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Office of the
Secretariat
VIA FIRST CLASS MAIL

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

April 24, 2012

Re: Regulation 4.5 Harmonization

COMMENT

Dear Mr. Stawick:

This letter is in response to the request for comment by the Commodity Futures Trading Commission ("Commission") on its proposed harmonization provisions. We write to directly respond to the Commission's consideration of adopting "a family office exemption from CPO registration akin to the exemption adopted by the SEC."¹

Due to the Commission's adoption of final rules that repealed certain registration exemptions available under Rule 4.13(a)(4) and Rule 4.14(a)(8)(i)(D) for commodity pool operators ("CPO") and commodity trading advisors ("CTA"), respectively, the exemptions relied upon by many family offices are no longer available. Thus, we specifically write to urge the Commission to adopt new family office exemptions under the definitions of CPO and CTA in furtherance of regulatory harmony and public policy considerations. We further propose that under these two new family office exemptions, it should be clear that anyone qualifying under them will also be exempt from any notice filing, disclosure, and recordkeeping requirements, including, without limitation, Rules 4.13(a)(5) and (6), 4.13(b) and (c), 4.21, 4.23, 4.31 and 4.32 or any other such requirements.

Pittsburgh

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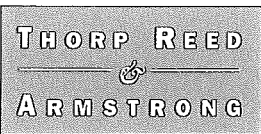
Wilmington

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While we certainly appreciate the concern of the Commission regarding the importance of oversight of, and transparency in, the commodity futures and option markets, requiring the managers of single family offices to register with the Commission is not consistent with the requirements of the SEC or Section 409 of the Dodd-Frank Wall Street Reform Act ("Dodd-Frank"), both of which endeavor to relieve single family offices from onerous and non-essential registration requirements. Dodd-Frank mandates the exclusion of "family offices", a term to be defined by the SEC, from being considered advisors subject

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¹ Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators, 77 Fed. Reg. 11,345 (proposed February 24, 2012) (to be codified at 17 C.F.R. pt. 4).



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to the Investment Advisors Act of 1940, and thus recognizes the need to weigh regulatory goals of oversight and transparency against countervailing considerations, including family office autonomy, privacy and undue burden.

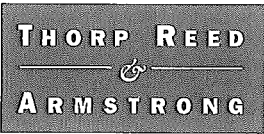
Congress clearly stated that “the Advisors Act is not designed to regulate the interactions of family members, and registration would unnecessarily intrude on the privacy of the family involved.”² Congress’ statement was made in the context of securities law; however, this principle may certainly be applied to the commodities markets as well, as Congress surely did not intend to exempt the interactions of family members in one arena but not in others. Thus, we encourage the Commission to adopt a family office exemption under the definitions of CPO and CTA to appropriately reflect and harmonize the treatment of single family offices across financial regulatory schemes, including the SEC and Section 409 of Dodd-Frank.

Public policy considerations further favor providing a family office exemption. As noted in the Commission’s Proposed Rule in the Federal Register³, the Commission has the 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.”⁴ Bona fide family offices are much less likely to pose a significant risk to the stability of the commodities futures and derivatives markets. Family offices are required to be wholly owned by family clients and exclusively controlled by one or more family members and/or family entities. As a result, the interests of family offices directly align with those of their clients, which provides little reason to be concerned that managers of family offices will act contrary to the interest of their clients. Further, family offices do not hold themselves out to the public as investment advisers. Thus, the public interest served by the forced registration of family offices is insubstantial, which favors the provision of a family office exemption.

² See S. CONF. REP. NO. 111-176, at 38-39 2010.

³ Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators, 77 Fed. Reg. 11,345 (proposed February 24, 2012) (to be codified at 17 C.F.R. pt. 4).

⁴ Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators, 77 Fed. Reg. 11,345 (proposed February 24, 2012) (to be codified at 17 C.F.R. pt. 4) *citing* H.R. Rep. No. 93-975, 93d Cong., 2d Sess. (1974), p. 20.

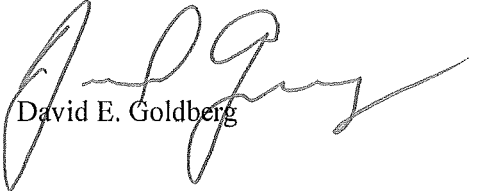


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Due to the reasons stated above, we respectfully request the Commission exempt single family offices from registration with the Commission. We appreciate the opportunity to comment on this issue and look forward to working with the Commission in the future.

Very truly yours,



David E. Goldberg

DEG/jlm