

New York State Bar Association

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**Business Law Section
Securities Regulation Committee**

April 15, 2011

Commodity Futures Trading Commission
Three Lafayette Centre
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Email address: agswapsANPR@cftc.gov

Attention: Mr. David A. Stawick, Secretary

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

Ladies and Gentlemen:

The Securities Regulation Committee of the Business Law Section of the New York State Bar Association (the "Committee") appreciates the invitation from the Commodity Futures Trading Commission (the "CFTC" or the "Commission") to comment on its proposal to repeal certain exemptions provided in Rules 4.13 and 4.14 of the CFTC's regulations from registration as a Commodity Pool Operator (each, a "CPO") and a Commodity Trading Advisor (each, a "CTA") (the "Proposed Rules").¹

The Committee is composed of members of the New York State Bar Association, a principal part of whose practice is in securities regulation. The Committee includes lawyers in private practice and corporation law departments. A draft of this letter was reviewed by certain

¹ Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 Fed. Reg. 7,976 (Feb. 11, 2011).

members of the Committee. The views expressed in this letter are generally consistent with those of the majority of members who reviewed and commented on the letter in draft form. The views set forth in this letter, however, do not necessarily reflect the views of the organizations with which its members are associated, the New York State Bar Association or its Business Law Section.

Background

The CFTC, acting on its own initiative, without Congressional authority or direction, has proposed to repeal the CPO and CTA exemptions in Rules 4.13(a)(3), 4.13(a)(4) and 4.14(a)(8) of the CFTC's regulations (such exemptions, the "CFTC Exemptions"). The CFTC Exemptions were adopted by the CFTC in 2003 to "encourage and facilitate participation in the commodity interest markets [to] benefit . . . all market participants [by increasing] liquidity."²

Under Rule 4.13(a)(3), operators are exempt from registration as a CPO for a pool if (1) the pool's interests are exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), (2) the pool's interests are offered only to Qualified Eligible Persons under Rule 4.7 (including knowledgeable employees as defined in the Investment Company Act of 1940, as amended ("knowledgeable employees")) ("QEPs") or accredited investors as defined in Regulation D of the Securities Act ("accredited investors"), and (3) the pool's aggregate initial margin and premiums attributable to futures and options on futures do not exceed five percent of the liquidation value of the pool's portfolio, or the aggregate notional value of such positions does not exceed 100 percent of the liquidation value of the pool's portfolio.³

Under Rule 4.13(a)(4), operators are exempt from registration as a CPO for a pool if (1) the interests in the pool are exempt from registration under the Securities Act and (2) the operator reasonably believes that all participants are certain QEPs or accredited investors.⁴

Under Rule 4.14(a)(8)(i)(D), advisors are exempt from registration as a CTA for a pool if, among other requirements, the pool has an operator that qualifies for exemption from registration under Rules 4.13(a)(3) or 4.13(a)(4), as long as the advisor does not hold itself out as a CTA.⁵

The CFTC Exemptions evidence a sound regulatory decision by the CFTC that CPOs and CTAs for pools with participants of a certain level of sophistication (in the case of Rule

² Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues, 68 Fed. Reg. 47,221, 47,223 (Aug. 8, 2003).

³ See 17 C.F.R. § 4.13(a)(3) (2011).

⁴ See 17 C.F.R. § 4.13(a)(4) (2011).

⁵ See 17 C.F.R. § 4.14(a)(8) (2011).

4.13(a)(4)) or with participants of a certain level of sophistication and a minimal level of commodity trading activity (in the case of Rule 4.13(a)(3)) do not require extensive regulation. We continue to believe that these sophisticated participants do not need investor protection. The CFTC Exemptions have been relied upon by many operators and advisors. In fact, according to the CFTC, over 10,000 exemption notices have been filed since 2003 under Rules 4.13(a)(3) and 4.13(a)(4).⁶

The following discussion is divided into three parts. Part I sets out the Committee's comments regarding why the Commission should not repeal the CFTC Exemptions. Part II sets out the Committee's comments on those items for which the Commission specifically seeks comment in the proposing release. Part III sets out the Committee's comments as to why family offices should be granted an exemption from registration if the CFTC Exemptions are repealed. In sum, the Committee recommends regulatory restraint by the CFTC because we believe that the Commission's 2003 policy judgment in promulgating the CFTC Exemptions remains valid today. Accordingly, we respectfully request that the Commission (1) withdraw its proposed repeal of the CFTC Exemptions and (2) consider the other issues and recommendations presented in this letter prior to adoption of the final rules.

