Exemptions from CFTC Registration

27 June 2016

Are we in or out of the Commodity Exchange Act?

- The Dodd-Frank Act amended the definition of "commodity pool" to include any type of pooled investment vehicle that trades commodities interests
  - This includes non-security-based swaps, futures, options, options on futures, FX forwards, certain CDSs
  - Also under the CFTC's jurisdiction are broad-based security indices (10 or more component securities)
  - Shares jurisdiction with the SEC for "mixed" swaps that are interests with both swap and security-based swap components

What are CTAs and CPOs?

What is a Commodity Trading Advisor?	What is a Commodity Pool Operator?
• CTAs advise managed accounts and pooled investment vehicles, such as commodity pools • CTAs are usually the investment adviser • For a separately managed account or a single investor entity, there is only a CTA	• CPOs manage commodity pools • A CPO solicits or accepts funds, securities or property from prospective investors in the commodity pool • CPOs can make trading decisions on behalf of the pool or they can retain the services of a CTA to do so • CPO can be the adviser or the GP
...an individual or organization which, for compensation or profit, advises others as to the value of or the advisability of buying or selling futures contracts, options on futures, or retail off-exchange forex contracts. http://www.nfa.futures.org/nfa-registration/cta/index.html	*...an individual or organization which operates a commodity pool and solicits funds for that commodity pool. A commodity pool is an enterprise in which funds contributed by a number of persons are combined for the purpose of trading futures contracts, options on futures, or retail off-exchange forex contracts, or to invest in another commodity.* http://www.nfa.futures.org/nfa-registration/cpo/index.HTML

Rule 4.13(a)(3) *de minimis* exemption for certain CPOs

This is available to operators of private funds that engage only in a *de minimis* level of trading commodity interests

Rule 4.13(a)(3) impose trading limits in addition to investor suitability and marketing restrictions

This exemption generally requires that a fund limit its commodity positions so that either:

- the aggregate initial margin and premiums required to establish such positions will not exceed 5% of the liquidation value of the fund's portfolio; *or*
- the aggregate net notional value of the positions does not exceed 100% of the liquidation value of the fund's portfolio

Commodity positions include many types of swaps, not "security-based swaps". An annual reaffirmation of the filing for the exemption must be made through the NFA website, with advisers reviewing the conditions for the exemption and confirming they are still eligible for it

This requirement also applies to exemptions obtained under CEA Sections 4.5 and 4.7

CTAs …

Rule 4.14(a)(8)	
Consistent with its rescission of Rule 4.13(a)(4), the CFTC amended CFTC Rule 4.14(a)(8)(i)(D), which previously allowed an exemption from CTA registration for investment advisers that provided advice to funds that rely on Regulations 4.13(a)(3) or 4.13(a)(4), by removing the reference to 4.13(a)(4)	

Rule 4.14 exemption from CTA registration

CFTC Rule 4.14 provides an exemption from CTA registration for persons that

- engage solely in certain limited forms of commodity interest trading advisory activity; and/or
- are registered or, in certain cases, exempt from CFTC or SEC registration

In relevant part, Rule 4.14(a)(10) exempts persons from CTA registration that do not:

- provide commodity interest trading advice to more than 15 persons in any rolling 12-month period; or
- hold themselves out generally to the public as a CTA

Special rules on counting and aggregating persons

- A non-U.S. CTA only counts U.S. resident clients towards the 15 person test

Other provisions of this exempt non-U.S. advisers that advise non-U.S. private funds that have only non-U.S. resident investors

Must file a notice with the NFA to claim relief

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