



July 27, 2011

Submitted Electronically

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
115 21st Street, NW
Washington, DC 20581

Re: Commodity Pool Operators and Commodity Trading Advisors:
Amendments to Compliance Obligations; Proposal to Rescind Sections 4.13(a)(3) and 4.13(a)(4)
(RIN 3038-AD30)

Dear Secretary Stawick:

HedgeOp Compliance, LLC respectfully submits this letter in response to the Commodity Futures Trading Commission's (the "Commission" or "CFTC") invitation to the public to submit their views on the topics addressed at the July 6, 2011 public roundtable held by the Staff of the Commission concerning the Commission's Notice of Proposed Rulemaking on Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations (76 Fed. Reg. 7976, proposed Feb. 11, 2011, the "Proposing Release").

Our comments are limited to the Commission's proposed rescission of the exemptions for commodity pool operators ("CPOs") under Commission Regulations 4.13(a)(3) and 4.13(a)(4) (the "4.13 Exemptions"), specifically with respect to the availability of such exemptions to fund-of-funds managers ("FOF Managers").

HedgeOp Compliance, LLC is a regulatory and compliance consultant to investment advisers and private funds, utilizing a variety of investment strategies and styles.

We are writing at the request of a number of our FOF Manager clients that manage private investment funds investing primarily in unaffiliated private investment funds. These FOF Managers generally operate their private investment funds under either a 4.13(a)(3) or 4.13(a)(4) exemption, are primarily engaged in rendering securities advice (and therefore have been exempt from registration as commodity trading advisers), and are either currently registered with the Securities and Exchange Commission (the "SEC") under the Investment Advisers Act of 1940 (the "Advisers Act") as investment advisers or will be registering with the SEC as a result of amendments to the Advisers Act pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

As more fully discussed below, we do not believe that rescission of the 4.13 Exemptions, in particular with respect to FOF Managers, is necessary to meet either of the following purposes stated in

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the Proposing Release: (i) the limitation of regulatory arbitrage, where pool operators may avoid registration with either the Commission or the SEC; or (ii) improved transparency and accountability with respect to these pool operators. In addition, the repeal of the 4.13 Exemptions would most likely require these advisers to register with the CFTC, subjecting them to duplicative and inconsistent regulation, a situation the Dodd-Frank Act sought to avoid.

Accordingly, we are writing to respectfully request that the Commission reconsider its decision to rescind the exemptions currently available under the 4.13 Exemptions and elect to retain these exemptions.

The Commission has proposed rescinding the exemptions from registration as commodity pool operators available under Commission Regulations 4.13(a)(3) and 4.13(a)(4). As you are aware, many operators of private funds that trade futures contracts and commodity options, and advisers to such funds, rely on the 4.13 Exemptions. Regulation 4.13(a)(3) is a “de minimis” exemption available to a CPO operating a privately offered pool which is offered only to qualified eligible participants, accredited investors or knowledgeable employees and which engages in a de minimis amount of futures trading (either because initial margin and premiums are limited to five percent of the liquidation value of the pool’s portfolio or because commodity interest exposure does not exceed 100 percent of the fund’s liquidation value). Regulation 4.13(a)(4) provides that a person is exempt from registration as a CPO if the interests in the pool are exempt from registration under the Securities Act of 1933 and the CPO reasonably believes that all pool participants are qualified eligible persons as defined in Regulation 4.7. Regulation 4.13(a)(4) imposes no limits on the amount of commodity trading the pool can engage in.

The 4.13 Exemptions were originally instituted to encourage and facilitate participation in the commodity interest markets and benefit all market participants through increased liquidity, without jeopardizing the protection of investors. We are of the view that the 4.13 Exemptions continue to serve these policy purposes and should not be repealed.

In addition, with respect to the Commission’s stated goal of avoiding regulatory arbitrage, there is no such issue in the case of our FOF Manager clients; they are not avoiding all regulation by either the SEC or the CFTC. As stated above, these FOF Managers are (or, subject to the recent amendments of the Investment Advisers Act, will be) registered with the SEC as investment advisers, subject to the regulation and oversight of that agency.

With respect to the CFTC’s stated goals of increasing transparency and controlling risk as a result of the repeal of the 4.13 Exemptions, we endorse the legal and policy analysis expressed in the comment letters previously filed by Sidley Austin LLP (dated April 11, 2011) and others, that requiring FOF Managers to register as CPOs as a result of the repeal of these exemptions will not serve to achieve these goals.

Funds-of-funds hold interests in other funds; FOF Managers are not directly involved in the commodities markets and, if applicable, generally use investment in commodities funds in a limited manner to hedge their risks and diversify their investments. The funds-of-funds generally have little

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impact on the commodities markets, since the unaffiliated managers of the underlying funds have discretion over the underlying funds' investments in commodities. Meaningful information that the CFTC seeks with respect to transparency and risk would be obtained from the underlying funds, the entities directly participating in the commodities markets, rather than from the funds-of-funds.

As cited by the National Futures Association (the "NFA") in their April 12, 2011 comment letter (<http://www.nfa.futures.org/news/newsComment.asp?ArticleID=3792>), the 4.13 Exemptions were instituted in part to "allow[s] both the Commission and the NFA to focus their resources on those entities that are more directly involved in the futures markets and away from investment vehicles that are sold only to sophisticated investors and use futures trading in a limited manner to hedge their risks and diversify their investments." In this era of limited funding and resources, it continues to make sense to focus on the entities directly involved in the commodities markets.

We urge the CFTC to do a cost-benefit analysis to determine if requiring FOF Managers to register is of sufficient benefit to the CFTC to warrant the following costs to managers of funds that are not directly involved in trading commodities: (i) having certain of their employees study for, and pass, regulatory examinations; (ii) the administrative requirements of registering; (iii) preparing compliant disclosure documents; and (iv) undergoing the expense of ongoing compliance with applicable NFA rules and regulations.

In the event that, after reconsideration, the Commission decides to proceed with the rescission of these 4.13 Exemptions, we respectfully request that the Commission consider adopting an exemption for FOF Managers that are (or will be) registered with the SEC, for the reasons discussed above.

HedgeOp Compliance, LLC appreciates the opportunity to submit our views on the rescission of the 4.13 Exemptions. If the Commission or any of its staff members have any questions concerning the statements in this letter, please do not hesitate to contact the undersigned at (212) 515-2800.

Respectfully submitted,

HEDGEOP COMPLIANCE, LLC

By: 

Name: William G. Mulligan

Title: Managing Partner and CEO

cc: Chairman Gary Gensler
Commissioner Michael Dunn
Commissioner Bart Chilton
Commissioner Jill Sommers
Commissioner Scott O'Malia