

January 8, 2021

The New Year Brings New Obligations for Exempt and Registered CPOs

In 2021, asset managers who are registered or exempt from registration with the U.S. Commodity Futures Trading Commission (the “CFTC”) as commodity pool operators (“CPOs”) will face a variety of new regulatory obligations. As discussed below, the CFTC and National Futures Association (the “NFA”) have, in recent years, amended rules and filing requirements that either have compliance dates in early 2021 or took effect in 2020 but will be encountered by the majority of asset managers for the first time in the new year.

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Requirements for Exempt CPOs

Registration Exemption Affirmations. Consistent with past years, any person that has claimed an exemption from CPO registration under CFTC Rules 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), or 4.13(a)(5) (each such CPO, an “Exempt CPO”), an exclusion from the definition of CPO under CFTC Rule 4.5, or an exemption from registration as a commodity trading advisor (“CTA”) under CFTC Rule 4.14(a)(8) must affirm such exemption/exclusion within 60 days of the calendar year-end, which is March 1, 2021 for this affirmation cycle.¹

New Attestation. Beginning this affirmation cycle, each Exempt CPO will be required to attest, in connection with its affirmation of an applicable exemption, that neither it nor any of its principals has in its background any statutory disqualifications listed under Section 8a(2) of the Commodity Exchange Act. For additional information, please see our prior [alert](#).

Rule 4.5 Compliance Deadline. The CFTC amended Rule 4.5 in December 2019 to specify that the registered investment adviser (“RIA”) of an investment company registered under the Investment Company Act of 1940, as amended (“RIC”) is the entity that is required to claim the exclusion from the definition of CPO with respect to a qualifying RIC (for additional information see our [alert](#)). The amendment compliance date is March 1, 2021. Consequently, if a person other than a RIC’s RIA has claimed the Rule 4.5 exclusion with respect to a RIC, then, in connection with the current affirmation cycle, the RIA of the RIC must claim the Rule 4.5 exclusion and such other person must allow its existing Rule 4.5 claim to expire.

New Requirements for Registered CPOs

Swaps proficiency requirement. Persons who are registered with the NFA as swap associated persons (“Swap APs”) must satisfy the swaps proficiency requirement by January 31, 2021 (the “Compliance Date”). The failure to satisfy the swaps proficiency requirement by the Compliance Date will result in the withdrawal of a Swap AP’s swap approval status and, under certain circumstances, such Swap AP’s registration as an associated person. After the Compliance Date, all new applicants for Swap AP registration must satisfy the swaps proficiency requirement before their applications will be approved. Additional information on the swaps proficiency requirement is available [here](#).

Annual Questionnaire. The NFA recently redesigned its annual questionnaire, which members must update annually in connection with the registration renewal process and throughout the year to reflect changes in their business operations. The redesigned questionnaire differs significantly from the previous form. Consequently, NFA members who have yet to

¹ Failure to affirm an exemption from CPO or CTA registration will result in the exemption being withdrawn automatically. For registered CPOs or CTAs, the withdrawal of the exemption will result in the entity being subject to the entirety of Part 4 of the CFTC’s regulations regardless of whether the entity otherwise remains eligible for the exemption. For non-registrants, the withdrawal of the exemption may subject the person or entity to enforcement action by the CFTC.

complete their annual registration update should allow extra time to prepare the filings before the due date. The failure of a registrant to complete all annual filings on a timely basis may result in a fine and/or registration withdrawal.

Form PQR. In October 2020, the CFTC adopted amendments to Form CPO-PQR that simplify and streamline the CPO reporting process (see our alert [here](#)). The NFA subsequently made conforming changes to its Form-PQR (the revised form is available [here](#)). Registered CPOs will be required to file the revised Form-PQR beginning with the December 31, 2020 filing, which is due on March 31, 2021.

Please contact [Leigh Fraser](#), [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.