

CLIENT ALERT

CFTC and NFA Regulatory Reminders

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This memo summarizes certain Commodity Futures Trading Commission and National Futures Association regulatory requirements impacting commodity pool operators and commodity trading advisors that come into effect in early 2021. In addition, NFA is now accepting annual affirmation filings from CPOs and CTAs that are required to make such filings.

Swap AP Proficiency Requirements Deadline Approaching

Individuals who are swap associated persons (“APs”) of commodity pool operators, commodity trading advisors, futures commission merchants and introducing brokers must complete NFA’s Swaps Proficiency Requirements by January 31, 2021. After January 31, 2021, any individual seeking to engage in swaps activity will need to satisfy the Swaps Proficiency Requirements prior to being approved as a swap AP.

RIC CPO Claims of Exclusion

At the end of 2019, the CFTC amended Rule 4.5 to identify the registered investment adviser (“RIA”) to a registered investment company (“RIC”) or business development company as the excluded CPO. This was a change from the way the rule operated in the past, where the rule called for claims to be filed by the RIC itself. Any RIC with a previously filed claim of exclusion has until March 1, 2021 to comply with this provision and switch the claim of exclusion to the RIA.

NFA’s Exemptions System Updated for Amended CFTC Rule 4.13

In June 2020, the CFTC amended Rule 4.13 to require CPOs claiming relief under most exemptions in such rule to represent that neither the CPO nor any of its principals has in its background a bad act that would require disclosure under section 8a(2) of the Commodity Exchange Act, if such person sought registration. NFA has updated its Exemptions

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System to accommodate this new requirement. Thus, a person currently seeking relief from CPO registration pursuant to Rule 4.13(a)(1), 4.13(a)(2), 4.13(a)(3) or 4.13(a)(5) must complete a statutory disqualification attestation including such representation. A CPO with an existing exemption is not required to complete the statutory disqualification attestation until it completes the annual exemption affirmation process in 2021, as described below.

Annual CPO and CTA Affirmation Window Is Open

Each entity excluded from the definition of “commodity pool operator” by CFTC Rule 4.5, or exempt from CPO registration pursuant to Rule 4.13 (other than family offices exempt pursuant to Rule 4.13(a)(6)), must comply with an annual affirmation requirement if the entity wishes to maintain its excluded or exempt status. Each CTA exempt from CFTC registration pursuant to Rule 4.14(a)(8) also must affirm its claim of exemption on an annual basis. Affirmation filings are due within 60 days after the calendar year end. Filings for 2021 may be made at this time by accessing NFA’s Exemptions System. Such filings must be made no later than March 1, 2021. In connection with the 2020 amendments to Rule 4.13, effective with this affirmation cycle, each CPO reaffirming an exemption under Rules 4.13(a)(1), 4.13(a)(2), 4.13(a)(3) and 4.13(a)(5) will be required to attest that neither the CPO nor any of its principals has any statutory disqualifications listed under section 8a(2) of the Commodity Exchange Act. Failure to file a required affirmation by the deadline will result in the automatic withdrawal of the applicable notice of claim of exemption or exclusion.

Updated Form PQR

In October 2020, the CFTC adopted final rules that ease CPO reporting requirements on Form PQR. While the CFTC is not requiring the filing of the new form until the first 2021 reporting period ends on March 31, 2021, NFA has already modified its Form PQR on EasyFile to reflect the CFTC amendments. The new form is available on NFA’s website. Such modifications include the reporting of a legal entity identifier (LEI), if applicable, and the elimination of certain questions and Schedules B and C. CPOs submitting their December 31, 2020 NFA Form PQR, which is due by March 31, 2021, will therefore be using the modified form.

If you have any questions regarding this client alert, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

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Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of the Commodity Exchange Act and the CFTC regulatory regime. We would be pleased to assist on your matters.

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