



| asset management group

INVESTMENT ADVISER
ASSOCIATION

December 20, 2012

VIA ELECTRONIC MAIL

Mr. Gary Barnett
Director
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

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Pool Operators and Commodity Trading Advisors that Must Register as a Result of Amended CFTC Regulation 4.5 and Rescinded CFTC Regulation 4.13(a)(4)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 Mr. Barnett:

The Investment Company Institute (“ICI”),¹ the Investment Adviser Association (“IAA”),² and the Asset Management Group of the Securities Industry and Financial Markets Association³

¹ The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$13.8 trillion and serve over 90 million shareholders.

² The Investment Adviser Association is a not-for-profit association that represents the interests of investment adviser firms registered with the Securities and Exchange Commission. Founded in 1937, the IAA’s membership consists of more than 550 advisers that collectively manage in excess of \$10 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

³ The Asset Management Group (AMG) of the Securities Industry and Financial Markets Association’s members represent U.S. asset management firms whose combined assets under management exceed \$20 trillion. The clients of AMG member firms include, among others, registered investment companies, endowments, state and local government pension funds, private sector Employee Retirement Income Security Act of 1974 pension funds and private funds such as hedge funds and private equity funds. In their role as asset managers, AMG member firms, on behalf of their clients, engage in transactions for hedging and risk management purposes that will be classified as “security-based swaps” and “swaps” under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

(“SIFMA AMG”) respectfully request that the Division of Swap Dealer and Intermediary Oversight (“DSIO” or the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) promptly address a matter of urgent concern to certain persons that operate, advise, or subadvise registered investment companies and/or private funds (together, “funds”) that invest directly or indirectly in commodity interests. As a result of the Commission’s recent amendments to Regulation 4.5, and its rescission of Regulation 4.13(a)(4),⁴ many of these persons are required to register as commodity pool operators (“CPOs”) and/or commodity trading advisors (“CTAs”) with the CFTC by January 1, 2013 by filing a registration application with the National Futures Association (“NFA”).

We are concerned that, due to the large number of CPO and CTA registration applications that have been filed with the NFA, NFA will be unable to process all of these applications by the January 1 deadline. We therefore respectfully request that the DSIO provide temporary registration no-action relief to permit a person that, as a result of the amendments to CFTC Regulation 4.5 or the rescission of CFTC Regulation 4.13(a)(4), files an application for CPO and/or CTA registration or to serve as an associated person (“AP”) or principal of a CPO and/or CTA, with the NFA on or before December 31, 2012 and complies with the other conditions set forth in this letter, to engage in CPO and/or CTA activities, or activities as an AP and/or principal of a CPO and/or CTA, before such registration application is declared effective by the NFA. As discussed below, the requested relief is modeled on relief DSIO has granted to various intermediaries now required to register under the Commodity Exchange Act (“CEA”) because of their swaps activity.

Background

The Commission’s amendments to Regulation 4.5 and rescission of Regulation 4.13(a)(4) have resulted in hundreds of persons submitting registration applications on Form 7-R as CPOs and CTAs, accompanied by Form 8-Rs for APs and natural person principals, through the NFA’s Online Registration System. We understand that, while NFA is doing its best to process these registrations in a timely manner, this influx of hundreds of applications, many of which have been submitted by persons that have never been registered before with the CFTC or been NFA members, likely will make it difficult, if not impossible, for NFA to process all pending registrations by the January 1 deadline. Persons that are required to register as CPOs, CTAs, and APs, or file Form 8-Rs as principals, by that date are concerned about their potential status with the Commission if their registrations are not made effective or they are not approved as principals by the deadline.

