registered as an investment adviser with the SEC, one of the states, or a comparable non-U.S. regulatory authority. The Proposal, if adopted, could usher in sweeping changes to thousands of hedge funds, funds-of-funds, and other investment funds and managers that invest in the commodities markets, directly or indirectly, both within and outside of the United States. The Proposal does not provide for any lengthy transition period or include any grandfathering provision for existing funds currently relying on these exemptions.

The CFTC's stated rationales for the elimination of the Private Fund Exemptions are to: (i) bring the CPO and CTA regulatory structure into alignment with the stated purposes of Dodd-Frank; (ii) encourage consistent regulation among federal financial agencies; (iii) improve accountability and transparency of CPO and CTA activities; and (iv) facilitate collection of data to assist the Financial Stability Oversight Council ("FSOC"). The CFTC states in the Proposal that "a large group of market participants have fallen outside of the oversight of regulators" and that continuing to grant these exemptions "is outweighed by the [CFTC's] concerns of regulatory arbitrage." Specifically, the CFTC also appears to be attempting to harmonize its own regulations with those imposed on the SEC by Dodd-Frank, as Dodd-Frank requires many previously exempt investment advisers to Private Funds to register with the SEC or one or more state regulatory authorities.[10] These advisers will be required to complete one or more Schedules of Forms CPO-

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[9] Dodd-Frank amended the Commodity Exchange Act, as amended ("CEA"), to change the definition of CPO and make other amendments affecting CTAs so that the definitions of CPO and CTA, respectively, include persons operating or advising pools entering into swaps. Thus, once the Dodd-Frank amendments become effective in July 2011, Private Funds trading swaps will be captured under these regulations, in addition to Private Funds trading listed futures and options.

[10] The compliance dates for such registrations are expected to be deferred by the SEC until the first quarter of 2012. See Letter from Robert E. Plaze, Associate Director, SEC Division of Investment Management, to David Massey, President, North American Securities Administrators Association, (April 8, 2011) (*available* at http://www.sec.gov/rules/proposed/2010/ia-3110-letter-to-nasaa.pdf).

PQR (as discussed in more detail herein) and also report on Form ADV, as well as the proposed Form PF. Because, for many CTAs, the CTA Exemption relied upon is contingent on advising pools relying on the Private Fund Exemptions, the rescission of the Private Fund Exemptions would also require CTAs, absent another available exemption, to register with the NFA and comply with the reporting obligations under proposed Form CTA-PR (as discussed in more detail herein), as well as Form ADV and proposed Form PF if they are also required to register as investment advisers with the SEC.

The CFTC does not take into account the fact that the Proposal is not required by Dodd-Frank, or that many managers who would have to register with the CFTC if these exemptions are eliminated (i) will be registering as investment advisers with the SEC and (ii) are primarily engaged in the trading of instruments not subject to the CFTC's jurisdiction. Rather, the CFTC believes that it is necessary to rescind or modify the Private Fund Exemptions following recent economic turmoil to more effectively oversee market participants and manage market risk and to take regulatory action comparable to the SEC (which is required by Dodd-Frank). This has the effect of simply "piling on," rather than creating a well-conceived, efficient and non-duplicative regulatory regime.

This also comes at a time when all regulators will be under increasing budgetary and staffing pressures and will be expected to use the limited dollars available as wisely and effectively as possible. We submit that duplicative regulation would not be the most efficient use of scarce resources, is not necessary for the market integrity and protection posited by the CFTC, and would impose unnecessary and significant costs and burdens on industry participants and investors.

**Adverse Impact of Proposal**

Significant Costs

The Proposal does not provide data on the full costs and benefits of the Proposal. The Private Fund industry will not be able to compute the costs of the NFA changes until it knows how the CFTC will resolve such issues and problems. Fund managers required to register as CPOs and CTAs under the proposed rules in their current form will need to allocate significant time and resources to come into and maintain compliance with applicable requirements. These costs would be passed on to fund investors and would thus negatively impact returns to investors. They would also erect new barriers to entry and use of the markets, making the markets less competitive, efficient and liquid.

To become a registered CPO or CTA, a person is required to provide certain disclosures to regulators and investors required by Form 7-R, including identifying and background information, as well as information about disciplinary issues. In addition to registration of the firm as a CPO or CTA and NFA membership, all firm directors, executive officers, and 10% or greater owners must be disclosed on the firm's registration form as "principals," and all firm salespersons and their supervisors must be registered as "associated persons." These individuals will be required to provide background information required by Form 8-R, pass the National Commodity Futures Examination (Series 3), become associate members of the NFA and be subject to ongoing training. Subject to certain exceptions, associated persons and principals must file fingerprint cards with the NFA and are subject to extensive background checks by the NFA. Among other matters, operators and advisers of Private Funds will need to determine which of their personnel are subject to licensing and registration requirements and allow time for such persons to take and pass the applicable proficiency examinations and to complete the registration process.

