

## Investment Funds Alert

### CFTC Staff Publishes FAQs for Registering and Exempt CPOs and CTAs

August 15, 2012

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On August 14, 2012, the staff of the Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight (the "Staff") published responses to frequently asked questions regarding the rescission of Regulation 4.13(a)(4), testing compliance with 4.13(a)(3) and the reversion to 2003 standards for registered investment companies (available [here](#)).

The Staff provides useful guidance in the FAQs regarding, among other things, the following:

- The general partner, managing member or board of directors of a commodity pool can avoid registration as a commodity pool operator (CPO) if it properly delegates its rights and obligations to a registered CPO.
- CPOs formerly exempt under Regulation 4.13(a)(4) will not have to reconfirm that the investors in the pool are "qualified eligible persons" when claiming relief under CFTC Regulation 4.7.
- Swaps are required to be included within the trading threshold computation under Regulation 4.13(a)(3) starting on December 31, 2012.
- CPOs of fund of funds may continue to rely on Appendix A until the CFTC adopts a revised exemption.
- The notional value of an uncleared swap for purpose of computing the 4.13(a)(3) trading restriction is the amount reported by the reporting counterparty as the notional amount of the swap under Part 45 of the CFTC's regulations.

Also significant are the questions that the Staff did not answer, including whether CPOs that are also registered investment advisers may delay the annual audit of financial statements until 120 days after the fiscal year, the ability to use a "relying adviser" concept for CPOs and the impact of the Jump Start Our Business Startups Act on the restrictions on marketing to the public in the United States under CFTC Regulation 4.13(a)(3).

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