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C O U N S E L O R S   A T   L A W

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April 23, 2012

Mr. David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581  
VIA CFTC Website Submission

Re:            Regulation 4.5 Harmonization

Dear Mr. Stawick:

Morgan Lewis & Bockius, LLC ("Morgan Lewis"), on behalf of a family office client, appreciates the opportunity to comment on the Commodity Futures Trading Commission's (the "Commission") request for public comment on whether it should adopt a family office exemption.<sup>1</sup> Our client strongly recommends and supports the adoption of a family office exemption.

Our client believes that the Commission should adopt a family office exemption that codifies the Commission's longstanding approach regarding family offices, previously addressed in interpretative, exemptive and no-action letters. Consistent with this approach, family office entities should not be considered commodity pools within the meaning and intent of Commission Rule 4.10(d)(1) and, accordingly, the operators of such entities should not be CPOs. Further, the Commission should make clear that the advisors to family offices are not required to be registered as CTAs.<sup>2</sup> Finally, our client believes that the definition of family office must be sufficiently broad enough to encompass all family investors as currently served by family offices. In particular, consistent with prior Commission staff guidance, immediate in-laws of family members and their spouses.<sup>3</sup>

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<sup>1</sup> Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators 77 Fed. Reg. 11345, 11348 (Feb. 24, 2012); *see also*, Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252, 11263 (Feb. 24, 2012)(noting that the Commission has directed staff to look at the possibility of adopting a family offices exemption).

<sup>2</sup> *See, e.g.*, CFTC Interpretative Letter No. 10-25, Comm. Fut. L. Rep. (CCH) ¶ 31,585 (Jun. 25, 2010); CFTC Interpretative Letter No. 00-100, Comm. Fut. L. Rep. (CCH) ¶ 28,420 (Nov. 1, 2000); and CFTC No-Action Letter No. 97-89 Comm. Fut. L. Rep. (CCH) ¶ 27,191 (Oct. 27, 1997).

<sup>3</sup> *See, e.g.*, CFTC Interpretative Letter No. 95-21, Comm. Fut. L. Rep. (CCH) ¶ 26,348 (Mar. 7, 1995).

The adoption of a family office exemption is consistent with the Commission's own prior relief and interpretations in this area. Additionally, by adopting a family office exemption similar to the U.S. Securities and Exchange Commission, the Commission would achieve its stated goal to ensure "congruent and consistent regulation of similarly-situated entities among Federal financial regulatory agencies."<sup>4</sup>

The Commission has recently rescinded the exemption from commodity pool operator ("CPO") and commodity trading advisor ("CTA") registration under Commission Rules 4.13(a)(4) and 4.14(a)(8)(i)(D), respectively.<sup>5</sup> It is these exemptions, along with prior Commission staff interpretative letters, that many family offices rely upon. Accordingly, the Commission should adopt a family office exemption as soon as possible, so as to avoid unnecessary regulatory uncertainty.

Our client appreciates the opportunity to express its support for the adoption of a family office exemption and we would be happy to discuss with Commission staff any issues raised in this letter.

Very truly yours,



Michael A. Piracci

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<sup>4</sup> See Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations; Proposed Rules, 76 Fed. Reg. 7976, 7978 (Feb. 11, 2011).

<sup>5</sup> 77 Fed. Reg. at 11284.