If these persons’ registrations are not made effective or these persons are not approved as principals by the deadline, their ability to conduct commodity interest-related business could be

⁴ *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11252 (Feb. 24, 2012); *correction notice published at* 77 Fed. Reg. 17328 (Mar. 26, 2012) (“Rule 4.5 Adopting Release”).

substantially impaired by NFA Bylaw 1101. This provision requires that NFA members undertake due diligence to seek to determine that those parties with whom they conduct business are appropriately registered or exempt from registration under the CEA. If registrations are still pending after January 1, these applicants may be unable to satisfy the due diligence demands of the NFA member firms with whom they do business, resulting in those member firms being unable to do business with them. This could have significant adverse effects on the shareholders of, or other investors in, funds that buy and sell commodity interests as part of their portfolio management strategy. We have copied the NFA staff on this letter, and plan to separately request that they confirm that the Bylaw 1101 obligation would not apply to NFA member firms conducting business with these applicants for the brief period of time during which the applicants would rely on the relief requested by this letter.

The DSIO has granted similar no-action relief in the recent past for certain applicants for registration in light of the effective date of the definition of “swap:”

... to provide [such persons] with sufficient time for the completion of the registration process as applicable to them, and to relieve the pressure the Division anticipates will be placed on the registration system as a result of the sudden influx of the numerous registration applications that must be filed by [such persons].⁵

The relief we are requesting similarly:

- Relates to many persons “who have not previously been subject to registration with and regulation by the Commission, [and] will be unfamiliar with the process by which a person becomes a Commission registrant.”⁶
- “[W]ill enable the . . . NFA . . . to perform the registration function in an orderly manner. . . . Because registration is not effective instantaneously with the submission of a registration application, the temporary no-action position taken in this letter will: (1) help to avoid business interruptions by providing relief to those [persons] who, due to the unavoidable operational and resource constraints NFA would face in processing and approving that many registration applications at one time, are unable to become registered by [the registration deadline]; and (2) alleviate the pressure on NFA to immediately process the large number of registration applications . . . it otherwise would likely be receiving on or immediately prior to that date.”⁷

⁵ CFTC Letter No. 12-15 (October 11, 2012).

⁶ *Id.*

⁷ *Id.*

Request for Relief

For the reasons discussed above, we request that the Division not recommend enforcement action to the Commission against a person for failure to be registered as a CPO, CTA, or for serving as an AP or principal of a CPO or CTA, as a result of the amendments to CFTC Regulation 4.5 or the rescission of CFTC Regulation 4.13(a)(4), subject to the following conditions:

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.
2. Subject to the foregoing and the relief requested by this letter, on and after January 1, 2013, the person is subject to and makes a good faith effort to comply with the CEA and the Commission's regulations applicable to its activities as a CPO, CTA, principal or AP of a CPO or CTA, as if the person was in fact registered or approved in such capacity.⁸
3. The requested relief would 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 AP, or approved as a principal, 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).

* * * * *

⁸ We note that this obligation is subject to the Commission's adoption of harmonized reporting, recordkeeping, and disclosure rules under Part 4 of the Commission's regulations, with which it has stated compliance will not be required until 60 days following the effective date of such rules. *See* Rule 4.5 Adopting Release, *supra* note 4; *Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators*, 77 Fed. Reg. 11345 (February 24, 2012). The DSIO staff has confirmed that the effective date of the harmonization rules will be 60 days after they are published in the Federal Register.

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We appreciate your expedited consideration of our request, and would be pleased to discuss it further with you. If you have questions or require further information, please contact the ICI (Karrie McMillan at 202/326-5815, Sarah A. Bessin at 202/326-5835 or Rachel H. Graham at 202/326-5819), the IAA (Karen L. Barr at 202/293-4222), or SIFMA AMG (Tim Cameron at 212/313-1389).

Sincerely,

/s/Karrie McMillan

Karrie McMillan
General Counsel
Investment Company Institute

/s/ Karen L. Barr

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General Counsel
Investment Adviser Association

/s/ Timothy W. Cameron

Timothy W. Cameron
Managing Director, Asset Management Group
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cc: The Honorable Gary Gensler, Chairman
The Honorable Jill E. Sommers, Commissioner
The Honorable Bart Chilton, Commissioner
The Honorable Scott D. O'Malia, Commissioner
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