U.S. Regulatory Roadmap

March 24, 2025

CompliGlobe Ltd.

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Cover all the bases …

For a non-U.S. fund: register or exempt the fund's **securities** from SEC registration under the Securities Act of 1933

Register or exempt the **investment adviser** from SEC registration under the Investment Advisers Act of 1940

For a **private fund**, be exempt from being an investment company under the Investment Company Act of 1940

Register or exempt the **seller of the securities** as a broker under the Securities Exchange Act of 1934

Register as or be an exempt **CTA** or **CPO**: Commodity Exchange Act

FCPA, FATCA, CTA, PFIC, GILTI and other U.S. federal and state business and tax laws, rules and regulations

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Who is a "U.S. person"?

- This definition is based on *residence,* defined in Rule 902 of Regulation S under the Securities Act of 1933
  - Individuals: where they *reside**
  - Partnership or corporation:
    - if not organized in a U.S. state, it is not a U.S. person; *however*
    - it *would* be a U.S. person if it was (i) organized or incorporated under the laws of any foreign jurisdiction and (ii) formed by a U.S. person principally for the purpose of investing in securities not registered under the Securities Act, unless it was organized or incorporated, and owned, by accredited investors (as defined in Regulation S who are not natural persons, estates or trusts
  - Trusts, estates, etc: the location of trustees, executors
  - Investment managers: where its clients reside

* Regardless of citizenship or nationality

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"… in the United States"

Private Fund Adviser …

- Release IA-3222 (2011) – Private Fund Adviser exemption adopting release
  - "A client will not be considered a United States person if the client was not a United States person at the time of becoming a client of the adviser." "This will permit a non-U.S. adviser to continue to rely on rule 203(m)–1 if a non-U.S. client that is not a private fund, such as a natural person client residing abroad, relocates to the United States or otherwise becomes a United States person."
  - Falls away if such person tops up their investment
- Rule 203(m)-1
  - "any discretionary account or similar account that is held for the benefit of a United States person by a dealer or other professional fiduciary is a United States person if the dealer or professional fiduciary is a related person of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States."
  - Note to Rule 203(m)-1: "A client will not be considered a United States person if the client was not a United States person at the time of becoming a client."

Foreign Private Adviser …

- Note to Rule 202(a)(30)-1: "A person who is in the United States may be treated as not being in the United States if such person was not in the United States at the time of becoming a client or, in the case of an investor in a private fund, each time the investor acquires securities issued by the fund."

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Offer for sale or sell the securities of a non-U.S. private fund to a U.S. person

Register the securities or obtain an exemption

- Under Securities Act Section 5 – public offering
  - Issuer must file a registration statement with the SEC
    - May take offers but not make sales before R/S is declared effective
    - After R/S is declared effective may make sales (take money)
    - Extensive disclosure and continuing obligations, and costly
- If the issuer does not file a R/S, it must establish an exemption from registration of the securities
  - Offer and sale outside the United States, Regulation S
  - Inside the United States, generally Regulation D
  - Limited offerings (quasi-public/private), Regulation A
  - Rule 144A for re-sales of securities sold in private placements – QIBs only
  - Rule 144 for re-sales of restricted securities
- Must also establish exemptions from state registration

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“Private fund”

A company, LLC, partnership, LLP, trust or other type of pooled investment vehicle that is not an investment company for purposes of the Investment Company Act of 1940 because it

- does not have more than 100 U.S. person beneficial owners – the Section 3(c)(1) exemption (today, rarely used)
- has only U.S. persons that are “qualified purchasers” (never more than 499 in any one fund) – the Section 3(c)(7) exemption

Types of private funds

- Single entity fund – simple, but creates PFIC issues
- Master feeder structure – slightly complicated but eliminates PFIC issue
  - U.S. taxpayers invest in the onshore feeder fund – Delaware entity
  - U.S. tax exempt investors and all other investors go into a non-U.S. entity
  - All or substantially all feeder fund assets go into the master fund, which invests

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What is an "investment adviser"?

- Under the Advisers Act of 1940, an investment adviser is any person that
  1. for compensation
  2. is engaged in the business of providing investment advice about securities or investments giving or acting upon research, advice or recommendations
  3. to others private fund *or* separately managed accounts ("SMA")
- Providing investment advice is
  - Discretionary (decisions taken and effected by the adviser, no client involvement)
  - Advisory (active client involvement - discussions and giving research, advice or recommendations - *but no trading: client trades on their own*)
- As adviser, sub-adviser, AIFM or fund GP/Trust trustee or LLC managing member
- If a non-U.S. person uses the "means of interstate commerce" (post, fax, e-mail, visit, instant messaging, social media, phone or web site access), it becomes amenable to SEC jurisdiction and must satisfy an exemption, register with the SEC as an investment adviser or cease the activity
- A "participating affiliate", if compliant with SEC Staff no-action letters, does not register with the SEC

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If you want to manage assets for a U.S. person?