I. The CFTC Should Withdraw the Proposed Rules.

The CFTC states that the repeal of the CFTC Exemptions will align the CPO and CTA regulatory structure with the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Pub. L. 111-203 (2010)⁷ and help ensure consistent regulation of similarly situated entities among federal agencies in order to limit regulatory arbitrage.⁸ However, Dodd-Frank does not mandate this repeal. In fact, Dodd-Frank does not directly or indirectly indicate any Congressional intent to eliminate the CFTC Exemptions. Instead, Dodd-Frank eliminated the private adviser exemption under Section 203(b)(3) of the Investment Advisers Act of 1940, as amended (the "Advisers Act").⁹ There is no basis to require an investment adviser that is registered with the SEC and subject to extensive regulation under the Advisers Act to also be registered with the CFTC and subject to separate but similarly extensive regulation under the CEA, except in the case of CPOs and CTAs that are primarily engaged in the business of providing commodity trading advice, as discussed in Part II below. We believe that repeal of the CFTC Exemptions would result in duplicative, inconsistent and burdensome regulation rather than consistent regulation.

⁶ 76 Fed. Reg. at 7,986, n.69.

⁷ 76 Fed. Reg. at 7,985-86.

⁸ See 76 Fed. Reg. at 7,986.

⁹ Dodd-Frank § 403 (amending Advisers Act § 203(b)(3)).

The CFTC has also stated that the Proposed Rules would improve transparency and accountability with the CFTC of the activities of CPOs and CTAs. CPOs and CTAs are currently required to file notices of exemption with the CFTC in order to rely on the CFTC Exemptions. In connection with these notices, the CPOs and the CTAs provide the CFTC with their contact information.¹⁰ Should the CFTC require additional information from the exempt CPOs and CTAs, it has broad power to issue a special call for information pursuant to CFTC Rules 21.03 and 4.13(c)(1)(iii). In addition, the CFTC's large trader reporting requirements already provide for accountability and transparency for CPOs and CTAs with trading activity in excess of the volumes deemed to be large and therefore of potential systemic significance.¹¹ Dodd-Frank specifically proposed additional accountability and transparency for swaps trading activity by creating the 'major swap participant' and 'major securities-based swap participant' categories that will each require enhanced accountability and transparency for swap trading activity deemed large enough to have potential systemic significance.¹² However, Dodd-Frank sensibly did not propose additional accountability or transparency for pools with CPOs and CTAs eligible for the CFTC Exemptions. In other words, the CFTC has or will have (after Dodd-Frank, in the case of swaps) additional information from those participants with large futures or swaps positions and may currently obtain additional information from exempt CPOs and CTAs pursuant to its special call rights. As such, the CFTC has and will have sufficient data without the repeal of the CFTC Exemptions to achieve its goal of assisting the Financial Stability Oversight Council in collecting data. Indeed, the CFTC has not specified its need for information beyond what is already or will be available to it.

We finally note that the CFTC has not suggested that there have been any fraud or enforcement issues with CPOs or CTAs relying on these exemptions. The Committee believes there is no evidence that the Proposed Rules are addressing any identified systemic risk or otherwise serving any legitimate regulatory purpose. For the reasons stated above, we request that the CFTC withdraw the Proposed Rules in their entirety.

II. Specific Requests for Comment

a. Grandfathering.

The CFTC requests comment as to whether previously exempt entities should be grandfathered from registering as CPOs and CTAs. If the CFTC does not withdraw the Proposed Rules, we believe that previously exempt entities should be grandfathered. Thousands of CPOs and CTAs have structured their pools based on the CFTC Exemptions since 2003. It would not

¹⁰ CFTC Rule 4.13(b)(1)(i); CFTC Rule 4.14(a)(8)(iii)(A).