Registered CPOs and CTAs must comply with various disclosure, reporting, record-keeping, advertising and business conduct obligations imposed by the CFTC under Part 4 of its rules and the NFA under its rules. Unless other exemptive relief is available, such as by reliance on CFTC Regulation 4.7 ("Rule 4.7") (discussed below), registered CPOs and CTAs are required to provide prospective pool participants and advisory clients, respectively, with a comprehensive disclosure document that includes specified information, such as the background of the CPO or CTA, risk factors, past trading/performance records and information related to fees and expenses. Disclosure documents must be reviewed by the NFA prior to their first use or amendment, and expire every nine months, after which time the document must be updated and re-submitted to the NFA. Drafting CFTC-compliant disclosure documents and revised fund offering documents will result in substantial legal costs to Private Funds and their investors and significant delays in new and ongoing fund offerings to investors.

CFTC Regulation 4.12(b), which only applies to registered CPOs, also provides limited exemptive relief from certain Part 4 requirements for certain CPOs if, among other things, the pools these CPOs operate do not commit more than 10% of the fair market value of their assets to establish commodity interest trading positions and they trade commodity interests in a manner solely incidental to their securities trading activities. The availability of this exemption will be substantially limited by the expansion of financial instruments that will now be considered commodity interests.

CPOs are also required to provide periodic financial reports and annual reports to pool participants. CPOs and CTAs must maintain and retain certain books and records, which are subject to inspection by regulators and, in some cases, investors and clients. Further, as a CFTC

registrant and NFA member, a registered CPO is required to comply with additional applicable CFTC and NFA rules and procedures, including, among others, the supervision of personnel, promotional material standards, ethics training of associated persons, and maintenance of disaster recovery/business continuity plans, and be subject to periodic compliance examinations by NFA staff.

Additionally, Rule 4.7, which only applies to registered CPOs and CTAs, provides such CPOs and CTAs limited exemptive relief from certain of the foregoing disclosure, recordkeeping, and reporting requirements, upon the filing of a claim of exemption with the NFA, if all of the participants in the CPO's pool or the CTA's advisory clients qualify as QEPs. The limited regulatory relief provided under Rule 4.7 would not extend to a vast number of sponsors and advisers to Private Funds who have claimed the Limited Trading Exemption from CFTC registration and regulation because such funds may have current investors who are not QEPs.

Dual SEC / CFTC Registration and Regulation / Lack of Added Value from Rule Change

Citing a lack of transparency and enhanced concerns regarding market stability, the CFTC has also proposed new CFTC Regulation 4.27, requiring registered CPOs and CTAs to file Forms CPO-PQR and CTA-PR, respectively. All registered CPOs and CTAs would be required to complete Schedule A of the proposed forms; Schedule B also would be required for CPOs and CTAs with assets under management of over $150 million; and Schedule C would be required for CPOs and CTAs with assets under management of over $1 billion. The proposed forms, if all schedules are required, encompass over 60 categories of questions and would collect from Private Fund operators and advisers information that is unprecedented in its scope and detail. Moreover, the information is largely duplicative of the information in proposed Form PF, which has been jointly proposed by the SEC and CFTC for SEC registered investment advisers who also are registered or required to be registered with the CFTC as a CPO or CTA. Form PF will allow the CFTC to provide systemic risk information to FSOC.[11] The foregoing reporting requirements are

[11] Form PF will require private investment funds to disclose certain financial information for use by the FSOC in monitoring systemic risk. Form PF will be required for registered investment advisers, although CPOs and CTAs registered with both the SEC and the CFTC will also need to complete this form. For these advisers, filing Form PF through the Form PF filing system would be a filing with both the SEC and CFTC. However, irrespective of their filing a Form PF with the SEC, such advisers would be required to file Schedule A of proposed Form CPO-PQR (for CPOs) or Schedule A of proposed Form CTA-PR (for CTAs). Additionally, to the extent that they operate or advise commodity pools that do not satisfy the definition of "private fund" under Dodd-Frank, such advisers would still be required to file proposed Form CPO-PQR (for CPOs) and proposed Form CTA-PR (for CTAs). Reporting by Investment Advisers to Private Funds and

in addition to dual registrants' reporting obligations under Form ADV and CFTC Forms 7-R and Form 8-R. All of these proposed reports require an unprecedented amount and detail of information that will impose great time and costs on the industry without commensurate benefits. Moreover, the regulatory infrastructure is presently insufficient to review, analyze and meaningfully use such data.