1. No involvement with the United States?
   - No need to register as an investment adviser with the SEC under the Advisers Act ("RIA") or file a report to become a "Private Fund Adviser"
2. Manage U.S. person money directly in SMAs, not via a private fund
   - Satisfy the "Foreign Private Adviser" exemption or register to become an RIA
3. You want to manage U.S. person money *only* in a private fund
   - Use the "Private Fund Adviser" exemption and become an "Exempt Reporting Adviser" ("ERA"), or register to become an RIA
4. You want to manage U.S. person money in SMAs *and also* in a private fund
   - If you have 15 or more U.S. person clients (direct in SMAs *or* investors in a private fund) *or* more than $25m from these U.S. person clients, you must become an RIA

- If you are an affiliate of an RIA that wants you to provide it with research, advice or recommendations for it to use for its U.S. person client and you do not wish to be an RIA
  - Become a "participating affiliate"

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“Regulatory assets under management”

- “RAUM” Includes *all* securities portfolios subject to continuous and regular management, including:
  - Proprietary assets
  - Assets managed for no compensation
  - Assets of all clients
- In the case of a private fund:
  - Uncalled capital commitments of a private fund
  - Leveraged assets
  - All assets, regardless of the type of assets held by that fund
- Sub-adviser includes only assets over which it provides continuous and regular advisory services
- Include all gross assets without any deductions for debt or leverage
- Value private fund assets at fair value

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Exemption: "Foreign Private Adviser"

Advisers Act Section 202, Rule 202(a)(30)-1

1. No place of business in the United States;
   - Avoid U.S. activity, direct or indirect
2. Fewer than 15 U.S. person clients in SMAs *and* U.S. person investors in a private fund;
   - Add both – direct (SMA) and indirect (private fund) U.S. person clients
3. Aggregate RAUM of less than $25m attributable to the U.S. clients in #2 above;
4. Does not hold itself out in the United States as an adviser; *and*
   - *Be careful with press releases, articles, conferences, visits and events*
5. Does not advise SEC registered investment companies ("RICs") or SEC registered business development companies

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Exemption: "Private Fund Adviser"

Advisers Act Section 203(m), Rule 203(m)-1 Known as Exempt Reporting Advisers ("ERAs")

1. An adviser "solely" to private funds
2. For assets managed from a location *in* the United States, aggregate RAUM of no more than $150m, determined annually

- "Rules of the road" for a non-U.S. firm
  - Manages only private funds
  - Cannot have any U.S. person money in SMAs – not even $1
  - the $150m cap does not apply if assets are managed *outside* the United States
  - count U.S. persons and aggregate U.S. person RAUM across all private funds
  - must run the Foreign Private Adviser and Private Fund Adviser tests together so that if you have more than 15 U.S. person investors or RAUM of more than $25m from them, become an ERA to avoid full registration
  - exclude any private fund that (1) is not incorporated in the United States, (2) is not marketed to U.S. persons and (3) does not have U.S. person investors

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Implications

If a non-U.S. person uses the means of interstate commerce to provide investment advice to a U.S. person, it has these choices

- Cease the activity – *no contact*
- Stay under the $25m and 15 U.S. person caps and be a Foreign Private Adviser – *limited contact*
- Become a Private Fund Adviser and take U.S. person funds only via a private fund – *limited contact*
- Become an RIA – *full contact*

Do not forget

- *If the non-U.S. adviser manages U.S. person assets directly in an SMA, even $1, it cannot be a Private Fund Adviser*
- *Always apply the Foreign Private Adviser and Private Fund Adviser exemptions at the same time*

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U.S. regulatory disclosure obligations …

- Beneficially own more than 5% of a class of equity security registered with the SEC under Section 12 of the Securities Exchange Act of 1934
  - Those exercising control file Schedule 13D
  - "Qualified institutional investors" (passive investors, money managers) file Schedule 13G
  - If one switches from passive to active, re-file on Schedule 13D
- Beneficially own more than 10% of a class of equity security registered with the SEC under Section 12 of the Exchange Act
  - File reports under Section 16(a) – Forms 3, 4 and 5
  - Subject to short swing profit liability under Section 16(b) – can't buy and sell or vice versa in a six-month period and make a profit
- Exercise discretion over more than $100m in Exchange Act Section 12 registered securities
  - File Form 13F
- Trading over certain limits, frequency
  - File 13H
- Possible corporate action filings

