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CFTC Reinstates Family Office Exception

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By: Thomas J. Handler & Christine E. McKillip

On November 29, 2012, the Commodity Futures Trading Commission (the "CFTC") released a blanket No-Action Letter providing relief from registration as a Commodity Pool Operator ("CPO") to family offices that qualify for the Family Office Exemption created under the Dodd-Frank Act, modifying the Investment Advisers Act of 1940 (the "IAA"). This relief stems from the recent CFTC decision to rescind the CPO exemption in the Commodities Exchange Act that most family offices currently rely on to avoid registration. Without the exemption, family offices investing in mutual funds or hedge funds owning commodities could be required to register as a CPO by December 31, 2012.

While the CFTC noted that family offices are "not operations of the type and nature that warrant regulatory oversight by the CFTC," the new "family office exemption" is not a self-executing exemption. In order to obtain the relief set forth by the CFTC in the No-Action Letter, a family office is required to:

1. Retain the Family Office Exemption pursuant to the IAA;
2. Submit a claim for relief to the CFTC's Division of Swap Dealer and Intermediary Oversight by December 31, 2012, containing the name, address, and phone number of the family office, and the capacity and the name of the pools of commodities owned by the family office (if applicable); and,
3. Prior to March 31, 2013, confirm its status as a family office and warrant that the family office will notify the CFTC if it no longer meets the definition of a family office pursuant to the IAA.

If you have any questions regarding this No-Action Letter or the family office exemption discussed herein, please contact Handler Thayer, LLP at (312) 641-2100.

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