Dual registrants would be subject to periodic audits by both the SEC and NFA. Overlapping compliance requirements under SEC and CFTC regulations, certain of which would result in multiple and in some cases duplicative disclosure and substantive conflicts, will require dual registrants to again expend significant resources. For instance, registered CPOs are required to provide monthly reports to the participants in their pool containing certain required information under CFTC Regulation 4.22, whereas the recently amended "Custody Rule" under the Investment Advisers Act of 1940, as amended ("Advisers Act"), requires delivery to investors no less frequently than quarterly[12] (with significant differences in the information required to be included in such reports). In the case of a fund of funds, audited financial statement must be filed with the NFA within 90 days of a pool's fiscal year,[13] whereas under the Custody Rule the SEC affords 180 days. There are also numerous discrepancies between the CFTC and Advisers Act requirements relating to the presentation of performance information, such as the additional CFTC requirement that a commodity pool include the rate of return presented on a monthly basis for the last five years and year-to-date, and the CFTC requirement that a registered CPO disclose, in some cases, the performance of its other pools in the disclosure document for a pool, which would most likely violate the advertising requirements under the Advisers Act, as interpreted.[14]

Unintended Consequences

The breadth of pools and managers that would be affected by the CFTC's Proposal is much broader than necessary to achieve the CFTC's stated purpose. The Proposal would significantly impact a wide variety of Private Funds and managers in ways neither discussed nor anticipated in the Proposal, but that warrant careful consideration by Congress as well as the CFTC and the

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Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, SEC Rel. No. IA-3145 (Jan. 26, 2011).

[12] Custody of Funds or Securities of Clients by Investment Advisers, Rel. No. IA-2968 (Dec. 30, 2009).

[13] 17 C.F.R. § 4.22(c).

[14] 17 C.F.R. § 4.25; 17 C.F.R. § 275.206(4)-1.

SEC. The Proposal follows the re-definition of CPOs and CTAs under Dodd-Frank to include persons operating or advising pools entering into "swaps," as that term has itself been broadly expanded by Dodd Frank,[15] as well as commodity futures, commodity options, securities futures products, foreign currencies and certain leverage transactions, and will therefore compel many managers to decide whether to register with the NFA and comply with the vast array of applicable CFTC regulations or exit the commodities interest markets entirely. Furthermore, the Proposal does not differentiate between managers that are actively involved in trading commodity interests as part of their core investment strategy and those that trade such instruments to a limited extent or solely for hedging, risk management or other incidental purposes. As a result, many managers in the latter category of commodity traders, particularly those that have relied on the Limited Trading Exemption and cannot claim some level of regulatory relief under Rule 4.7, may have to cease trading commodity interests and resort to less efficient instruments for hedging purposes.

Prior to the adoption of the Private Fund Exemptions, managers who sought to hedge portfolio risks could do so by utilizing instruments other than exchange traded commodity interests and thereby avoid the need to register as a CPO and CTA. The dramatic expansion of CFTC jurisdiction over a broad range of instruments makes it far more difficult for a manager to effectively manage its investment strategy without taking on extensive CFTC-imposed obligations. Hence, not only would the Private Fund Exemptions be eliminated, but it will be far more difficult for a manager to trade without using instruments that are regulated by the CFTC, which in turn would impose dual regulation by both the CFTC and the SEC.

Finally, the Proposals may apply to a broad range of unintended investment managers in the United States and elsewhere. Under the CFTC registration requirements, non-U.S. managers operating an offshore fund with more than 10% ownership by U.S. investors may have to register with the CFTC; and many offshore fund directors may also be deemed principals and therefore subject to the licensing, registration, and proficiency examinations required of domestic managers, regardless of whether the funds which they supervise trade commodity interests to a

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15 Section 721 of Dodd-Frank defines "swaps" as any agreement, contract or transaction that (i) is a put, call, cap or similar option of any kind, (ii) provides for any purchase, sale, payment or delivery that is dependent on the occurrence or non-occurrence of any event related to a potential financial, economic or commercial consequence (excluding dividends on an equity security), (iii) is an instrument commonly know as an interest rate swap, foreign exchange swap, basis swap or credit default swap, among others, (iv) are commonly known to the trade as a swap, (v) meets the definition of "swap agreement" as defined in Section 206A of the Gramm-Leach-Bliley Act, or (vi) is any combination or permutation of items (i) – (v). Section 761 of Dodd-Frank defines "security-based swaps" as a swap (as defined in Section 721) that is based on a narrow-based security index, single security or loan, or the occurrence or non-occurrence of an event relating to the issuer of a security on a narrow-based security index.

significant degree. Operators and advisers to many funds-of-funds and other private funds that trade commodity interests indirectly through investments in one or more underlying funds may be subject to CPO and/or CTA registration as well, because the CFTC has taken the view that a fund which invests its assets in a commodity pool is itself a commodity pool.[16]

**Proposed Course of Action**

The CFTC cannot, and should not, set back the clock to 2003 as there are now many more funds pursuing a commodity-related strategy (in part because of the 2003 amendments that liberalized the applicable regulatory regime) and are doing so using both exchange-traded and OTC products. There are no historic or compelling reasons to do so, nor has it been mandated by Congress or market events. Moreover, in light of the strain on the CFTC's budget and staffing resulting from Dodd-Frank's new requirements, resources may not realistically be available for the CFTC, or even the NFA, to oversee this large new group of registrants in a manner to achieve the stated purposes. Finally, the Proposal is simply unnecessary and unwarranted regulation that will be costly. As a result, and for the reasons discussed herein, we strongly recommend that the CFTC maintain the Private Fund Exemptions in their current form and abandon the Proposal.

