

April 20, 2012

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st St NW  
Washington, DC 20581

Re: Regulation 4.5 Harmonization and “Family Offices”

Dear Mr. Stawick:

We represent several clients in the Northeast (our “Clients”<sup>1</sup>) that manage the finances and other affairs of the members of a single family. Each of these Clients complies with the definition of “family office” that was finalized by the SEC late last year. We are submitting this letter to the Commodity Futures Trading Commission (the “Commission”) in response to the Commission’s request for comment included in its proposed rule entitled “Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators” (77 FR 11345). Specifically, the proposal solicited comment regarding whether family offices should be exempt from Commodity Pool Operator (“CPO”) registration akin to the exemption adopted by the SEC (*id.* at 11348).

Our Clients are in favor of such an exemption and request that the Commission adopt an exclusion from the commodity “pool” definition, thereby excluding family offices from CPO registration, and an exemption from commodity trading advisor (“CTA”) registration for family offices (the “Family Office Exclusion”).

Our Clients support the overall regulatory regime applicable to CPOs and CTAs embodied in the Commodity Exchange Act (as amended by, among other statutes, Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act) and as implemented via the Commission’s regulations. Our Clients agree that regulating systemically important entities, as well as entities that accept funds from the general public or that may have financial interests and

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<sup>1</sup> Nothing in this letter should be construed as attributing any views to every family office client, or any specific family office client, of Goodwin Procter LLP.

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incentives that differ from those of their clients, is in the best interests of those that conduct business with such entities and the financial system as a whole.

However, it seems clear that Congress never intended family offices to be subject to this level of regulation. As defined in SEC Rule 202(a)(11)(G)-1(b), family offices are limited to serving the needs of clients who are closely related by kinship. Each family office must be wholly owned by family clients and exclusively controlled by one or more family members and/or family entities, and family offices do not hold themselves out to the public as investment advisers. As a result, the interests of family offices are inextricably tied to those of their clients. There is little reason to be concerned that family offices will act contrary to the interests of their clients, whether by executing trades not in their clients' interest, by misleading their clients, by failing to make certain disclosures to their clients, or through other action or omission.

Furthermore, third parties understand the nature of family offices as representatives of a single family. Family offices do not hold themselves out as advisers to third parties and typically interact with third parties only as market participants generally engaging in transactions on an arm's length basis. There is therefore little to be gained by providing those with whom family offices transact with regulatory protection beyond that to which family offices are already subject as market participants, such as antifraud rules and certain recordkeeping and reporting requirements.

It is doubtful that the costs to the Commission of subjecting family offices to registration and ongoing supervision as CPOs and CTAs will justify any minimal benefit to the public that might conceivably be achieved by such regulation. There are many family offices and the aggregate costs of regulating such a large group, or reviewing the numerous individual exemption requests that are certain to arise in the absence of a broad Family Office Exclusion, will be significant. Because such family offices cannot, by definition, offer their services to the public, and because third parties understand the nature of such family offices, it is difficult to conceive of a scenario in which the benefits to the public of requiring family office registration justify the costs such a regime will impose on the Commission's limited manpower and budget.

Furthermore, while all market participants must be diligent in ensuring full compliance with all applicable laws and regulations, the Commission should consider whether family offices, which are generally very small in comparison to the banks and hedge funds that tend to dominate trade in the various types of commodities, should be required to bear the compliance costs of CPO or CTA registration given the nature of their clients and the minimal benefit third parties will enjoy from such registration and compliance therewith.

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For the above reasons, our Clients strongly support the adoption of the Family Office Exclusion. With full respect for the regulatory process and the needs of the Commission and its staff to properly consider the implications of adopting new regulations, our Clients request that such an exemption be adopted on a timetable—perhaps coupled with interim relief, if necessary—to be in place prior to the date on which entities that have until recently relied on the exemption from CPO registration previously included in Rule 4.13(a)(4) are required to register as a CPO (December 31, 2012).

Furthermore, our Clients strongly support the arguments included in the comment letters that have been submitted by Skadden, Arps, Slate, Meagher & Flom LLP on behalf of The Private Investor Coalition, Inc., and Perkins Coie, on behalf of a family office client.

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Our Clients appreciate 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,



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