

April 23, 2012

VIA EMAIL TO: WWW.CFTC.GOV

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

Re: Regulation 4.5 Harmonization

Dear Mr. Stawick:

Willkie Farr & Gallagher LLP appreciates this opportunity to comment, on behalf of various clients, on whether the Commodity Futures Trading Commission (the "Commission"), as part of its efforts to harmonize the part 4 regulations with certain Securities and Exchange Commission ("SEC") regulations,¹ should adopt a family office rule akin to the SEC family office rule (the "SEC Rule").² We have among our clients numerous single family offices with varying structures, located throughout the United States and abroad, that currently rely on the SEC Rule and, therefore, are excluded from the definition of an investment adviser under the Advisers Act. Certain of such family offices, however, as a result of the repeal of Rule 4.13(a)(4) and the amendment to Rule 4.14(a)(8)(i)(D),³ would be required to register with the Commission as commodity pool operators ("CPOs") and/or commodity trading advisors ("CTAs"). For the reasons noted below, we believe that such registrations would be unnecessary, and we, therefore, recommend that the Commission propose and adopt a family office rule that codifies previously issued staff no-action, exemptive and interpretative relief letters and that parallels the SEC Rule and its related interpretations.

¹ Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 77 Fed. Reg. 11345, 11348 (proposed Feb. 24, 2012) (to be codified at 17 C.F.R. pt. 4).

² Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Family Offices, 17 C.F.R. § 275.202(a)(11)(G)-1 (2011).

³ Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations; Final Rule and Proposed Rule, 77 Fed. Reg. 11252 (Feb. 24, 2012), as amended by 77 Fed. Reg. 13728 (Mar. 26, 2012) (to be codified at 17 C.F.R. pt. 4, 145 and 147) ("CFTC Adopting Release").

The SEC adopted the SEC Rule in anticipation of the repeal of an exemption from investment adviser registration relied upon by many family offices.⁴ The SEC Rule is generally consistent with the conditions included in various exemptive orders the SEC issued to family offices prior to the adoption of the SEC Rule. Among the benefits cited by the SEC for adopting a rule of general applicability to family offices, as opposed to the SEC's past practice of requiring a family office seeking relief from the provisions of the Advisers Act to file an individual request for exemption, is the reduced burden placed on the SEC's staff by virtue of its not having to consider a substantial number of individual requests that may not present controversial facts.⁵ In addition, the SEC noted that it does not view family offices as the "sort of arrangement that the Advisers Act was designed to regulate."⁶

The circumstances as well as the primary purposes for adopting the SEC Rule are comparable and applicable to the Commission's adoption of a family office rule. Effective December 31, 2012, the manager of a family office will no longer be able to rely on the Rule 4.13(a)(4) exemption from CPO registration and/or the Rule 4.14(a)(8)(i)(D) exemption from CTA registration with respect to a pool for which a 4.13(a)(4) notice of exemption was previously filed. The facts presented in the Commission's relief letters are substantially similar to the circumstances in which the SEC previously granted exemptive relief to family offices, and to the parameters of the SEC Rule. While the Commission has noted that family offices continue to be permitted to request relief on an individual basis and to rely on those interpretative letters previously issued to the extent permissible,⁷ the adoption of a rule of general applicability would also serve to relieve the burden of reviewing numerous letters requesting substantially similar relief. In addition, given the wide range of family office structures, family offices may be reluctant to rely on interpretative letters to the extent that the facts presented in the letters are not completely analogous to their situations. Congress vested discretion in the Commission "to exempt from registration those persons who would otherwise meet the criteria for registration . . . if, in the opinion of the Commission, there is no substantial public interest served by such registration."⁸ The Commission staff has stated that no public interest is served in regulating pools whose primary purpose is investing family assets.⁹

Given the similarities between the relief previously granted by the SEC and the Commission, and the fact that the same family offices will be relying on the SEC Rule and any newly adopted Commission rule, we support the adoption of a family office rule that tracks the SEC Rule and its interpretations. Adopting such a rule would be consistent with the goal of harmonizing the Commission's and the SEC's rules to the fullest extent possible.

⁴ Family Offices, 76 Fed. Reg. 37983 (January 29, 2011) (to be codified at 17 C.F.R. pt. 275) ("SEC Adopting Release").

⁵ Family Offices, 75 Fed. Reg. 63753, 63760 (proposed October 18, 2010) (to be codified at 17 C.F.R. pt. 275).

⁶ See SEC Adopting Release, *supra* note 4, at 37984.

⁷ See CFTC Adopting Release, *supra* note 3, at 11263.

⁸ CFTC Staff Letter 00-98, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,411 (May 22, 2000) (citing H.R. Rep. No. 93-975, at 29 (1974)).

⁹ *Id.*

David A. Stawick

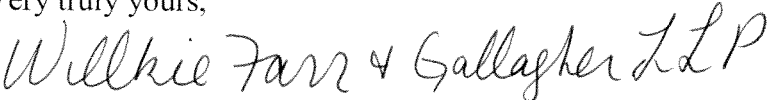
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We note that our clients also generally support the proposals and recommendations submitted to the Commission by The Private Investor Coalition, Inc. in its letter dated April 13, 2012.

We appreciate the consideration of the Commission and its staff with respect to the adoption of a family office rule and would encourage the Commission to act expeditiously to propose and adopt the rule. We hope that the Commission and its staff find this letter helpful, and we would be pleased to discuss any aspect of it with the Commission or its staff. Questions regarding this letter may be directed to Rita M. Molesworth at (212) 728-8727 or Deborah A. Tuchman at (212) 728-8491.

Very truly yours,

A handwritten signature in cursive script that reads "Willkie Farr & Gallagher LLP". The signature is written in dark ink and is positioned below the typed name.

WILLKIE FARR & GALLAGHER LLP