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CORPORATE & FINANCIAL
WEEKLY DIGEST

Corporate & Financial Weekly Digest

February 10, 2012 by Marilyn Selby Okoshi

CFTC Rescinds CPO Registration Exemption; Adopts Additional Reporting Obligations

On February 9, the Commodity Futures Trading Commission adopted by a vote of 4 to 1 final rules amending its part 4 regulations governing commodity pool operators (CPOs) and commodity trading advisors (CTAs).

The amendments:

- Rescind the exemption from CPO registration under CFTC Rule 4.13(a)(4) for CPOs of commodity pools offered privately only to certain qualified eligible persons and institutional investors;

- Modify the annual disclosure relief to registered CPOs claiming exemption under CFTC Rule 4.7 to require that commodity pool annual financial statements be audited;

- Require additional risk disclosures regarding swaps transactions in the CFTC disclosure documents that are required to be provided by registered CPOs and CTAs that are not relying on the disclosure exemptions provided by CFTC Rule 4.7;

- Adopt additional reporting obligations for registered CPOs and CTAs under CFTC Rule 4.27 and new Forms CPO-PQR and CTA-PR;

- Add limitations on futures and swaps trading by investment companies that are registered under the Investment Company Act of 1940 but that are exempt from CPO registration under CFTC Rule 4.5 (click here to view the article under **Investment Companies and Investment Advisors** for more information); and

- Require annual affirmation of eligibility for exemptions from CPO and CTA registration.

Effectiveness and Compliance Deadlines

Except as noted below, the general effective date of the amended rules will be 60 days after publication in the Federal Register.

- The data reporting rules in revised Section 4.27 will become effective on July 2, 2012. The first reports will be due within 60 days after September 30 for CPOs having at least $5 billion in commodity pool assets under management as of June 30, and will be due within 90 days after December 31 for all other registered CPOs and CTAs.

- The deadline for CPOs currently relying on the Rule 4.13(a)(4) (or claiming the exemption before it is repealed) is December 31, 2012. Affected CPOs must be registered and otherwise comply with the Part 4 rules applicable to CPOs on or before that date.

- Compliance by registered investment companies with the requirements of amended Rule 4.5 will be required by the later of December 31, 2012 or 60 days after the date on which CFTC regulations defining the term "swap" become effective. Funds that are required to register as a result of those amendments will become subject to compliance with the CFTC's recordkeeping, reporting and disclosure requirements no later than 60 days after the CFTC implements as-yet-unspecified final rules harmonizing the CFTC and Securities and Exchange Commission requirements.

- Compliance with all other amendments is required by December 31, 2012.

Highlights of Changes from the Proposed Rules

Changes to the original proposals include:

- Maintaining the exemption from CPO registration for CPOs of pools offered privately to accredited investors that engaged in limited futures and swaps trading pursuant to CFTC Rule 4.13(a)(3);

- Requiring annual reaffirmations of exemption eligibility on a calendar year-end basis rather than on the anniversary of the filing date;

- Revising the substance and filing timelines for Forms CPO-PQR and CTA-PR. Notably:

    - CPOs that are registered as investment advisers with the SEC and report pool information on Form PF will only have to complete Schedule A of Form CPO-PQR containing general identifying information for any pool that is covered on Form PF. If the CPO chooses not to file Form PF with respect to commodity pools that are not private funds, it will have to file the full form CPO-PQR with respect to those pools.

- Form CTA-PR will require only demographic data and the names of pools advised by the CTA.
- The level of commodity pool assets under management required to be a large CPO required to report quarterly within 60 days of quarter end (rather than 15 days, as originally proposed) was raised from $1 billion to $1.5 billion.
- CPOs with at least $150 million in commodity pool assets under management will be required to file Schedules A and B annually within 90 days of year-end but CPOs with less than that amount under management will not have to file Schedule B.

To review the full CFTC release adopting the rules, please click here.

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