

May 4, 2017

CFTC Permits Registered CTAs to Use Third-Party Recordkeepers; Action May be Required

On April 20, 2017, the Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight (the "Division") issued [Exemptive Letter No. 17-24](#) ("Letter 17-24"), which provides exemptive relief to registered commodity trading advisors ("CTAs") from the requirement of CFTC Rules 4.33 and 4.7(c)(2) that required books and records be kept at the CTA's main business office (the "Relief").¹ Additional action must be taken before a CTA is permitted to rely on the Relief.

The Relief is not self-executing; rather, a CTA who uses a third-party recordkeeper must file a notice of claim with the CFTC by the later of June 30, 2017, the time it registers with the CFTC, or the time it delegates its recordkeeping obligations. The notice filing must identify the third-party recordkeeper, specify which records will be kept by the third-party recordkeeper and contain representations from the CTA that it will update the notice if the contact information or location of any of the books and records changes. In addition, the CTA must represent in the notice filing that it remains responsible for ensuring that all required books and records are kept in accordance with CFTC Rule 1.31, even though the rule has become obsolete due to technological advances. The CFTC, however, recently proposed amendments to CFTC Rule 1.31 to modernize the requirements therein (see our [Alert](#) here). Notably, unlike commodity pool operators ("CPOs"), CTAs are not required to obtain and upload to the National Futures Association ("NFA") representations from third-party recordkeepers, which were often difficult for CPOs to obtain.

Under the Relief, a CTA must also (i) produce original books and records for inspection at its main business office within 48 hours of a request by the CFTC (or 72 hours if such records are maintained outside the United States); and (ii) disclose the location of the required books and records in any CTA Disclosure Document.

In addition, CTAs must amend their NFA registration Form 7-R and update any other documents to reflect the location of their books and records. CTAs should also consider amending existing or entering into new agreements with third-party recordkeepers to require such recordkeepers to comply with applicable CFTC rules, since the failure of a third-party recordkeeper to keep or produce such books and records in accordance with CFTC rules is deemed to be the failure of the CTA and could subject the CTA to an enforcement action.

Please contact [Deborah Monson](#), [Jeremy Liabo](#), [Douglas Cunningham](#) or the Ropes & Gray attorney who usually advises you with any questions you may have or if you would like additional information.

¹ The Division granted similar relief to commodity pool operators in "[Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators](#)." See 78 FR 52308 (Aug. 22, 2013) (the "Harmonization Rule"). The Harmonization Rule was later expanded by Exemptive Letter No. 14-114, which extended the scope of permitted third-party recordkeepers beyond what was originally set forth in the Harmonization Rule.