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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-143
No-Action
November 5, 2014
Division of Swap Dealer and Intermediary Oversight

Mr. Paul Architzel
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Washington, D.C. 20006

RE: No-Action Relief from Registration as Commodity Trading Advisors for Family Offices

This is in response to your request submitted to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) on November 26, 2013, (the “Correspondence”), on behalf of the Private Investor Coalition, Inc., a coalition of more than fifty single family offices. In the Correspondence, you request that the Division not recommend that the Commission take an enforcement action, pursuant to Section 4m(1) of the Commodity Exchange Act (“CEA”),¹ against any family office for failure to register as a commodity trading advisor (“CTA”), in connection with advisory services it provides to a “Family Client,” as defined by regulations promulgated by the Securities and Exchange Commission (“SEC”).²

CFTC Letter 12-37

In the Correspondence, you extensively cite CFTC Staff Letter No. 12-37 (“Letter 12-37”), which the Division issued in November 2012.³ As the Division explained in Letter 12-37, a family office is, generally, a professional organization that is wholly-owned by clients in a family and is exclusively controlled (directly or indirectly) by one or more members of a family and/or entities controlled by a family (“Family Office”).⁴ Typically, a Family Office is employed when one or more direct members of a family create substantial wealth, and share that

¹ 7 U.S.C. 6m(1).

² See 76 Fed. Reg. 37983 (June 29, 2011) and 17 CFR 275.202(a)(11)(G)-1(d)(4).

³ See CFTC Staff Letter 12-37 (Nov. 29, 2012). This and all other Commission staff letters cited herein are available on the Commission’s website, www.cftc.gov.

⁴ *Id.* at 1.

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wealth in whole or in part with other members of that family, either through direct transfer, inheritance, or similar means.⁵ The Family Office is then used to provide personalized services to that family, including advice regarding issues of tax, estate planning, investment, and charitable giving.⁶

The Division intended Letter 12-37 to address the impact of the rescission of Commission Regulation 4.13(a)(4), which provided an exemption from registration as a commodity pool operator (“CPO”) to any entity who, inter alia, operated a pool whose investors are “qualified eligible persons,”⁷ with respect to Family Offices. Family Offices and their operators commonly relied upon this exemption, and after its rescission, would have been required to register as CPOs, without relief from the Commission or its staff. Relief from CPO registration was requested on the basis that “family offices are not operations of the type and nature that warrant regulatory oversight by the Commission,” and that “a family office is comprised of participants with close relationships, [and have] a direct relationship between the clients and the adviser,” thereby substantially reducing the need for customer protections provided by the regulation of CPOs pursuant to Part 4 of the Commission’s regulations.

Letter 12-37 cited a rulemaking by the SEC, in which the SEC adopted an exclusion for Family Offices that would otherwise be required to register as investment advisers.⁸ The Division stated that, “the fundamental issue of the appropriate application of investment protection standards as required by each respective agency’s regulations is substantially similar in the [family office] issue.”⁹ With the purpose of facilitating compliance by “placing both agencies on equal footing with respect to the application of investor protections relevant to this issue,” the Division provided no-action relief from CPO registration to CPOs meeting the SEC’s definition of “family office” in 17 CFR 275.202(a)(11)(G)-1 and filing the requisite notice to the Division.¹⁰

In the Correspondence, you correctly point out that Letter 12-37 “was silent with respect to relief” for Family Offices from registration as CTAs.¹¹ You further argue that “the reasoning of [Letter 12-37] ... holds equally true in respect of CTA registration,” and that “failure to provide the requested no-action relief may have the anomalous result that... a person who has been relieved under [Letter 12-37] from the requirement to register as a CPO in connection with

⁵ *Id.*

⁶ *Id.*

⁷ The “qualified eligible person” standard is comprised primarily of criteria based on assets owned by an individual or entity, and is defined in Commission Regulation 4.7(a)(2).

⁸ CFTC Letter 12-37, at 2 (Nov. 29, 2012) (citing 76 Fed. Reg. 37983 (June 29, 2011)). *See* 17 CFR 275.202(a)(11)(G)-1(a) (providing that “[a] family office, as defined in this section, shall not be considered to be an investment adviser for purpose of the Act”); and 17 CFR 275.202(a)(11)(G)-1(b) (defining “family office”).

⁹ CFTC Staff Letter 12-37 at 2.

¹⁰ *Id.*

¹¹ Correspondence, p. 2.

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the operation of a family office nonetheless would be required to register as a CTA.”¹² The Correspondence additionally cites prior instances where one of the Division’s predecessors, the Division of Trading and Markets, granted persons or entities providing commodity interest trading advice to Family Offices relief from CTA registration.¹³

The Division agrees that the arguments raised in favor of providing Family Offices no-action relief from registration as CPOs are equally applicable in the context of CTA registration. As noted above, Letter 12-37 limits the availability of no-action relief to CPOs operating a Family Office structure meeting the definition of “family office,” in 17 CFR 275.202(a)(11)(G)-1(b). Therefore, consistent with that previously issued relief, the Division hereby grants no-action relief from CTA registration for Family Offices eligible for relief under Letter 12-37, in connection with their advisory services to “Family Client[s],” as defined in 17 CFR 275.202(a)(11)(G)-1(d)(4).

No-Action Relief for Family Offices From CTA Registration

Based upon the foregoing, the Division will not recommend enforcement action, pursuant to CEA Section 4m(1), for failure to register with the Commission as a CTA, against any Family Office, in connection with any advisory services it provides to a “Family Client,” as defined in 17 CFR 275.202(a)(11)(G)-1(d)(4), *provided that* the Family Office (i) submits a claim electing the relief herein, and (ii) remains in compliance with § 275.202(a)(11)(G)-1, as amended, regardless of whether the Family Office seeks to be excluded from the Investment Advisers Act of 1940.

Claim of No-Action Relief

This relief is not self-executing. Rather, an eligible Family Office must file a claim electing the relief. A claim submitted by a Family Office will be effective upon filing, so long as the claim is accurate and complete.

Specifically, the claim of no-action relief must:

- a. State the name, main business address, and main business telephone number of the Family Office claiming the relief;

¹² *Id.* at 3.

¹³ Correspondence, p. 2, *citing* CFTC Staff Letter No. 97-89 (Oct. 27, 1997) (granting the managing member of a fund, which serves as a private investment vehicle for a family, no-action relief from CPO and CTA registration required by CEA Section 4m(1)); *and* CFTC Staff Letter No. 99-46 (Sept. 29, 1999) (granting no-action relief from CTA registration to the adviser of a family office partnership structure and finding that there is no “substantial public interest to be served by requiring the Adviser to register as a CTA”).

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- b. State the capacity (*i.e.*, CTA) and, where applicable, the name of the pool(s), for which the claim is being filed;
- c. Be electronically signed by the Family Office; and
- d. Be filed with the Division using the email address *dsionoaction@cftc.gov* with the subject line “Family Office CTA Relief.”

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse the affected persons from compliance with any other applicable requirements contained in the Act or in the Commission’s regulations issued thereunder. For example, affected persons remain subject to all antifraud provisions of the Act. Further, this letter, and the relief contained herein, is based upon representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Elizabeth Groover, Special Counsel, at 202-418-5985 or egroover@cftc.gov.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association