



## Investment Management ADVISORY ■

**SEPTEMBER 23, 2014**

### CFTC Grants Exemptive Relief to Permit General Solicitation under CFTC Rules

On September 9, 2014, in an effort to harmonize its rules with recent Securities and Exchange Commission (SEC) amendments made pursuant to the Jumpstart Our Business Startups Act (the "JOBS Act") that permit general solicitation and advertising in certain private offerings, the Commodity Futures Trading Commission (CFTC) issued a letter providing certain commodity pool operators (CPOs) exemptive relief from the general solicitation restrictions contained in CFTC Rules 4.7 and 4.13(a)(3).

Rule 4.7 exempts CPOs from certain disclosure, reporting and recordkeeping rules if the commodity pool is offered only to qualified eligible persons. Rule 4.13(a)(3) provides an exemption from CPO registration for pool operators that trade a *de minimis* amount of commodity interest positions. Both exemptions contain restrictions on marketing commodity pools or offering pool securities to the public. As a result, many CPOs that would have otherwise been permitted to engage in general solicitation and advertising following the SEC's recent amendments were nonetheless barred from doing so if they relied on either Rule 4.7 or 4.13(a)(3).

In an effort to bridge the gap between CFTC rules and the recently amended SEC rules, the CFTC's exemptive letter provides to certain CPOs relief from the restrictions on general solicitation contained in Rules 4.7 and 4.13(a)(3), provided that certain conditions are met. First, exemptive relief is limited to CPOs that rely on the exemptions provided by the SEC in newly enacted Rule 506(c), as those are the CPOs impacted by the discrepancy between the recent SEC amendments and the CFTC's current rules. Second, in order to claim the exemptive relief granted by the letter, CPOs must file a notice with the CFTC's Division of Swap Dealer and Intermediary Oversight. The notice, which is effective upon filing, must contain the following information:

- the name, business address and main business telephone number of the CPO claiming the relief;
- the name of the pool(s) for which the claim is being filed;
- a statement that the CPO claiming relief is relying on Rule 506(c); and
- whether the CPO intends to rely on the exemptive relief pursuant to Rule 4.7(b) or 4.13(a)(3) for the listed pool(s).

Notices must be signed by the CPO and filed via email using the email address [dsionoaction@cftc.gov](mailto:dsionoaction@cftc.gov) and stating "JOBS Act Marketing Relief" in the subject line.

If you would like to take advantage of general solicitation and advertising in offering your commodity pool, please contact any of the Alston & Bird attorneys listed in this advisory.

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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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