



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 12-37  
No-Action  
November 29, 2012  
Division of Swap Dealer and Intermediary Oversight

Re: Family Offices

This letter is in response to written correspondence to and telephonic conversations with (together, “the Correspondence”) Division of Swap Dealer and Intermediary Oversight (the “Division”) requesting that the Division address the rescission of Regulation 4.13(a)(4)<sup>1</sup> through the adoption of relief for certain family offices from Part 4 of the Commission’s Regulations.

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. Typically, a family office structure is employed when one or more direct members of a family create substantial wealth, and share that wealth in whole or in part with other members of that family, either through direct transfer, inheritance, or similar means. 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.

In February 2012, the Commission promulgated certain amendments to Part 4 of the Commission’s Regulations.<sup>2</sup> Notable, and at issue here, is the rescission of Regulation 4.13(a)(4), which had previously exempted from registration<sup>3</sup> Commodity Pool Operators (“CPOs”) who, inter alia, operated a pool for only those individuals who met a certain “qualified eligible person” standard.<sup>4</sup> In general, family offices relied on Regulation 4.13(a)(4) as an exemption from registration. Pursuant to these recent amendments, absent affirmative relief, many family offices would be required to register with the Commission as a CPO.

The Correspondence asserts generally, that family offices are not operations of the type and nature that warrant regulatory oversight by the Commission. That is, because a family office is comprised of participants with close relationships, and there is a direct relationship between

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<sup>1</sup> See, “Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations,” 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

<sup>2</sup> Id.

<sup>3</sup> In addition to an exemption from registration as a commodity pool operator, 4.13(a)(4) functionally relieved such commodity pool operators from the disclosure and compliance requirements of the Commission’s Regulations.

<sup>4</sup> The “qualified eligible person” standard is comprised primarily of criteria based on assets owned by an individual or entity.

the clients and the adviser, such relationships greatly reduce the need for the customer protections available pursuant to Part 4 of the Commission's Regulations. Importantly, as a function of these relationships, any disputes that arise between any of the family members concerning the operation of the family office could be resolved within that family unit, or through state courts under laws designed to resolve such family disputes.<sup>5</sup>

Further, it has been suggested that this issue has similarly been addressed by the Securities and Exchange Commission ("SEC"), which resulted in an exclusion for family offices that would otherwise be required to register as an investment adviser.<sup>6</sup> The Division notes that the SEC has devoted substantial time and resources to addressing this issue. Further, the Division observes that the fundamental issue of the appropriate application of investor protection standards as required by each respective agency's regulations is substantially similar in the issue at hand. The Division further notes that placing both agencies on equal footing with respect to the application of investor protections relevant to this issue will facilitate compliance with both regulatory regimes.

Based on the foregoing, the Division will not recommend that the Commission take an enforcement action for failure to register with the Commission as a CPO against a CPO that is a Family Office within the meaning and intent of 17 CFR § 275.202(a)(11)(G)-1, as amended, provided that the CPO complies with the following requirements.

#### Family Office No-Action

The Division will not recommend enforcement action for failure to register with the Commission as a CPO against any CPO that is a Family Office as defined by the SEC, provided that the CPO (i) submits a claim to take advantage of the relief, and (ii) remains in compliance with § 275.202(a)(11)(G)-1, as amended, regardless of whether the CPO 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 CPO must file a claim to perfect the relief. A claim submitted by a CPO will be effective upon filing, so long as the claim is complete.

Specifically, the claim of no-action relief must:

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

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<sup>5</sup> This rationale is also noted in the adopting release of the SEC's family office exclusion. See, Family Offices; Final Rule 76 FR 37983 at 37984 (June 29, 2011).

<sup>6</sup> Id. The Division notes that the SEC rule explicitly does not apply to "multifamily offices," which are family offices serving multiple families. Id. at 37991. Accordingly, the relief in this letter does not extend to multifamily offices.

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

Further, prior to March 31, 2013 (or, for a Family Office that begins to operate after that date, within 30 days after it begins to operate as a Family Office), it must confirm that the CPO is a Family Office within the meaning and intent of 17 CFR § 275.202(a)(11)(G)-1, and that the CPO will notify the Division if it is no longer a Family Office within the meaning and intent of such regulation.

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act.<sup>7</sup> Therefore, a control number for the collection must be obtained from the Office of Management and Budget. In accordance with 44 U.S.C. § 3507(d) and 5 C.F.R. §§ 1320.8 and 1320.10, the Division will, by separate action, prepare an information collection request for review and approval by OMB, and will publish in the *Federal Register* a notice and request for public comments on the collection burdens associated with the no-action relief. If approved, a family office may not rely on the Division's determination not to recommend an enforcement action to the Commission unless the vehicle provides the information the Division has determined is essential to the provision of no-action relief.

In granting CPOs the relief described herein, the Division seeks to strike the appropriate balance between the Commission's regulatory objectives and addressing the public concerns of Family Offices and family clients. As such, the Division believes that not recommending enforcement action will address these concerns.

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 the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void.

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<sup>7</sup> 44 U.S.C. § § 3501 *et. seq.*

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Should you have any questions, please do not hesitate to contact Amanda Olear, Special Counsel, at 202-418-5283 or Michael Ehrstein, Attorney-Advisor, at 202-418-5957.

Very truly yours,

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Division of Swap Dealer  
and Intermediary Oversight

cc: Regina Thoele, Compliance  
National Futures Association, Chicago