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For non-U.S. RIAs

- *Unibanco* no-action letter (1992): subject to conditions, a non-U.S. RIA may opt to not apply the safeguards of the Advisers Act and the rules thereunder to its non-U.S. clients

- Generally, a non-U.S. RIA that does not have a direct U.S. person client (i.e., U.S. person $$ in an SMA) but manages the assets of a non-U.S. private fund in which a U.S. person is invested) may opt to not apply the substantive provisions of the Advisers Act to its client, the private fund

- Under *Goldstein v SEC*, where an RIA or ERA manages the assets of a private fund, the client is the fund and not the underlying investors

- The SEC's examination authority comes from Advisers Act Section 204 and Rule 204-2 thereunder and extends to all books and records of an RIA

- Under Rule 204-2(d), the books and records of an RIA "may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation."

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"Participating Affiliates"

- An affiliate of an RIA that gives research, advice or recommendations to the RIA for it to use for or give to its U.S. clients
- Must demonstrate *bona fide* affiliation through "control"
- Cannot "engineer" a participating affiliate relationship to avoid registration – this is doing indirectly what cannot be done directly, and is unlawful (Advisers Act Section 208(d))

Participating Affiliates are established through a series of SEC Staff no-action letters, reaffirmed by the SEC in Release 3222

Mercury Asset Management plc (April 16, 1993); *Kleinwort Benson Investment Management Limited, et al.* (December 15, 1993); *Murray Johnstone Holdings Limited, et al.* (October 7, 1994)*; ABN AMRO Bank N.V., et al.* (July 1, 1997); *and Royal Bank of Canada, et al.* (June 3, 1998)

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What is required for Participating Affiliates?

- Participating affiliate does not have to register with SEC
  - Must sign a participating affiliate agreement with the RIA
  - Relevant personnel are “associated persons” that comply with the RIA’s Code of Ethics personal account dealing requirements
  - May give only research, advice and recommendations
  - Must keep records of what it does for the RIA
  - SEC must have adequate access to trading and other records of the participating affiliate
  - Form ADV disclosure of associated persons
- RIA must exercise oversight over and supervise the participating affiliate in its role – failure to supervise is actionable under Advisers Act Section 203(e)(6)
- Cannot exercise discretion over the RIA’s client accounts
  - The participating affiliate no-action letters were issued by the Staff of the SEC’s Division of Investment Management (“IM”) pursuant to delegated authority
  - The no-action letters only deal with matters arising under Advisers Act Section 203
  - Because the letters were issued by IM pursuant to delegated authority and not the Staff of the SEC’s Division of Market Regulation (“MR”, now Trading and Markets), IM had no authority to pass on matters outside the Advisers Act – in particular, the Exchange Act and brokerage. This would have required action by MR and MR took no position in these letters

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Integration

- The SEC stated in Release 3222 that it would treat as a single adviser two or more affiliated advisers that were separately organised but operationally integrated, i.e., portfolio managers simultaneously manage assets for two firms using the same research, advice and recommendations, controls and strategies in such way that one cannot distinguish between the two firms
- Integration is a facts and circumstances test
- *Penn Mezzanine Partners Management, L.P.*, Admin Proc 3-15939 (June 20, 2014) and *TL Ventures Inc.*, Admin Proc 3-15940 (June 20, 2014) – two ERAs were separately incorporated but operationally dependent. The factors cited: overlapping employees who gave investment advice to clients of both firms with same research and advice at the same time; common control; operational dependence; common ownership (equity securities); duplicative policies and procedures but no controls to keep operations separate; common marketing (strengths of the group, etc.); and one e-mail address to conduct business for both companies
- Bradway Financial, LLC ("Bradway"), Bradway Capital Management and CEO Brian Case - in relevant part, "[Bradway] was not entitled to rely on [the Private Fund Adviser] exemption because Bradway Financial and Bradway Capital were under common control and operationally integrated. For example, Bradway Financial and Bradway Capital: were both owned by Case, shared the same employees, operated in the same office, shared the same technology systems, and failed to maintain policies and procedures addressing registration or exemption from registration as an investment adviser."

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What is a “broker”?

