Published on *The National Law Review* https://natlawreview.com

Deadline Approaches for Annual CPO/CTA Exemption Filings

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Firms must affirm their exemption or exclusion from CPO or CTA registration on the National Futures Association's Exemption Filing System by February 29.

The ***Commodity Futures Trading Commission (CFTC)*** requires commodity pool operators (CPOs) and commodity trading advisors (CTAs) that operate pursuant to certain exemptions or exclusions from registration to affirm their claims for relief within 60 days of December 31 of each year. Accordingly, affirmations for this year are due by February 29, 2016, and must be filed on ***NFA's Exemptions Filing System***.

The annual affirmation requirement applies to firms operating pools as excluded or exempt CPOs pursuant to CFTC Regulations 4.5,[1] 4.13(a)(1),[2] 4.13(a)(2),[3] 4.13(a)(3),[4] or 4.13(a)(5)[5] and to firms providing commodity trading advice as exempt CTAs pursuant to CFTC Regulation 4.14(a)(8).[6] Typically, such firms include managers, advisers and subadvisers to mutual funds, exchange-traded funds (ETFs), pension plans, hedge funds, and private equity funds. Firms operating pursuant to an exemption or exclusion from CPO or CTA registration should confirm that they continue to comply with the requirements of the applicable exemption or exclusion. Firms must then visit NFA's Exemptions Filing System (under the Electronic Filings tab on NFA's website) to affirm each exemption or exclusion. Failure to do so by February 29 will cause NFA to automatically withdraw the exemption or exclusion.

In the event that a firm no longer qualifies for the relief or otherwise fails to affirm the exemption or exclusion, the firm could be required to register as a CPO or CTA to continue operating or providing advice to each relevant pool. If the firm is already registered as a CPO or CTA, it may be required to operate the pools in compliance with Part 4 of the CFTC's regulations and adhere to the CFTC's disclosure, recordkeeping, and reporting requirements.

NFA's BASIC system will reflect the firm's affirmation date, enabling other firms to perform due diligence with respect to the exempt or excluded CPO or CTA, consistent with NFA Bylaw 1101.

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[1] Under CFTC Regulation 4.5, certain employee benefit plans, investment companies, insurance companies, banks, and trust companies may be exempt from the requirement to register as a CPO.

[2] CFTC Regulation 4.13(a)(1) provides an exemption from CPO registration to a firm that operates only one pool for which it does not receive compensation or advertise.

[3] CFTC Regulation 4.13(a)(2) provides an exemption from CPO registration to a firm that operates a pool with 15 or fewer investors and satisfies certain other conditions.

[4] Generally, CFTC Regulation 4.13(a)(3) provides an exemption from CPO registration to a firm that operates a pool that engages in a “de minimis” amount of commodity trading, determined in accordance with regulatory calculations.

[5] Under CFTC Regulation 4.13(a)(5), certain independent directors or trustees of actively managed pools operated by a CPO that is eligible to claim relief under CFTC Regulation §4.12(c) are exempt from CPO registration.

[6] Under CFTC Regulation 4.14(a)(8), a firm that is (a) registered or exempt from registration as an investment adviser, (b) provides commodity interest trading advice to certain types of entities (and such advice is solely incidental to its business of providing other investment advice), and (c) does not otherwise hold itself out as a CTA, is generally exempt from registration as a CTA.

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National Law Review, Volume VI, Number 13

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