Lowenstein Sandler

Client Alert

Investment Management

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CFTC Streamlines Regulations for Commodity Pool Operators and Commodity Trading Advisors

By Scott H. Moss and Lauren E. Killeen

On Oct. 9, 2018, the Commodity Futures Trading Commission (CFTC) unanimously approved proposed rules streamlining regulations for commodity pool operators (CPOs) and commodity trading advisors (CTAs).[1] These rules are part of the CFTC's Keep It Simple, Stupid (KISS) Initiative, which seeks to simplify and modernize the CFTC's rules.

In Tuesday's press release, CFTC Chairman J. Christopher Giancarlo explained it is his hope that this is "the first of a series of long overdue simplifications to Part 4 regulations. These proposed amendments are common sense changes that cut the regulatory mandates on CPOs and CTAs, while simultaneously promoting consumer confidence in the market."

What These Rules Do

These rules codify long-standing staff advisories and no-action letter relief in Part 4 regulations. The following changes have now been approved.

- "CPOs that only solicit and/or accept funds from non-U.S. persons for participation in offshore commodity pools to claim an exemption from CPO registration and compliance requirements with respect to such pools, while permitting the maintenance of registration with commodity pools for which CPO registration is required."
- U.S.-based CPOs of offshore commodity pools, which have U.S. participants, are able to maintain the commodity pool's original books and records in the offshore location of the pool. Previously, these books and records were maintained at the CPO's main U.S. business location.
- A person that would be statutorily disqualified from registering with the CFTC as a CPO is prohibited from claiming or affirming an exemption from CPO registration.
- Registration relief is granted for CPOs and CTAs of entities qualifying as family offices.
- Investment advisors to business development companies are now excluded from the definition of CPO under 17 CRF § 4.5, just like investment advisors to registered investment companies are excluded.
- Qualifying CPOs are able to engage in general solicitation in their pool offerings, as envisioned by the JOBS Act of 2012.
- CPOs that only operate commodity pools exempt or excluded under 17 CRF §§ 4.5 and 4.13 are granted relief from filing Form CPO-PQR, which requires CPOs

[1] The notice of proposed rulemaking and related press release are available at: https://www.cftc.gov/PressRoom/PressReleases/7825-18

to periodically file detailed information regarding pools and other funds that the CPOs operate.

- Certain CTAs are granted relief from filing Form CTA-PR, which requires CTAs to report general information about the CTA and its trading programs.
    - CTAs that do not direct trading of any commodity interest accounts are granted relief from filing
    - Registered CTAs that only advise pools in which the CTA is also a CPO are granted relief from filing.

What This Means

These proposals are consistent with the CFTC's KISS Initiative, which requests public input on the agency's regulations in order to make them less burdensome and costly, while maintaining their regulatory benefits. While these rules are unlikely to materially alter the current CPO/CTA landscape, they should ease reporting requirements on CPOs and CTAs. These proposed changes should also help advance the CFTC's ongoing effort to harmonize rules with other similar regulators, such as the Securities and Exchange Commission.

Contacts

Please contact either author of this article or any other member of Lowenstein Sandler's Investment Management Group for further information on the matters discussed in this alert. Similarly, we are available to assist you in developing best-in-class policies and compliance programs for your firm in accordance with all applicable rules and regulations and industry standards.

SCOTT H. MOSS
Partner
T: **646.414.6874**
smoss@lowenstein.com

LAUREN E. KILLEEN
Bar Admission Pending
T: **646.414.6813**
lkilleen@lowenstein.com