

September 3, 2020

Effective September 8 - New CFTC Requirement for CPOs Who Rely on the De Minimis Exemption for Private Funds

The U.S. Commodity Futures Trading Commission (“CFTC”) has [amended](#) (the “Amendment”) the requirements to qualify for an exemption from registration as a commodity pool operator (“CPO”) under certain CFTC Rules¹ including Rule 4.13(a)(3), which is commonly known as the de minimis exemption for private funds (each an “Exemption”).

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Beginning September 8, 2020 (the “Effective Date”), a CPO who seeks to claim an Exemption will be required to represent that neither it nor any of its principals² has in their backgrounds a Commodity Exchange Act (“CEA”) Section 8a(2) disqualification event (“Statutory Disqualification”). Where a CPO has claimed an Exemption prior to the Effective Date, the CPO is required to represent that neither it nor any of its principals is subject to Statutory Disqualification in connection with the 2021 Exemption renewal cycle.

Stated broadly, a “principal” includes any director, the president, the chief executive officer, the chief operating officer, the chief financial officer, the chief compliance officer, and any person in charge of a major business unit whose activities are subject to CFTC regulation. A principal also includes an individual who directly or indirectly (i) owns ten percent (10%) or more of the outstanding shares of any class of voting securities, (ii) is entitled to vote or to sell ten percent (10%) or more of any class of voting securities or to receive ten percent (10%) or more of the profits, or (iii) has the power to exercise a controlling influence over the entity’s activities subject to CFTC regulation. An individual or entity is a principal if it has contributed ten percent (10%) or more of a firm’s capital. In addition, an entity that is the direct owner of ten percent (10%) or more of any class of equity securities (other than non-voting securities) falls within the definition of a principal.

The offenses listed in CEA Section 8a(2) are ones for which the CFTC may, without a hearing, refuse to register any natural person or entity. As such, the offenses that give rise to a Statutory Disqualification are generally of the utmost seriousness, including theft, fraud, misappropriation, and extortion.

As a next step, asset managers who expect to rely on an Exemption or who currently rely on an Exemption and plan to renew the Exemption by March 2021 should determine whether they and any of their principals are subject to Statutory Disqualification.

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

¹ The CFTC Rules subject to the Amendment are Rules 4.13(a)(1), (2), (3) and (5).

² The term “principal” is defined in CFTC Rule 3.1(a).