



Financial Services & Products ADVISORY ■

JANUARY 7, 2014

Annual Affirmation of Exemption or Exclusion from CPO or CTA Registration – Deadline for Affirmation: March 3, 2014

Any firm that is currently claiming an exemption or exclusion from registration with the Commodity Futures Trading Commission (the “CFTC”) as a commodity pool operator (“CPO”) or commodity trading advisor (“CTA”) is required to affirm its status with the National Futures Association (the “NFA”) before March 3, 2014. If you claim an exemption or exclusion from (i) CPO registration with respect to one or more funds that you operate pursuant to CFTC Regulation 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3) or 4.13(a)(5),¹ or (ii) CTA registration under CFTC Regulation 4.14(a)(8),² then you must affirm the applicable exemption(s) or exclusion(s) by March 3, 2014 (i.e., within 60 days of the calendar year end).

If you do not affirm an exemption or exclusion by March 3, 2014, then the exemption or exclusion will be automatically withdrawn on March 3, 2014. For registered CPOs and CTAs, the automatic withdrawal of a pool’s exemption or exclusion will result in the CPO or CTA being subject to the disclosure, reporting and recordkeeping requirements of the Commodity Exchange Act regardless of the firm’s continuing eligibility to avail itself of an exemption or exclusion. For non-registered CPOs and CTAs, the resulting withdrawal may result in an enforcement action by the CFTC. Moreover, you should be aware that pursuant to NFA Bylaw 1101, any member of the NFA will be prohibited from doing business with a firm that is not properly registered with the NFA. Thus, this could impact account relationships with futures commission merchants or the ability of any NFA member that is an investor from maintaining an investment in a fund or with a firm that does not have proper registration in place.

You can complete the affirmation process on the NFA’s Exemption System at <http://www.nfa.futures.org/NFA-electronic-filings/ORS.HTML> at any time prior to March 3, 2014. Once logged in, you will need to identify each exemption or exclusion that you are affirming.



To view the full NFA notice, including instructions for completion of the affirmation process and FAQs for Exemptions, please click here: <http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4346>.

If you have questions regarding the exemptions and exclusions affected by this requirement, the affirmation process generally, or if you need assistance with making the filing, please contact us.

¹ Generally, CFTC Regulation 4.5 excludes registered investment companies, state-regulated insurance companies, federally or state-regulated financial depository institutions and certain operators of ERISA pension plans from the definition of CPO.

Generally, CFTC Regulation 4.13(a)(1) exempts CPOs that operate only one commodity pool for which they do not receive compensation or advertise.

Generally, CFTC Regulation 4.13(a)(2) exempts CPOs operating only pools with 15 or fewer participants at any time and total gross capital contributions that do not exceed \$400,000.

Generally, CFTC Regulation 4.13(a)(3) exempts CPOs operating pools that fulfill one of two *de minimis* tests for commodity interest positions, are not marketed to the public and are offered only to certain sophisticated investors.

Generally, CFTC Regulation 4.13(a)(5) exempts persons who act as a director or trustee for a pool whose operator is registered as a CPO and can claim relief under Regulation 4.12(c) because the pool participation units are registered under the Securities Act of 1933 or listed for trading on a national securities exchange.

² Generally, CFTC Regulation 4.14(a)(8) exempts registered investment advisers, as well as certain persons or entities exempt from investment adviser registration, that direct their commodity interest trading advice solely to certain “qualifying entities,” collective investment vehicles excluded from the definition of commodity pool and commodity pools organized and operated outside of the United States, its territories and possessions; provide such trading advice solely incidental to their business of providing securities or other investment advice; and are not otherwise holding themselves out as CTAs.

If you would like to receive future *Financial Services & Products Advisories* electronically, please forward your contact information to financial.advisory@alston.com. Be sure to put "subscribe" in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following members of the Financial Services & Products Group:

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