If the CFTC determines not to withdraw its Proposal, we recommend that the CFTC together with the SEC conduct a joint study and roundtable of all market participants to analyze the full impact and necessity of dual registration of CPOs and CTAs with the NFA and the SEC, and to consider regulatory exemptive relief for SEC registered investment advisers.

If the CFTC is unwilling to grant a blanket exemption for those CPOs and CTAs that are registered as investment advisers with the SEC, we recommend the imposition of additional CFTC registration and compliance requirements only on those dual-registered CPOs who are "primarily engaged" in trading commodity interests (*i.e.*, a standard akin to that currently applied to CTAs registered with the SEC or one or more states).

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16 CFTC Interpretive Letter No. 86-22, Comm. Fut. L. Rep. (CCH) 23,280 (Sept. 19, 1986). The CFTC staff had previously declined to issue a "not a pool" interpretation to a limited partnership that could, among other activities, commit up to 10% of its assets to investments in commodity pools. CFTC Interpretive Letter No. 86-25, Comm. Fut. L. Rep. (CCH) 22,452 (Dec. 6, 1984). The CFTC has, however, granted partial relief from certain of the disclosure requirements of CFTC Regulation § 4.21 where a pool allocated less than 10% of its assets to another commodity pool. CFTC Interpretive Letter No. 92-12, Comm. Fut. L. Rep. (CCH) 25,343 (July 28, 1992).

We also recommend that the CFTC provide regulatory exemptive relief to CPOs relying on the Limited Trading Exemption, which will otherwise be disproportionately impacted by the Proposal, as well as considering an increase in the threshold for that exemption, and reconsider the justification for not maintaining the Sophisticated Investor Exemption as comparable to the private offering exemptions under the securities laws to qualified investors whom both Congress and regulators have historically determined are not in need of many of the investment protections afforded to retail investors.[17] Moreover, any de minimis exemption from CPO registration should exclude swaps from the determination of the threshold for commodity interest trading. Margin requirements for both centrally cleared and uncleared swaps have not been established, and once established could vary significantly based on the type of swap. Similarly, it remains unclear as to whether the Department of the Treasury will exempt foreign exchange forwards and swaps from the swap definition, and if not exempt what margin requirements will govern these instruments.

Additionally, we recommend that the CFTC provide exemptive relief for managers of funds-of-funds, particularly those that are registered with the SEC. Funds-of-funds do not typically invest directly in commodity interests and they may have difficulty complying with any de minimis exemption adopted by the CFTC because they may be unable to obtain representations from or monitor compliance by managers of underlying funds. This may be a particular issue for managers of existing funds-of-funds that are already invested in underlying funds. Moreover, to the extent the managers of the underlying funds are required to provide information to the SEC or the CFTC, any reporting by the fund-of-funds manager would be duplicative.

Finally, we recommend that the CFTC take into account the unique role of non-U.S. managers and independent offshore fund directors in developing such alternatives.

If the Private Fund Exemptions are rescinded, a substantial amount of time must be provided as a transition period to allow for a potentially large number of firms, many of which are currently overwhelmed by the extensive compliance burdens being imposed on them under Dodd-Frank, to register as CPOs and/or CTAs, to prepare and pre-clear disclosure documents with the NFA, to arrange for associated persons to register and pass licensing examinations, and to develop and test their compliance programs. We believe that the likely extension of the registration and compliance deadlines imposed by Dodd-Frank for certain investment advisers until the first quarter of 2012 may provide the necessary opportunity to re-examine the details of the Proposal and its implications in greater depth.

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[17] E.g., Section 4(2) of the Securities Act; Regulation D under the Securities Act; Sections 3(c)(1) and 3(c)(7) of the Investment Company Act.

Thank you for considering our views on this important topic. If we can provide any additional information that may assist the CFTC and its Staff, please contact George J. Mazin at 212-698-3570 or george.mazin@dechert.com, M. Holland West at 212-698-3527 or holland.west@dechert.com or Matthew K. Kerfoot at 212-641-5694 or matthew.kerfoot@dechert.com.

Respectfully submitted,

/s/ George J. Mazin

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