

CFTC Issues Highly Anticipated Harmonization Rules

August 13, 2013

Today, the Commodity Futures Trading Commission (CFTC) provided long-awaited clarification and relief to investment advisers that are registered with the CFTC as commodity pool operators (CPOs) and/or commodity trading advisors (CTAs). The CFTC issued final rules to harmonize certain compliance obligations of CPOs and CTAs with relevant Securities and Exchange Commission (SEC) requirements ([Harmonization Rules](#)) applicable to advisers to investment companies registered as such under the Investment Company Act of 1940 (RICs). The Harmonization Rules also amend certain CFTC compliance requirements that apply to all registered CPOs and CTAs.

The Harmonization Rules were initially proposed in February 2012. At that time, the CFTC finalized rules amending the compliance obligations of CPOs and CTAs, including eliminating a blanket exclusion from CPO status for advisers to RICs under CFTC Rule 4.5 and imposing a new *de minimis* trading threshold. As a result of this change, along with changes to the Commodity Exchange Act resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act, many advisers to RICs have registered as CPOs and CTAs. The CFTC proposed the Harmonization Rules to assist advisers to RICs, recognizing that many of the compliance obligations of CPOs and CTAs were conflicting or inconsistent with, or duplicative of, the relevant SEC requirements.¹

The Harmonization Rules attempt to reconcile the disclosure, reporting and recordkeeping requirements of CPOs and CTAs with SEC requirements that apply to RIC advisers. The Harmonization Rules stipulate that, for advisers to RICs (subject to certain conditions), compliance with RIC disclosure obligations under SEC rules constitutes compliance with the CPO disclosure document (i.e., prospectus) rules and, among other things:

- Relieve RIC advisers from having to obtain acknowledgments from investors of receipt of a disclosure document;
- Relieve RIC advisers from having to include a breakeven analysis in their disclosure documents; and
- Relieve RIC advisers from having to include past performance data for certain RICs.

The Harmonization Rules also permit CPOs to maintain their books and records at a location other than a main business address, such as with a third-party service provider, provided that such records are readily accessible. In addition, disclosure documents need to be updated and amended at least every 12 months instead of every nine months, as is currently required by CFTC rules.

The Harmonization Rules will become effective 30 days after they are published in the Federal Register, and compliance with the Harmonization Rules will be subject to phased-in implementation.

Sutherland attorneys are currently reviewing the Harmonization Rules, along with newly issued [guidance](#) from the SEC's Division of Investment Management pertaining to commodity interest (i.e., futures, options and swaps) trading by RICs. A more comprehensive Legal Alert will be published in the coming days.

¹ For more information, please see our February 29, 2012, [Legal Alert](#).

■ ■ ■

If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Frederick R. Bellamy	202.383.0126	fred.bellamy@sutherland.com
James M. Cain	202.383.0180	james.cain@sutherland.com
Robert S. Chase II	202.383.0194	robb.chase@sutherland.com
Robert E. Copps	212.389.5045	robert.copps@sutherland.com
Daphne G. Frydman	202.383.0656	daphne.frydman@sutherland.com
Gregory S. Kaufman	202.383.0325	greg.kaufman@sutherland.com
Michael B. Koffler	212.389.5014	michael.koffler@sutherland.com
John J. Mahon	202.383.0515	john.mahon@sutherland.com
David T. McIndoe	202.383.0920	david.mcindoe@sutherland.com
David A. Roby, Jr.	202.383.0137	david.roby@sutherland.com
Stephen E. Roth	202.383.0158	steve.roth@sutherland.com
Steven H. Scheinman	212.389.5043	steven.scheinman@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
Michael J. Voynich	404.853.8329	michael.voynich@sutherland.com
John H. Walsh	202.383.0818	john.walsh@sutherland.com
Warren N. Davis	202.383.0133	warren.davis@sutherland.com
Cynthia Reid Beyea	202.383.0472	cynthia.beyea@sutherland.com
Jeanette M. Curtis	202.383.0948	jeanette.curtis@sutherland.com
Raymond A. Ramirez	202.383.0868	ray.ramirez@sutherland.com
Stephen T. Tsai	202.383.0897	stephen.tsai@sutherland.com
William M. Watts, III	202.383.0898	bill.watts@sutherland.com