

## Investment Management Alert

October 16, 2014

### **CFTC Staff Allows Self Executing Delegation of CPO Functions**

The staff of the Commodity Futures Trading Commission (CFTC) yesterday changed its position and no longer requires a no-action request for delegation of commodity pool operator (CPO) functions from persons that might otherwise be subject to CPO registration (delegating CPOs) to registered CPOs (designated CPOs). If the criteria set forth in the CFTC staff's new no-action letter are met, the no-action relief is self-executing. As in the CFTC's staff's previous guidance regarding CPO delegation, the delegating CPO must still delegate CPO functions pursuant to an agreement that complies with specified requirements, which are substantially similar to those in the previous CFTC guidance, and the delegating CPO and designated CPO must be affiliates if the delegating CPO and designated CPO are not natural persons.<sup>1</sup> The CFTC also provided additional clarification that a person who is a principal or an employee of the delegating CPO may also be involved in soliciting investors or may have management responsibilities over pool property as part of the designated CPO without precluding reliance on the letter so long as (i) it is clear in which capacity the principal or employee is acting, (ii) he or she is appropriately registered (including as an "associated person" if soliciting investors) and (iii) he or she is subject to supervision as part of the designated CPO or commodity trading advisor. The letter is available at CFTC Letter 14-126. Delegations of CPO functions that do not satisfy all of the requirements of the rule must continue to be submitted to the CFTC staff through its traditional no-action letter request process.

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<sup>1</sup> The conditions that must be satisfied are substantially the same as those in CFTC Letter 14-69 as summarized in our alert published in May 2014 available here, except that (i) records of the delegating CPO maintained by the designated CPO are not required to be maintained under CFTC Regulation 1.31 and (ii) no filing need be made.

## Contact Information

If you have any questions regarding this alert, please contact:

**J.P. Bruynes**

[jpbruynes@akingump.com](mailto:jpbruynes@akingump.com)

212.872.7457

New York

**Prakash H. Mehta**

[pmehta@akingump.com](mailto:pmehta@akingump.com)

212.872.7430

New York

**Kelli L. Moll**

[kmoll@akingump.com](mailto:kmoll@akingump.com)

212.872.8041

New York

**Eliot D. Raffkind**

[eraffkind@akingump.com](mailto:eraffkind@akingump.com)

214.969.4667

Dallas

**Stephen M. Vine**

[svine@akingump.com](mailto:svine@akingump.com)

212.872.1030

New York