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April 18, 2012

VIA ELECTRONIC MAIL
Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 Twenty-First Street, N.W.
Washington, D.C. 20581

Re: Regulation 4.5 Harmonization

Dear Mr. Stawick:

We represent a family office[1] located in the Pacific Northwest part of the county. We are submitting this letter on behalf of our client ("Client") to request that the Commodity Futures Trading Commission (the "Commission") adopt an exclusion from the commodity "pool" definition, thereby excluding operators from commodity pool operator ("CPO") registration, and an exemption from commodity trading advisor ("CTA") registration for single family offices (the "Family Office Exclusion"). Our Client strongly supports the adoption of a Family Office Exclusion as soon as possible because the Commission recently adopted final rules (the "Final Rules") that repeal the exemption from CPO registration under Rule 4.13(a)(4) and the accompanying exemption from CTA registration under Rule 4.14(a)(8)(i)(D).

[1] "Family offices" are entities established by families to manage their wealth and provide other services to family members. *See* Investment Advisers Act Release No. 3098 (Oct. 12, 2010) [75 FR 63753 (Oct. 18, 2010)].

Summary of Position

Our Client appreciates the opportunity to comment on whether the Commission should adopt a Family Office Exclusion.[2] The Commission's staff has a 36-year history of granting family office interpretative, exemptive, and no-action relief from CPO and/or CTA registration. In so doing, the Commission's staff has consistently recognized that the operation of a family office is not the kind of activity that either Congress or the Commission ever intended to regulate through CPO and/or CTA registration requirements. By expressly encouraging family offices in the preamble to the Final Rules to rely on previously issued staff interpretative letters, the Commission has ratified its staff's conclusions.

Consistent with the foregoing, our Client believes that requiring family offices to register as CPOs and/or CTAs as a result of the repeal of Rule 4.13(a)(4) and the amendment to Rule 4.14(a)(8)(i)(D) would be unwarranted and unnecessary. Codifying previously issued relief letters into a Family Office Exclusion would ensure that all family offices, and not just those particular family offices that have previously received staff letters, receive consistent treatment under the Commission's regulations. A Family Office Exclusion would also accomplish the Commission's stated goals of ensuring congruent and consistent regulation of family offices by the Commission and the Securities and Exchange Commission ("SEC"), and of aligning the Commission's treatment of family offices with the congressional intent of Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. 111-203 (2010).[3]

For these reasons, our Client strongly urges the Commission to adopt a Family Office Exclusion that would be consistent with the scope of previously issued staff interpretative, exemptive, and no-action relief letters and would employ the existing framework the SEC developed in adopting a family office exclusion from the definition of "investment adviser" in the Investment Advisers Act of 1940 ("Advisers Act"). To give effect to a Family Office Exclusion, the Coalition believes the Commission should exclude family clients (as defined in SEC Rule 202(a)(11)(G)-1(d)(4) under the Advisers Act) from the definition of commodity

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[2] Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 77 Fed. Reg. 11345, 11348 (Feb. 24, 2012).

[3] Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 Fed. Reg. 7976, 7978 (Feb. 11, 2011). In its proposing release to amend the compliance obligations of CPOs and CTAs, the Commission stated that the "proposed amendments are designed to (1) bring the Commission's CPO and CTA regulatory structure into alignment with the stated purposes of the Dodd-Frank Act; (2) encourage more congruent and consistent regulation of similarly-situated entities among Federal financial regulatory agencies..." *Id.*

"pool" in Rule 4.10(d)(1), which thereby would exclude the operators of such entities from registering with the Commission as CPOs. The Commission also should exempt family offices themselves (as defined in SEC Rule 202(a)(11)(G)-(1)(b) under the Advisers Act) under Rule 4.14 from registering with the Commission as CTAs as a result of the commodity interest trading advice provided to family clients. Taken together, these amendments to Rules 4.10 and 4.14 would ensure that all family offices receive equal treatment under the Commission's regulations and congruent treatment with the SEC's regulatory structure. As a result of these two new family office exemptions, it should be clear that any entity or person qualifying under them would also be exempt from any notice filing, disclosure, and recordkeeping requirements, including, without limitation, Rules 4.13(a)(5) and (6), 4.13(b), 4.13(c), 4.21, 4.23, 4.31, and 4.32 or any other such requirements.

Our Client also strongly supports the arguments in the comment letter that has been submitted by Skadden, Arps, Slate, Meagher & Flom LLP, on behalf of the The Private Investor Coaltion, Inc., and endorses all of the recommendations made therein.

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Our Client appreciates the opportunity to comment on the Commission's consideration of a Family Office Exclusion. We look forward to working with the Commission and its staff through the remainder of this rulemaking process, and we would be happy to answer any questions the Commission or its staff might have.

Sincerely,

Martin E. Lybecker