¹¹ Position Reports for Physical Commodity Swaps, 75 Fed. Reg. 67,258 (proposed Nov. 2, 2010) (proposing 17 C.F.R. Part 20).

¹² See Dodd-Frank § 731 (adding new CEA § 4s); and Dodd-Frank § 764 (adding new Exchange Act § 15F).

be reasonable to require those who have legitimately relied on the CFTC Exemptions to either restructure their pools or become subject to regulation as CPOs or CTAs.

b. Compliance Period.

The CFTC requests comment regarding the amount of time previously exempt entities who have filed notices of exemption will need to come into compliance with the proposed changes. If the CFTC does not provide the grandfathering relief we suggest, then we recommend that the CFTC provide exempt CPOs and CTAs with at least 12 months to come into compliance with the Proposed Rules.

There is currently a substantial burden on the entities involved in the futures and securities markets to review, comment upon and comply with the many new regulations being implemented under Dodd-Frank. This burden will continue for some time. Considering the constraints on the resources of all those involved, including the CFTC, and taking into account that the Proposed Rules are not mandated by Dodd-Frank, entities that would be required to register as CPOs and CTAs should be allowed sufficient time to either register with the CFTC or to restructure their businesses to comply with an alternative exemption.

c. New Notice Requirement.

The CFTC requests comment as to how to treat entities whose activities do not require registration but who may have filed a precautionary notice of exemption under the CFTC Exemptions. In particular, the CFTC is considering whether those entities should be required to file a new notice with the CFTC to avoid registration.

We do not believe that entities who are entitled to rely on another exemption or who are not otherwise required to register with the CFTC should be subject to an additional regulatory burden simply because the CFTC is amending its rules. Our view is that the CFTC should not propose any negative consequences for an entity that previously filed a notice of exemption but does not register after the rules are amended because it is not required to register.

d. De Minimis Exception.

The CFTC requests comment as to whether there should be a *de minimis* exemption under Rule 4.13, and, if so, what the *de minimis* threshold should be. We agree that there should be a *de minimis* exception. Unless there is a *de minimis* exception, the CFTC will be requiring the registration of entities who engage in minimal or potentially no commodity trading activity.¹³

¹³ A CPO is defined in relevant part to include a person engaged in a business and who in connection therewith solicits, accepts or receives funds, securities or property **for the purpose of trading in any commodity for future delivery**, whether or not it does so trade. CEA § 1(a)(5). The CFTC has stated that whether a particular entity is operated "for the purpose" of trading commodity interests and, therefore, is a commodity pool within the meaning and intent of Rule 4.10(d) depends on "an evaluation of all the facts relevant to the entity's (cont'd)

We do not believe that any regulatory purpose is served by requiring such entities to register with the CFTC.

We believe that a *de minimis* exception of up to a 20% liquidation value threshold (exclusive of any commodity trading for bona fide hedging purposes) would be appropriate and sufficient to take into account that Dodd-Frank has expanded the CFTC's jurisdiction over commodities to include swaps.

In addition, in order to avoid duplicative, overlapping and inconsistent regulation, we also suggest that CPOs who are registered with the SEC as investment advisers should not be required to also register with the CFTC unless they are primarily engaged in the business of trading commodity interests. Both the Advisers Act and the CEA currently have provisions to avoid duplicative and unnecessary registration, and we believe this principle should be extended to apply to CPOs.¹⁴

III. The CFTC Should Exempt Family Offices from Registration.

If the CFTC wishes to be consistent with Dodd-Frank, then, if it repeals the CFTC Exemptions, it should adopt an exemption from CPO and CTA registration for pool operators and advisors to family pools similar to the exemption proposed by Dodd-Frank for family office advisers under the Advisers Act. In repealing the exemption in Advisers Act Rule 203(b)(3) for investment advisers with fewer than 15 clients, Congress recognized that it would serve no useful regulatory purpose to require advisers providing advice to family offices to register as investment advisers.¹⁵ Accordingly, Dodd-Frank directed the SEC to adopt an exemption for family office advisers.

