April 23, 2012

By Facsimile
David A. Stawick, Secretary
Commodities Future Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, DC 20581

Re: Regulation 4.5 Harmonization

Dear Secretary Stawick:

The Commodity Futures Trading Commission (the "Commission") recently asked for comments regarding the possibility of creating an exemption from registration rules for Family Offices in order to provide harmony with the provisions of the Investment Advisors Act of 1940 (the "Investment Advisors Act") (Harmonization of Compliance Obligations for Registered Investment Companies to Register as Commodity Pool Operators, 77 Fed. Reg. 11345, 11348 (February 24, 2012)). Gray, Plant, Mooty, Mooty & Bennett, P.A. ("GPM") is pleased to have the opportunity to comment regarding the possibility of adopting such an exemption for Family Offices. GPM is a national law firm whose clients include a large number of Family Offices that provide tax, estate, investment, and other services for members of a related family.

GPM and its Family Office clients believe that the Commission should adopt an

exclusion to the definition of Commodity Pool Operator ("CPO") and an exemption to the Commodity Trading Adviser ("CTA") rules for Family Offices and their administrators because (i) regulation of Family Offices does not further the aims of the Commodity Exchange Act (the "Act"), (ii) providing relief from registration of Family Offices on a case-by-case basis is unduly burdensome on both Family Offices and the Commission, (iii) any possible benefits of requiring registration are outweighed by the potential costs and harm that may result from such requirement, and (iv) because it will create a unified regulatory scheme.

The Commission has Consistently Granted Relief for Family Offices.

Over the years, the Commission has consistently provided requested relief to Family Offices. This is because the Commission correctly believes that the regulation of family investment activities should be left to the family and that the family clients served by a Family Office are not the type of investors that the Act was designed to protect. The Commission also provided in its final rules regarding the elimination of the exemption in Rule 4.13 that Family Offices could continue to rely on previous exemption letters (or new requests for exemption) until the Commission had sufficient time to consider the establishment of a new exemption for Family Offices.

The Commission has consistently provided relief from registration as a CPO or CTA to funds and their managers where such funds were owned solely by members of a family, including those owned by second and third generation family members, former spouses of family members, and trusts for the benefit of family members (CFTC Staff

Letter No. 02-07, Comm. Fut. L. Rept. (CCH) ~28,924 (Jan. 24, 2002); CFTC Interpretative Letter No. 97-89, Comm. Fut. L. Rept. (CCH) ~27,191 (Oct. 27,1997); CFTC Interpretative Letter No. 97-78, Comm. Fut. L. Rept. (CCH) ~27,158 (Sept. 24,1997); CFTC Staff Letter No. 09-46, Comm. Fut. L. Rept. (CCH) ~31 ,482 (Oct. 20, 2009)). In fact, it appears that the Commission has granted relief in every situation which would also be exempted under the new Family Office rules of the Investment Advisors Act (Section 202 (a)(11)(G)). It seems logical to assume that the Commission would continue to grant such relief in similar situations where the funds are only open to family members.

While we agree that it is correct and consistent with the Commission's position that such relationships were not the type the Act was intended to cover, we believe it would be more equitable and less administratively burdensome to establish a uniform exclusion and exemption similar to the rules created under the Dodd-Frank provisions of the Investment Advisors Act. Failure to create such an exclusion and exemption would force each Family Office to separately spend time and effort to request approval from the Commission, thereby requiring the Commission to expend its limited resources responding to such requests. Creating an exemption that defines the essential characteristics of Family Offices would save both Family Offices and the Commission substantial resources, while at the same time accomplishing the Commission's stated objective of establishing a uniform regulatory structure that is consistent with other applicable regulation.

The Systemic Benefits of Requiring Registration are Outweighed by the Potential Costs and Harm that may Result from such Requirement.

We are mindful of the Commission's belief that it needs to better monitor systematic risk. We also believe this desire must be measured by weighing the relative costs to the Family Offices against the potential benefits to the investor and investment community at large. Most Family Offices do not directly trade commodities or futures, but may do so indirectly through third parties. Most of these third parties are currently required to register or will be required to register under the new exemption regime. Requiring Family Offices also to register runs the risk of double-counting the futures activity that is already being reported by another entity. Therefore, we believe the Commission's desire to obtain data and monitoring of systematic risk will be accomplished without requiring the added burden of registration on Family Offices.

We have additional concerns about the impact of the registration requirement on Family Offices. The costs of registration for Family Offices will be substantial. Family Offices are often small one- or two-person offices where the incremental cost of hiring licensed or knowledgeable compliance officers would be prohibitive. Further, the requirement to disclose private financial information of a family to the public could have severe adverse effects, including putting those families at risk of being victims of fraudulent activity by criminals who would have access to detailed financial information that is not otherwise available. We believe that the potential benefit of forcing Family Offices to register is substantially outweighed by these costs and risks.

We also believe that requiring Family Offices to provide information similar to that required to claim an exemption under the rules set forth in Section 4.5 and 4.13 also potentially subjects them to unnecessary risk. Therefore, we would request that the definition of CPO be modified to exclude "family client" as defined in Rule 202(a)(11)(G)-1(d)(4) under the Investment Advisors Act. In this way Family Offices will not be required to file any claim of exemption.

An Exclusion and an Exemption would Place the Act in Harmony with Other Regulatory Schemes.

We believe that Congress and the SEC correctly determined that the registration of Family Offices was neither necessary to provide protection for the investing public nor required for assessing systematic risk; they correctly concluded that the potential benefits of requiring registration did not outweigh the potential costs and risks that registration could bring. It is important to note that Congress drew a distinction between Venture Funds and Private Funds (as such terms are defined in the Investment Advisors Act and related rules and regulations), which are required to provide limited information under the exemptions created by the Investment Advisors Act, and Family Offices, which are not subject to such requirements. This follows a long history of Congressional, regulatory, and judicial analysis that such registration and disclosure would not be in the best interests of the Family Offices or the public.

Finally, many Family Offices have adapted their procedures and policies to meet the definitional and other requirements of the exemptions provided for Family Offices in the Investment Advisors Act. To have different rules for the Act would not only present

the possibility of inconsistent procedural and policy requirements, but would create a substantial cost burden on Family Offices to comply with disharmonious rules.

We believe the way to align the two Acts and create the best environment for balancing of benefit and cost is to create both an exclusion for Family Offices and an exemption for their advisers under the Act. This would be consistent with the current standard created by the SEC under the Investment Advisors Act. We therefore respectfully request that the Commission adopt a Family Office exclusion from the definition of commodity pool for any "family client" as defined in the Investment Advisor Act, and an exemption for advisers to Family Offices from the registration requirements for CTAs.

GPM appreciates the opportunity to comment on the Proposed Rules. If the Commission or any of its staff members have any questions concerning the comments in this letter, please do not hesitate to contact the undersigned at (612) 632-3420.

Sincerely,

Francis Vargas

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