



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 12-68
No-Action
December 21, 2012
Division of Swap Dealer and Intermediary Oversight

Karrie McMillan
General Counsel
Investment Company Institute
1401 H St., NW
Suite 1200
Washington, DC 20005

Re: Request for Temporary Registration Relief for Commodity Pool Operators and Commodity Trading Advisors that Must Register as a Result of Amended CFTC Regulation 4.5 and Rescinded CFTC Regulation 4.13(a)(4)

Dear Ms. McMillan:

This is in response to your letter dated December 20, 2012, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), along with in camera conversations with Commission staff (together, “the Correspondence”). By the Correspondence, you request that the Division not recommend enforcement action by the Commission against certain commodity pool operators (“CPOs”), commodity trading advisors (“CTAs”) or any principal or associated person (“AP”) thereof, for engaging in activities as such or operating in such capacities, as applicable, prior to a registration as such being granted or denied by the National Futures Association (“NFA”), so long as such application for registration is received by NFA on or before December 31, 2012.

Based upon the representations made in the Correspondence, we understand the relevant facts to be as set forth below. Pursuant to the recent amendment to Commission Regulation 4.5 and the rescission of Commission Regulation 4.13(a)(4)¹, a large number of persons will no longer be able to rely on a previously operative exclusion or exemption (as applicable) and as such, will be required to register with the Commission no later than December 31, 2012. Functionally, this registration will require CPOs and CTAs to file a Form 7-R with the

¹ 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

Commission (by and through NFA) and any principals and APs thereof to similarly file a Form 8-R. Considering the impending deadline for registration, and the significant volume of forms that will be filed as a result, concerns have been raised that NFA may not be able to timely process such filings and acknowledge the registration of applicants, potentially impairing such applicant's ability to conduct business.² Accordingly, in the absence of the requested relief, the Correspondence suggests that any pending registrants may be excluded from conducting routine commodity interest transactions with other NFA members. Such interruptions in the normal course of business may prove highly disruptive to firms that are attempting to comply in good faith with their regulatory requirements.

Based on the foregoing, the Division will not recommend that the Commission take an enforcement action against CPOs, CTAs, and the principals and APs thereof, who are required to register as a result of the recent amendment to Commission Regulation 4.5 or the rescission of Commission Regulation 4.13(a)(4),³ for engaging in activities as such or operating in such capacities, as applicable, prior to a registration as such being granted or denied by NFA, provided that such persons comply with the following requirements:

1. On or before December 31, 2012, the person completes and files with NFA a registration application, including, as appropriate, Forms 7-R and 8-R, as well as any required fingerprint card for each of its principals and APs and;

2. Subject to the foregoing, on and after January 1, 2013, the person shall be subject to, and shall comply with, the CEA and the Commission's regulations applicable to its activities as a CPO or CTA, or principal or AP thereof, as if the person was in fact registered or approved in such capacity.

Any relief granted herein shall terminate on the date on which NFA provides notice in accordance with CFTC Regulation 3.2(c) that the person is registered as a CPO, CTA or principal or AP thereof, *or*, five days after service by NFA of a notice on such person pursuant to NFA registration Rule 504 that the person may be disqualified from registration or principal status under CEA section 8a(2) or 8a(3), *or*, such time as NFA provides notice that such person's application for registration has otherwise been denied.

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

² For example, NFA Bylaw 1101 prohibits NFA Members from doing business with most non-Members that are required to be registered with the CFTC as a CPO or CTA.

³ See 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

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the 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, Special Counsel, at 202-418-5283 or aolear@cftc.gov, or Michael Ehrstein, Attorney-Advisor, at 202-418-5957 or mehrstein@cftc.gov.

Very truly yours,

Gary Barnett
Director

cc: Regina Thoele, National Futures Association, Chicago