Family offices frequently provide a broad range of services, including investment management services, to members of an extended family and employ a number of different structures and arrangements to manage the family's wealth. Family offices do not provide services to the general public. Many family offices operate family investment vehicles that trade in commodity interests and may be considered to be CPOs or CTAs.

operation." Revision of Commodity Pool Operator and Commodity Trading Advisor Regulations, 46 Fed. Reg. 26,004, 26,006 (May 8, 1981).

¹⁴ See, e.g., CEA § 4m(3), which provides that the CPO and CTA registration requirements shall not apply to CTAs that are SEC-registered investment advisers whose business does not consist primarily of acting as a CTA and that does not act as a CTA to any pool engaged primarily in trading commodity interests (as amended by Dodd-Frank). See also Advisers Act § 203(b)(6), which provides that a CTA registered with the CFTC does not need to register as an investment adviser with the SEC unless it is primarily engaged in the business of providing investment advice covered by the Advisers Act (or is adviser to certain registered investment companies) (as amended by Dodd-Frank).

¹⁵ See Private Fund Investment Advisers Registration Act of 2010 (Title IV of Dodd-Frank) § 409.

The staff of the Division of Clearing and Intermediary Oversight and the former Division of Trading and Markets has consistently recognized that the "legislative history of [the CPO registration requirements] indicated that it was intended to bring CPOs within the Commission's jurisdiction for the purpose of protecting unsophisticated investors from undesirable managerial and trading practices."¹⁶ In furtherance of this recognition, the staff has interpreted CFTC Rule 4.10(d) to exclude from the definition of "commodity pool" investment vehicles whose participants include members of the same immediate or extended family (and family trusts).¹⁷ The "not a pool" determination of these letters is premised on the conclusion that the family investment vehicles described therein were not within the meaning and intent of the commodity

¹⁶ *Request for Interpretation of Rule 4.10(d)*, CFTC Interpretative Letter No. 86-17 (June 24, 1986) (citing Statement of Dr. Clayton Yeutter, Assistant Secretary of Agriculture, House Committee of Agriculture Report on Commodity Futures Trading Commission Act of 1974, H.R. REP. NO. 975, 93rd Cong., 2d Sess. 79 (1974)).