- The term “broker” is defined in Section 3(a)(4) of the Exchange Act as a person who effects transactions in securities for the account of others

- Generally, if a non-U.S. person uses the means of interstate commerce to
  - solicit and/or effect transactions in securities for the account of others
  - solicit (call or send research, advice and recommendations) with an expectation to receive orders, receive and execute orders or route client orders in securities for execution
  - take unsolicited orders to buy or sell securities (beyond Rule 15a-6 *FAQ 9*)
  - Offer for sale or sell the securities of a pooled investment vehicle

  it could be deemed to be a broker-dealer and, absent an exception, exemption, rule or no-action letter, must (1) cease the activity, (2) use an SEC registered broker-dealer (“BD”) directly or as a Rule 15a-6 chaperone, (3) use a registered representative service or (4) register as a BD and become a FINRA member firm

- Covers … trading, M&A activities, finders, soliciting the purchase or sale of the securities of a private fund or arranging private the placement of debt and equity securities

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A facts and circumstances test

- According to the SEC Staff, for a firm to be a broker-dealer it must (i) be “engaged in the business” (ii) of “effecting transactions in securities” (iii) “for the account of others”
- A factor that often is determinative for elements (i) and (ii) is whether the firm receives transaction-based compensation, as it is deemed to be strong evidence of a firm having a salesman’s stake in the transaction and therefore of being engaged in the business of effecting securities transactions. The absence of this does not mean that a person is not a broker …
- Solicitation of securities transactions is also a factor
  - any affirmative effort that induces or is intended to induce transactional business or to develop an ongoing securities business relationship
  - the provision of research reports or other investment analysis is often considered to be a type of solicitation of any resulting trades
- "To qualify as a broker, the activities of the alleged broker must be characterized by a certain regularity of participation in securities transactions at key points in the chain of distribution” and be “engaged in the business” of securities transactions”
  - soliciting securities transactions (includes calling, sending research, advice and recommendations with a view to receiving an order to buy or sell and issuing advertising)
  - frequently taking and routing for execution unsolicited orders to buy or sell securities
  - making valuations as to the merits of an investment or giving advice
  - giving research with the expectation that the client would give an order based upon this
  - taking, routing or matching orders or facilitating transaction execution

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Relevant SEC Staff no-action letters

Under delegated authority, MR Staff issued no-action letters providing that a firm that transmits orders to brokers/banks for execution, does not hold client funds or securities, does not solicit a client for an order, does not send the client research with the purpose of receiving an order *and* does not receive transaction-based compensation for these activities is not required to register as a BD

- *This posits no client involvement in the process of effecting a transaction – from research through formation of advice or recommendation to placing the order, execution and matching, clearing and settlement –discretionary investment management*

No-action relief denied where the firm's activities were more extensive e.g. soliciting brokerage or sending research

- *This posits client-facing involvement to obtain, receive or effect an order to buy or sell securities*

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Exemption from BD registration: Rule 15a-6

- Exemption from Exchange Act broker-dealer registration for non-U.S. entities that would be a "broker" or "dealer" based upon certain activities they engage in with U.S. investors using the means of interstate commerce
- Rule 15a-6 permits (subject to compliance with its conditions)
  1. Sending research to and soliciting *major U.S. institutional investors*
  2. Soliciting and executing trades with or for *U.S. institutional investors* - restrictions on calling, visiting and sending research
  3. Executing an *un*solicited transaction with a U.S. person – hard to establish and, despite the Rule 15a-6 SEC Staff *FAQ 9* that permit "more than one" such transaction, not possible for expanded brokerage activities or solicitations
  4. Engaging in "principal to principal" trades directly with registered broker-dealers and certain other enumerated entities

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Key definitions for Rule 15a-6

- *Solicitation:* when the SEC adopted Rule 15a-6,* given it a broad meaning and reiterated many times since then – a single act to open an account or encourage a person to buy or sell a security
- *Major U.S. institutional investor*: under Rule 15a-6 no-action letters, an entity that owns, controls or has under management more than $100m in aggregate financial assets
- *U.S. institutional investor*: RIC; a bank, savings and loan association, insurance company, business development company, small business investment company or employee benefit plan defined in Securities Act Regulation D Rule 501(a)(1); a private business development company defined in Rule 501(a)(2) of Regulation D; an organization described in Section 501(c)(3) of the U.S. Internal Revenue Code of 1986; or a trust defined in Rule 501(a)(7) of Regulation D

* *See* "Registration Requirements for Foreign Broker-Dealers", Exchange Act Release 27017, 54 FR 30013 (13 July 1989)

