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BY EMAIL

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

Re: Regulation 4.5 Harmonization

Dear Mr. Stawick:

We are writing in response to the request by the Commodity Futures Trading Commission (the "Commission") for public comment on whether it should adopt an exemption for family offices for various requirements otherwise applicable to them under the Commission's rules governing commodity pool operations ("CPOs") and commodity trading advisors ("CTAs"). See Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 77 Fed. Reg. 11345, 11348 (February 24, 2012).

On behalf of several of our family office clients which would be adversely affected if required to registered as a CPO or a CTA, we wish to reiterate certain comments we provided to the Commission by letter dated April 12, 2011, in reaction to the Commission's proposed amendments to Rules 4.13(a)(3) and 4.13(a)(4) (the "Rule 4.13 Proposals"). We also endorse the comment letter submitted by Mark D. Young of Skadden, Arps, Slate, Meagher & Flom LLP on April 13, 2012 (the "Skadden Letter"), and strongly encourage the Commission to adopt the proposal included in the Skadden Letter.

1. *A Family Office Exemption is a Critical Component of any "Regulatory Alignment."* As the Commission stated in the release (the "Proposing Release") setting forth the

Rule 4.13 Proposals (Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations (Notice of proposed rulemaking), 76 Fed. Reg. 7976,7978 (February 11, 2011)), a primary aim of those proposed amendments was to "bring the Commission's CPO and CTA regulatory structure into alignment with the stated purposes" of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and "encourage more congruent and consistent regulation of similarly situated entities among Federal financial regulatory agencies." The Dodd-Frank Act mandated the creation of a new exclusion from the Investment Advisers Act of 1940 (the "Advisers Act") in section 202(a)(11)(G) thereof, under which "family offices," a term defined by the Securities and Exchange Commission (the "SEC") in SEC Rule 202(a)(ii)(G)-(1)(b), are not considered investment advisers subject to the Advisers Act.

Congress was clear about the reasoning behind this exemption: "the Advisers Act is not designed to regulate the interactions of family members, and registration would unnecessarily intrude on the privacy of the family involved" (*See* S. Conf. Rep. No. 111-176, at 38-39 (2010)). While this statement of principle was made in the context of securities law, there is no reason to believe that it applies with any less force to the commodities arena, and no indication that Congress is inclined toward the view that commodities regulation trumps family autonomy and privacy concerns in a way that securities regulation does not. Certainly there is nothing in the legislative history of Dodd-Frank that supports the inference that the Commission is required, expected or even encouraged to apply CTA and CPO regulation to family offices.

If the Commission is going to mirror the changes made by the SEC, we respectfully urge it to mirror those changes more precisely by including a family office exemption from CTA and CPO registration.

We also believe that implementing a parallel exemption for family offices would, as described in the Skadden Letter, be both (x) consistent with the Commission's prior treatment of family offices through private interpretive letters and (y) properly preservative of the Commission's resources by avoiding the flood of new requests for interpretive letters that would very likely result from the failure to adopt a sufficiently broad exemption.

2. *Public Policy Considerations Favor a Family Office Exemption Under the CEA.* The Commission holds the discretionary power "to exempt from registration those persons who otherwise meet the criteria for registration . . . if, in the opinion of the Commission, there is no substantial public interest to be served by the registration" (p. 7977, citing H.R. Rep. No. 93-975, 93d Cong., 2d Sess. (1974), p. 20). We request nothing more than the reasonable and appropriate exercise of such discretionary power.

As the Commission itself acknowledges in the Proposing Release, "smaller operators, advisors, and pools are less likely to present significant risk to the stability of the commodities futures and derivatives markets and the financial market as a whole, and therefore,

such entities should have a lesser compliance burden" (p. 7979). Family offices, with their relatively insignificant levels of market participation, are a subset of this category of "smaller operators" that pose a lower risk to market stability. Properly defined, a family office exemption should not extend to any person or entity that manages third party capital as a for-profit business and will be limited to entities which, in essence, manage assets exclusively for the families they serve. Family offices, as so defined, will not conduct activities that would be of interest to the Commission except in their role as customers of properly registered intermediaries, such as CTAs who may advise a family office as well as other customers; CPOs in which the family office may invest; or futures commissions merchants ("FCMs") through which family offices may execute futures transactions. Thus, the position information relevant to family office holdings will be reported by the Commission registrants through which family offices execute their investment strategies. Those intermediaries will also provide the information that may be required by the Financial Stability Oversight Council. In light of this, there is no significant public policy interest in requiring *bona fide* family offices to register as CPOs or CTAs.

As noted above, the Dodd-Frank Act itself recognizes, in the context of securities registration, the public policy importance of preserving privacy and autonomy for family offices. It is noteworthy that the Commission acknowledges in the Proposing Release that registration would require CPOs and CTAs "to report a great deal of proprietary information that, if publicly disclosed, would cause substantial harm to the competitive positions of those entities" (p. 7982). The personal information of family offices that would be exposed through CPO or CTA registration is deserving of at least as much regulatory respect and deference as the potential competitive disadvantage cited in the Proposing Release.

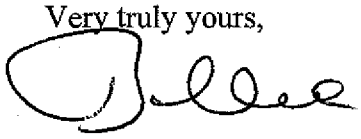
Ultimately, adoption of the Proposed Amendments without a family office exemption could force many family offices to choose between the publicity and expense associated with registration and the utility associated with using the financial tools regulated by the Commission. That choice may put the fiduciaries for such family offices in an untenable position with respect to managing the family office in the best interests of the family. Indeed, given contemporary interpretations of the "prudent person" standard as applied to investment advisors, it may be impossible for such fiduciaries to manage family office portfolios without insisting on the expense of family office registration, if that is the only means by which their clients will have access to modern portfolio management techniques that can only be implemented through futures and derivatives regulated by the Commission. Although the rules as proposed would continue to exempt certain pools that deploy not more than ten percent (10%) of their net assets to commodities positions that are incidental to securities investment, that limitation may not be consistent with achieving the benefits of modern portfolio management or the most efficient way of achieving optimal allocations and risk profiles.

In conclusion, we believe that the Commission adoption of a family office exemption, along the lines suggested by the Skadden Letter and consistent with the approach

taken by the SEC, would provide an appropriately harmonized approach to this portion of the Commission's jurisdiction, while preserving the privacy interests of *bona fide* family offices.

We appreciate the opportunity to comment. If you would like to discuss any of our comments, please call Thomas D. Balliett (212-715-9164) or Adam M. Busch (212-715-9231).

Very truly yours,



Thomas D. Balliett

cc: Adam M. Busch