Investment Management Alert

August 20, 2013

CFTC Amends Certain Record Retention and Document Distribution Requirements for All CPOs and CTAs

On August 13, 2013, the Commodity Futures Trading Commission (CFTC) adopted amendments to certain provisions of Part 4 of the CFTC regulations that are applicable to all commodity pool operators (CPOs) and commodity trading advisors (CTAs) as part of the final rule harmonizing the compliance obligations of CPOs of commodity pools that are investment companies registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940, as amended (RICs).

The amendments are primarily relevant for registered CPOs of commodity pools that are also RICs. For these pools, the CFTC will accept the SEC's disclosure, reporting and recordkeeping regime as substituted compliance for substantially all of Part 4 of the CFTC regulations. Therefore, the final rule permits dually registered CPOs of RICs to meet certain CFTC requirements by complying with comparable SEC requirements to which they are already subject.

Although the final rule primarily focuses on the compliance obligations of CPOs of RICs, certain amendments liberalize record retention and document distribution requirements for all CPOs and CTAs. The following amendments to the CFTC regulations apply to all CPOs and CTAs, whether or not they operate or advise RICs.

Third-Party Recordkeeping

The CFTC has amended CFTC Regulations 4.23 and 4.7(b)(4) to permit all CPOs to use third-party service providers to maintain their books and records. Each CPO electing to use a third-party service provider must file with the National Futures Association (i) a notice providing information about the third-party service provider and (ii) a statement from the service provider agreeing to maintain the books and records consistent with CFTC regulations. CFTC Regulations 4.23 and 4.7(b)(4) currently require that books and records be kept at the "main business location" of the CPO. The amendments to CFTC Regulations 4.23 and 4.7(b)(4) will become effective 30 days after publication in the Federal Register and CPOs may comply upon the effective date.

Twelve-Month Cycle for Disclosure Documents

The CFTC has amended CFTC Regulations 4.26(a)(2) and 4.36(b) to allow all CPOs and CTAs to use their disclosure documents for a twelve-month cycle, rather than for the current nine-month cycle. Therefore, CPOs and CTAs must update their disclosure documents pursuant to CFTC regulations on a twelve-month basis. The amendments to CFTC Regulations 4.26(a)(2) and 4.36(b) will become effective 30 days after publication in the Federal Register and CPOs and CTAs may comply upon the effective date.

Rescission of Signed Acknowledgment Requirement

The CFTC has rescinded the signed acknowledgement requirement in CFTC Regulation 4.21(b). CFTC Regulation 4.21(b) requires a CPO to obtain a signed acknowledgment from each prospective participant to whom it sends any disclosure document. Therefore, CPOs will no longer be required to obtain signed acknowledgements. The amendment to CFTC Regulation 4.21(b) will become effective immediately upon publication in the Federal Register.

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