¹⁷ *See, e.g., Regulation 4.10(d)(1)-Request for Interpretation Stating That Family Investment Entities are Not Commodity Pools*, CFTC Interpretative Letter No. 10-25 (June 25, 2010); *Regulation 4.10(d)(1)-Request That a Limited Partnership Comprised of Family Members Not be Considered a Commodity Pool*, CFTC Interpretative Letter No. 09-46 (Oct. 20, 2009); *Rule 4.10(d)(1): Request That a Limited Partnership Comprised of Family Members Not be Considered a Commodity Pool*, CFTC Letter No. 00-100 (Nov. 1, 2000); *Rule 4.10(d)(1)--Request for Interpretation That Family Limited Partnerships are Not Commodity Pools, and Section 4m(1) of the Act--Request for Interpretation That General Partners of Family Limited Partnerships are Not CPOs or CTAs*, CFTC Interpretative Letter No. 00-98 (May 22, 2000); *Request For CPO Registration No-Action Position Under Section 4m(1) of the Act, and Request for CTA Registration No-Action Position Under Section 4m(1) of the Act*, CFTC No-Action Letter No. 99-46 (Sept. 29, 1999); *Section 4m(1) of the Act--Request for No-Action Position From CPO Registration*, CFTC No-Action Letter No. 99-45 (Sept. 15, 1999); *Section 4m(1) of the Act--Request for No-Action Position From CPO Registration*, CFTC No-Action Letter No. 99-43 (Sept. 15, 1999); *Rule 4.10(d)(1)—Request That a Limited Partnership Comprised of Immediate Family Members Not be Considered a Commodity Pool*, CFTC Interpretative Letter No. 97-78 (Sept. 24, 1997); *Request That Limited Partnership Not be Considered a Commodity Pool*, CFTC Interpretative Letter No. 97-52 (June 24, 1997); *Request for Confirmation That General Partnership is Not a Commodity Pool Under Rule 4.10(d)(1) and Managing General Partner is Not a Commodity Pool Operator Under Section 1a(4) of the Act*, CFTC Interpretative Letter No. 97-50 (June 23, 1997); *Request for Relief From Regulation as a CPO*, CFTC Interpretative Letter No. 97-29 (Mar. 21, 1997); *Rule 4.10(d)—Request for Relief From Commodity Pool Operator Registration*, CFTC Interpretative Letter No. 97-07 (Feb. 5, 1997); *Request for Confirmation That "X" is Not a Commodity Pool Under Rule 4.10(d)(1) and General Partner Is Not a Commodity Pool Operator Under Section 1a(4) of the Act*, CFTC Interpretative Letter No. 96-51 (June 17, 1996); *Request for Interpretation From Rule 4.10(d)(1)*, CFTC Interpretative Letter No. 96-24 (Mar. 4, 1996); *Rule 4.10(d): Confirmation That the Partnership and Company are Not Commodity Pools Where Participants are Immediate Family Members*, CFTC Interpretative Letter No. 95-55 (Apr. 28, 1995); *Request for Relief From Commodity Pool Operator Regulation*, CFTC Interpretative Letter No. 95-35 (Nov. 23, 1994); *Rule 4.10(d): Confirmation That the Partnership is Not a Commodity Pool Where Participants are Immediate Family Members and One Long-Term Adviser*, CFTC Interpretative Letter No. 95-21 (Mar. 7, 1995); *Rule 4.10(d): Exclusion From the "Pool" Definition Where all Partners are Related*, CFTC Interpretative Letter No. 95-18 (Mar. 3, 1995); *Request for Interpretation of Rule 4.10(d)*, CFTC Interpretative Letter No. 95-15 (Feb. 17, 1995); *Request for Interpretation of Rule 4.10(d)*, CFTC Interpretative Letter No. 93-72 (July 26, 1993); *Re: "X"*, CFTC Interpretative Letter No. 93-48 (May 19, 1993); *Request for Relief From Commodity Pool Operator Regulation*, CFTC Interpretative Letter No. 93-46 (May 19, 1993); *Interpretation of the Term "Pool" in Rule 4.10(d)*, CFTC Interpretative Letter No. 86-10 (Apr. 24, 1986); *Joint Account Would Not Operate as Commodity Pool*, CFTC Interpretative Letter No. 83-9 (Nov. 3, 1983).

"pool" definition under Rule 4.10(d). The CFTC interpretative and no-action letters recognize that the registration of operators of "family pools" would not protect unsophisticated investors from undesirable managerial and trading practices. Many of these letters allow for (a) the participation of non-family members¹⁸ and (b) the receipt by the CPO or the CTA of compensation.¹⁹ The CFTC Family letters are similar to the exemptive orders issued by the SEC for family office advisers, which Dodd-Frank mandates the SEC to consider in adopting the family office adviser exemption.²⁰

