

Corporate & Financial Weekly Digest

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CFTC Proposes Substantial Modifications to CPO/CTA Registration and Reporting Obligations

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At an open meeting on January 26, the Commodity Futures Trading Commission proposed rules that would repeal exemptions from registration and effect substantial changes to the reporting requirements applicable to commodity pool operators (CPOs) and commodity trading advisors (CTAs) under the CFTC's Part 4 rules. Among the significant changes that would be effected by the proposed rules are the following:

- Withdrawal of the existing exemptions from CPO registration set forth in CFTC Rules 4.13(a)(3) and 4.13(a)(4). As a result of these proposed changes, many hedge funds and other collective investment vehicles that either (1) limit their futures trading in order to qualify for the exemption under Rule 4.13(a)(3), or (2) require heightened investor qualification standards in order to qualify for the exemption under Rule 4.13(a)(4) would be required to register as CPOs with the CFTC and become members of the National Futures Association (NFA).
- Reinstatement of limitations that were repealed by the CFTC in 2003 on the marketing and trading activities of registered investment companies that are operated pursuant to CFTC Rule 4.5, which excludes registered investment companies and their principals from the CPO definition. Under the CFTC proposal, entities relying on Rule 4.5 could not be marketed as a method for obtaining commodity exposure and would be required to limit their commodity futures and options positions (other than positions held for hedging purposes) to no more than 5% of the liquidation value of their portfolios.
- As part of a joint rulemaking with the Securities and Exchange Commission mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, implement periodic federal reporting requirements for all registered CPOs and CTAs with respect to any private funds and other pools that they operate. Depending on whether the CPO/CTA is dually registered as an investment adviser with the SEC, reports would be filed with the CFTC and/or the SEC, and would include information about the private funds and pools operated by such CPO/CTA, such as the funds' or pools' assets under management, use of leverage, counterparty credit risk exposure and trading and investment positions. Under the SEC and CFTC proposals, this periodic reporting information would be kept confidential to the extent permitted by law. Please see ["SEC and CFTC Jointly Propose](#)

[Private Fund Systemic Risk Reporting Rule](#)" for additional information regarding the SEC/CFTC joint proposal.

- Amend CFTC Rule 4.7 to rescind the exemption from certification requirements for financial statements of pools that are operated in accordance with CFTC Rule 4.7.
- Require persons claiming relief under CFTC Rules 4.5, 4.13 and 4.14 to reconfirm their exemption on an annual basis.

Information regarding the CFTC proposal, including a CFTC fact sheet and Q&A describing the proposal, is available [here](#).

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