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CFTC Staff Provides Family Offices With No-Action Relief From Commodity Pool Operator Registration

On November 29, 2012, the Commodity Futures Trading Commission (CFTC) Division of Swap Dealer and Intermediary Oversight (**Division**) issued no-action relief from commodity pool operator (**CPO**) registration to family offices whose investment vehicles use CFTC-regulated products (**commodity interests**).¹ **In order to claim this no-action relief, a family office must submit a notice to the Division.**

Family Office No-Action Relief

The no-action letter adopts a deferential tone on the issue of family office relief, recognizing that “the SEC has devoted substantial time and resources to addressing [the family office] issue” and that “the fundamental issue of the appropriate application of investor protection standards as required by each agency’s regulations is substantially similar ...” The Division indicates that the no-action letter is intended to place “both agencies on equal footing with respect to the application of investor protections,” thereby facilitating “compliance with both regulatory regimes.”

To this end, the Division’s relief relies on the definition of “family office” in Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940. Rule 202(a)(11)(G)-1(b) defines a family office as a company (including its directors, partners, members, trustees, etc.) that:

- (a) has no clients other than “family clients”;²
- (b) is wholly owned by family clients and exclusively controlled (directly or indirectly) by one or more “family members” and/or “family entities”;³ and
- (c) does not hold itself out to the public as an investment adviser.⁴

The no-action letter provides relief from CPO registration to entities that are family offices “within the meaning and intent” of Rule 202(a)(11)(G)-1 with respect to their operation of investment vehicles that use commodity interests. Consistent with the limitations on the SEC’s family office exclusion, the no-action letter notes that relief from CPO registration is not being afforded to “multifamily offices,” as that concept has been described by the SEC.⁵ In determining whether the relief applies, family offices should note that (1) the relief requires that the SEC’s family office definition be applied to the *operator* of the family investment vehicle (which is not necessarily the

1 See CFTC Staff Letter No. 12-37, available [here](#).

2 Family clients are defined in Rule 202(a)(11)(G)-1(d)(4).

3 Family members are defined in Rule 202(a)(11)(G)-1(d)(6) and family entities are defined in 202(a)(11)(G)-1(d)(5).

4 For a more complete discussion of the SEC’s family office exclusion, please see our client alert of September 14, 2011, “[SEC Adopts Rule Defining ‘Family Office’ Exclusion Under the Investment Advisers Act.](#)”

5 See Family Offices, 76 Fed. Reg. 37,983, 37,991 (June 29, 2011).

same entity that is the *adviser* to the vehicle), and (2) the no-action letter does not provide any relief from commodity trading advisor (CTA) registration (although existing statutory and/or regulatory exemptions from CTA registration may be applicable).

Procedure to Claim No-Action Relief

The relief provided in the no-action letter is not self-executing. Family offices are required to file a claim with the Division via email and, as long as it is materially complete, that claim will become effective upon filing. The claim must:

- (a) state the name, main business address and main business telephone number of the family office;
- (b) state the capacity of the family office (*i.e.*, acting as a CPO) with respect to the name of the “pools” for which the claim is being filed;
- (c) state that the family office is a “family office” within the meaning and intent of Rule 202(a)(11)(G)-1 and that it will notify the Division if it no longer satisfies that definition; and
- (d) be electronically signed by (a person authorized to bind) the family office; and
- (e) be filed with the Division via email at dsionoaction@cftc.gov with the subject line “Family Office” prior to December 31, 2012, for a family office in operation as of December 1, 2012, or, for a family office that begins to operate after December 1, 2012, within 30 days after it begins to operate as a family office.

The Division noted that the relief does not excuse a family office from compliance with any other applicable requirements set forth in the Commodity Exchange Act (CEA) or in CFTC regulations, including antifraud provisions.⁶

Next Steps for Family Office Relief

The CFTC has received numerous comments in response to recent proposed rulemakings calling for the adoption of a rule excluding family clients, as defined in Rule 202(a)(11)(G)-1(d)(4) from the definition of commodity pool, and family offices, as defined in Rule 202(a)(11)(G)-1(b), from the definition of CTA. There is no indication that the Division’s no-action letter has been issued in lieu of the subsequent adoption of a rule that would exclude family offices and family clients from the definitions of commodity pool, CPO and CTA in the CEA.

⁶ The continued application of antifraud provisions to family offices is a notable divergence between the SEC’s and the CFTC’s treatment of family offices.