¹⁸ *Section 4m(1) of the Act;--Request for No-Action Position From CPO Registration*, CFTC No-Action Letter No. 99-45 (Sept. 15, 1999) (a limited liability company was not a commodity pool whose members consisted of immediate family members and a long-term business associate of the family); *Section 4m(1) of the Act;--Request for No-Action Position From CPO Registration*, CFTC No-Action Letter No. 99-43 (Sept. 15, 1999) (a limited partnership was not a commodity pool whose partners consisted of immediate family members and a long-term business adviser to the family); *Request for Confirmation That General Partnership is Not a Commodity Pool Under Rule 4.10(d)(1) and Managing General Partner is Not a Commodity Pool Operator Under Section 1a(4) of the Act*, CFTC Interpretative Letter No. 97-50 (June 23, 1997) (enforcement action was not recommended against the managing general partner of a general partnership for failing to register as a CPO thereof, where a general partnership previously not found to be a commodity pool added three new general partners, two of whom were sons of a founding partner and the third was a close friend and long-time colleague of the managing general partner); *Rule 4.10(d): Confirmation That the Partnership is Not a Commodity Pool Where Participants are Immediate Family Members and One Long-Term Adviser*, CFTC Interpretative Letter No. 95-21 (Mar. 7, 1995) (a general partnership was not a commodity pool where the partners were immediate family members, trusts beneficially owned by these immediate family members and a long-term advisor to the family); *Request for Interpretation of Rule 4.10(d)*, CFTC Interpretative Letter No. 93-72 (July 26, 1993) (a limited partnership was not a commodity pool where the partnership consisted of the general partner, his wife, and a friend of over 30 years); *Request for Relief From Commodity Pool Operator Regulation*, CFTC Interpretative Letter No. 93-46 (May 19, 1993) (a limited partnership was not a commodity pool where all participants were immediate family members or long-term family friends (and their immediate families) of the general partner); *Interpretation of the Term "Pool" in Rule 4.10(d)*, CFTC Interpretative Letter No. 86-10 (Apr. 24, 1986) (a limited partnership was not a commodity pool where (a) the partners consisted of two limited partnerships with partners from two unrelated families (including a 20-plus year associate of one family) and an individual unrelated to the families).

¹⁹ *See supra* note 18 and *Interpretation of the Term "Pool" in Rule 4.10(d)*, CFTC Interpretative Letter No. 86-10 (Apr. 24, 1986) (a limited partnership was found not to be a commodity pool and the general partners were not CPOs thereof even though the general partners received an "override" on the limited partners' share of the profits); *Section 4m(1) of the Act;--Request for No-Action Position From CPO Registration*, CFTC No-Action Letter No. 99-43 (Sept. 15, 1999) (a limited partnership was found to be a family investment vehicle and not a commodity pool and consequently, the general partner was not a CPO thereof even though the general partner received an annual fee equal to 1% of the partnership's assets and 20% of the partnership's net profits); *Rule 4.10(d)(1);--Request for Interpretation That Family Limited Partnerships are Not Commodity Pools, and Section 4m(1) of the Act;--Request for Interpretation That General Partners of Family Limited Partnerships are Not CPOs or CTAs*, CFTC Interpretative Letter No. 00-98 (May 22, 2000) (three family limited partnerships were found not to be commodity pools and, consequently, the general partners of the partnerships were not CPOs thereof even though they received either reimbursement for operating expenses or an annual fee for management services).

²⁰ *See* Dodd Frank Act, Pub. L. No. 111-203, § 409(b)(2), 124 Stat. 1376, 1575 (2010). For exemptive orders, *see, e.g., WLD Enters., Inc.*, Investment Advisers Act Release Nos. 2804, 94 S.E.C. Docket 1280 (Oct. 17, 2008) (*cont'd*)

Some family offices have not registered as CPOs or CTAs or filed notices of exemption because they determined that the applicable family investment vehicles were not commodity pools based on the CFTC interpretative and no-action letters for family offices. However, many family offices have filed notices of exemption under Rule 4.13(a)(3) or Rule 4.13(a)(4) as being simpler and easier to rely on than the interpretative and no-action letters, especially if their structures were not clearly consistent with the prior letters.²¹

The requirement to register with the CFTC would unnecessarily intrude upon the privacy of family members and impose increased costs on family offices currently relying on the CFTC Exemptions. Family offices pose no systemic risk and no public interest is served by regulating them.

