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Investment Management ADVISORY ■

DECEMBER 11, 2014

Annual CPO or CTA Exemption or Exclusion Affirmations Due by March 2, 2015; Filings Now Accepted

Any firm that is currently claiming certain exemptions or exclusions from registration with the Commodity Futures Trading Commission (CFTC) as a commodity pool operator (CPO) or commodity trading advisor (CTA) is required to affirm its status with the National Futures Association (NFA) before March 2, 2015. You must affirm your exemption(s) or exclusion(s) before March 2, 2015, if you claim an exemption or exclusion from:

(i) CPO registration with respect to one or more funds you operate pursuant to CFTC Regulations 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]

The NFA's Exemption System is now open and accepting affirmations of status. Any entity that does not affirm an exemption or exclusion by the March 2 deadline may be required to register with the CFTC. For registered CPOs, the automatic withdrawal of a pool's exemption or exclusion will subject the CPO to the disclosure, reporting and recordkeeping requirements of the Commodity Exchange Act. 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, NFA members are prohibited from doing business with any firm that is not properly registered. 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 with you.

You can complete the affirmation process on the NFA's Exemption System at http://www.nfa.futures.org/NFA-electronic-filings/exemptions.HTML at any time prior to March 2, 2015. Once logged in, you will need to identify each exemption or exclusion you are affirming.

You can view the full NFA notice, including instructions for completion of the affirmation process and FAQs for Exemptions here: http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4504.

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

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[1] Generally, CFTC Regulation 4.5 excludes any registered investment companies, state-regulated insurance companies, federal- 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.

To the extent that you rely on the exemption from CTA registration available under CFTC Regulation 4.14(a)(10), please note that no notice filing or affirmation is required. Generally, CFTC Regulation 4.14(a)(10) exempts an advisor that has not furnished commodity trading advice to more than 15 persons in the preceding 12 months and does not hold itself out generally to the public as a CTA.

If you would like to receive future *Investment Management 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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