



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Eileen T. Flaherty  
Director

CFTC Letter No. 17-69  
Other Written Communication  
May 3, 2017  
Division of Swap Dealer and Intermediary Oversight

David Blass  
General Counsel  
Investment Company Institute  
1401 H Street, NW, Suite 1200  
Washington, DC 20005

### **Re: Clarification on Language in CFTC Staff Letter No. 13-51**

Dear Mr. Blass:

This is in response to a question raised during your discussions with the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”). Specifically, you inquired about the meaning of a clause in CFTC Staff Letter No. 13-51 (“Letter 13-51”).<sup>1</sup>

On September 5, 2013, the Division issued Letter 13-51 in response to a request from the Investment Company Institute and the Securities Industry and Financial Markets Association. Letter 13-51 stated that the Division will not recommend that the Commission take enforcement action against a commodity pool operator (“CPO”) of a registered fund<sup>2</sup> that trades in commodity interests through wholly-owned controlled foreign corporations<sup>3</sup> (“CFCs”) for failure to file a separate report for such CFCs to the National Futures Association (“NFA”) pursuant to Commission regulation 4.27(c) and a separate annual report for such CFCs to NFA pursuant to Commission regulation 4.22(c). This is dependent upon, among other things, such CPO filing a report pursuant to Commission regulations 4.27(c) and an annual report pursuant to Commission regulation 4.22(c) for the parent registered fund that consolidates the financial information for its CFCs.

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<sup>1</sup> September 5, 2013. This letter is available on the Commission’s website, [www.cftc.gov](http://www.cftc.gov).

<sup>2</sup> Defined in Letter 13-51, p.2.

<sup>3</sup> *Id.*

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Specifically, regarding relief from Commission regulation 4.22(c), Letter 13-51 required the CPO, among other things, to prepare “an annual report of the registered fund that contains consolidated audited financial statements for the registered fund that includes, and also separately indicates, the holdings, gains and losses, and other financial statement amounts attributable to the CFC.”<sup>4</sup> In your discussions with the Division, you inquired about the meaning of the clause “and also separately indicates.”<sup>5</sup>

The Division notes that, in order to comply with condition (i) in Letter 13-51 regarding relief from Commission regulation 4.22(c), the CPO must distribute to the participants in the registered fund, and file with NFA, an audited consolidated annual report for the registered fund and its CFCs. The audited consolidated annual report must be presented in accordance with generally accepted accounting principles, which requires a consolidated schedule of investments that includes the holdings of both the registered fund and its CFCs.

Should you have any questions, please do not hesitate to contact Amanda Olear, Associate Director, at 202-418-5283, or Chang Jung, Special Counsel, at 202-418-5202.

Very truly yours,

Eileen T. Flaherty  
Director  
Division of Swap Dealer and  
Intermediary Oversight

cc: Regina Thoele, Compliance  
National Futures Association, Chicago

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<sup>4</sup> Letter 13-51, p.8.

<sup>5</sup> *Id.*