Accordingly, we request that the CFTC propose an exemption for CPOs and CTAs providing commodity trading advice or acting as an operator for family pools that will be comparable to and at least as comprehensive as the CFTC interpretative letters and the exemption for family office advisers to be adopted by the SEC. The CFTC family office rule should (1) broadly define family to include current and former extended family members (including (a) ancestors, descendants, siblings and relatives by marriage (or the equivalent) and by adoption, as well as (b) siblings and relatives by marriage (or the equivalent) and by adoption of any ancestors and descendants and (c) each of their ancestors and descendants), (2) allow for the participation in pool investments by employees and their families, as long as the

(notice) and 2807, 94 S.E.C. Docket 1881 (Nov. 14, 2008) (order); *Woodcock Fin. Mgmt. Co.*, Investment Advisers Act Release Nos. 2772, 93 S.E.C. Docket 3084 (Aug. 26, 2008) (notice) and 2787, 94 S.E.C. Docket 606 (Sept. 24, 2008) (order); *Slick Enters., Inc.*, Investment Advisers Act Release Nos. 2736, 93 S.E.C. Docket 796 (May 22, 2008) (notice) and 2745, 93 S.E.C. Docket 1616 (June 20, 2008) (order); *Gates Capital Partners, LLC/Bear Creek, Inc.*, Investment Advisers Act Release Nos. 2590, 90 S.E.C. Docket 65 (Feb. 16, 2007) (notice) and 2599, 90 S.E.C. Docket 788 (Mar. 20, 2007) (order); *Adler Mgmt., L.L.C.*, Investment Advisers Act Release Nos. 2500, 87 S.E.C. Docket 1813 (Mar. 21, 2006) (notice) and 2508, 87 S.E.C. Docket 2432 (Apr. 14, 2006) (order); *Riverton Mgmt., Inc.*, Investment Advisers Act Release Nos. 2459, 2005 WL 3404118 (Dec. 9, 2005) (notice) and 2471, 2006 WL 119133 (Jan. 6, 2006) (order); *Parkland Mgmt. Co.*, Investment Advisers Act Release Nos. 2362, 84 S.E.C. Docket 3156 (Feb. 24, 2005) (notice) and 2369, 85 S.E.C. Docket 118 (Mar. 22, 2005) (order); *Longview Mgmt. Grp. LLC*, Investment Advisers Act Release Nos. 2008, 2002 WL 10528 (Jan. 3, 2002) (notice) and 2013, 2002 WL 192323 (Feb. 7, 2002) (order); *Kamilche Co.*, Investment Advisers Act Release Nos. 1958, 75 S.E.C. Docket 1209 (July 31, 2001) (notice) and 1970, 75 S.E.C. Docket 1687 (Aug. 27, 2001) (order); *Bear Creek Inc.*, Investment Advisers Act Release Nos. 1931, 2001 WL 236772 (Mar. 9, 2001) (notice) and 1935, 2001 WL 327593 (Apr. 4, 2001) (order); *Moreland Mgmt. Co.*, Investment Advisers Act Release Nos. 1700, 66 S.E.C. Docket 1051 (Feb. 12, 1988) (notice) and 1705, 66 S.E.C. Docket 1605 (Mar. 10, 1998) (order); *Roosevelt & Son*, Investment Advisers Act Release No. 54, 1949 WL 35524 (Aug. 31, 1949) (memorandum opinion); *Pitcairn Co.*, Investment Advisers Act Release No. 52, 1949 WL 35503 (Mar. 2, 1949) (order); *Donner Estates, Inc.*, Investment Advisers Act Release No. 21, 1941 WL 37202 (Nov. 3, 1941) (findings and opinion). See also S. Rep. No. 1775, 76th Cong., 3d Sess., 21-22 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess., 28 (1940).

²¹ An interpretative letter, unlike both exemptive and no-action letters, can be relied upon by persons other than its beneficiary, but is binding only upon the CFTC division issuing it, and not upon the CFTC itself. Rule 140.99(a).

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employees investing in the pool are knowledgeable employees or QEPs, (3) allow for the CPO and CTA to be owned and managed by employees, (4) allow for the participation in the pool by any family trusts, charitable organizations or other family entities, (5) allow for transfers of interests in the pool to non-family members in limited circumstances such as death and (6) allow for the participation of at least two families.

* * *

We are grateful for the opportunity to provide these comments on the Proposed Rules and for the Commission's attention and consideration.

Respectfully submitted,

SECURITIES REGULATION COMMITTEE

By: /s/ Howard Dicker

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