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Selling the securities of a private fund

- In IA Release 3222 (2011) adopting the Dodd-Frank exemptions from Advisers Act registration, the SEC stated that “persons who market interests in a private fund may be subject to the registration requirements of section 15(a) under the [Exchange Act]" and that ‘‘[s]olicitation is one of the most relevant factors in determining whether a person is effecting transactions”
- This was issued by the Commission itself, not the Staff
  - The focus was the solicitation of the securities of private funds
  - It was silent on transaction-based compensation
  - It was silent on whether/if it applies in other contexts – such as the solicitation of brokerage, direct or indirect, or a client giving an adviser an order
- Firms should proceed on basis that this Commission interpretation might "trump” Staff no-action letters on brokerage and that solicitation by itself might be enough to kick-off the broker-dealer registration requirements

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–3222; File No. S7–37–10]

RIN 3235–AK81

Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

80a–3), but for section 3(c)(1) or 3(c)(7) of that Act."

[9] Interests in a private fund may be offered pursuant to an exemption from registration under the Securities Act of 1933 (15 U.S.C. 77) ("Securities Act"). Notwithstanding these exemptions, the persons who market interests in a private fund may be subject to the registration requirements of section 15(a) under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o(a)). The Exchange Act generally defines a "broker" as any person engaged in the business of effecting transactions in securities for the account of others. Section 3(a)(4)(A) of the Exchange Act (15 U.S.C. 78c(a)(4)(A)). *See also Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934,* Exchange Act Release No. 44291 (May 11, 2001) [66 FR 27759 (May 18, 2001)], at n.124 ("Solicitation is one of the most relevant factors in determining whether a person is effecting transactions."); *Political Contributions by Certain Investment Advisers,* Investment Advisers Act Release No. 3043 (July 1, 2010) [75 FR 41018 (July 14, 2010)], n.326 ("Pay to Play Release").

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"Issuer's exemption": Exchange Act Rule 3a4-1

- Extremely narrow, limited safe harbor with no interpretations
- For issuers that propose to market their securities by one of its "associated persons"
- This is not available for an RIA or ERA that is not an associated person
- The associated person
  - cannot be subject to a statutory disqualification
  - must have other significant duties apart from marketing
  - cannot receive commissions or other transaction-based compensation
  - cannot be an associated person with a broker or dealer at the time of the sale
- Associated persons are partners, officers, directors and employees of the issuer, the GP of a partnership of an LLP or the MD of an LLC
  - Based on facts
  - only associated persons may engage in such marketing
  - the associated person must have other substantial duties apart from marketing
  - limited class of institutional investors
  - one offering per 12-month period
- Passive sales activities – written communications or delivering PPM, responding to queries and ministerial or clerical work

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What does this mean for a non-U.S. firm?

- Are we dealing with securities under the U.S. federal securities laws? If yes,
- Do we use the means of interstate commerce to promote our services, take orders, solicit U.S. clients to buy the securities of a private fund, solicit brokerage, arrange private placements of securities or take unsolicited orders to buy or sell securities?
- Do we send U.S. clients research, advice or recommendations with the expectation that they would give me an order to buy or sell those securities, or call them to discuss this? If yes,
- Does the Exchange Act give me a safe harbor or exception? If no,
- Does a rule apply (Rule 15a-6 or Rule 3a4-1)? If no,
- Is there a relevant interpretation or would a Rule 15a-6 FAQ cover me? If no,
- Has the SEC given me an exemption (derogation)? If no,
- Is there a no-action letter on point?
- If yes, can rely on no-action letters and not be deemed to be a broker
- If no, for advisory relationships, must
    1. register with the SEC as a BD
    2. use a BD – the advisory client, not the RIA, sends the order to the BD
    3. use a registered rep service
    4. do not engage in this activity – if you do, the SEC might sue you

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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 and certain FX forwards, leveraged FX and CDSs
  - Also under the CFTC’s jurisdiction are broad-based security indices (10 or more component securities)
  - Shared jurisdiction with the SEC for “mixed” swaps that are interests with both swap and security-based swap components
- FX forwards
  - If these are deliverable forwards, they are not commodity interests and advice with respect to them is not commodity trading adviser (“CTA”) activity
  - If they are non-deliverable forwards, they are commodity interests and advice with respect to them is CTA activity and therefore there needs to be an exemption

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What are CTAs and CPOs?

What is a CTA?	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

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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

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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)	

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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 (electronic) with an annual reaffirmation

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