

# Client Alert

Latham & Watkins  
Corporate Department

## Final CFTC Rules Maintain Limited Trading Exemptions But May Require Many More Investment Advisers to Investment Funds to Register as CPOs and CTAs

### Introduction

On February 8, 2012, the Commodity Futures Trading Commission (the CFTC) issued its final rule (the CPO-CTA Rule) amending several regulations applicable to commodity pool operators (CPOs) and commodity trading advisors (CTAs). Investment advisers to a large number of investment funds and registered investment companies — including private investment funds — and other persons that engage in commodity or swap transactions will be affected by the expanded registration scheme arising from recent amendments to the regulation of CPOs and CTAs. As a practical matter, unless one of two limited trading exemptions (described below) is available, any level of transactions in commodity interests may trigger registration requirements under the new CFTC rules. Moreover, although changes in law that will cause swaps to be included as commodity interests are not yet effective, once those changes become effective the CPO-CTA Rule will have an even broader impact, in that it will require registration in connection with the swaps activity of funds that do not invest in traditional commodity interests.

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### Overview

The Dodd-Frank Act of 2010<sup>1</sup> (DFA) expanded the definition of CPOs and CTAs<sup>2</sup> to include persons that trade swaps or advise with respect to swaps. A commodity pool<sup>3</sup> itself does not register with the CFTC in any capacity. However, a pool's operator, *i.e.* the CPO, may have to register, similar to an investment adviser registering with the Securities and Exchange Commission (SEC) or a state regulator. Likewise, anyone who advises another person, including a CPO, with respect to investing in commodity pools, commodities, security futures products or swaps must register as a CTA.<sup>4</sup>

*In General.* The CPO-CTA Rule will: (i) rescind the exemption from CPO registration for certain funds or pools limiting participation to sophisticated investors; (ii) to the same end, eliminate the exemption from CTA registration for CTAs that advise investment advisers to pools limited to sophisticated investors; (iii) rescind certain relief for CPOs from the certification requirement for annual reports; (iv) narrow the availability of an exclusion from the CPO definition for registered investment companies; (v) require the annual filing of notices

claiming exemptive relief for CPOs and CTAs and (vi) require additional risk disclosures for CPOs and CTAs regarding swap transactions. The CPO-CTA Rule was first proposed by the CFTC in October 2010 (the Proposed CPO-CTA Rule).<sup>5</sup> In a notable change from the Proposed CPO-CTA Rule, the CFTC did retain an exemption from CPO registration requirements for operators of certain pools that engage in a limited amount of trading in "commodity interests."<sup>6</sup> However, other significant exemptions have been eliminated.

The CPO-CTA Rule will thus likely have significant effects on operators of many pools as well as investment funds (even if already subject to SEC regulation) that engage in transactions involving "commodity interests."<sup>7</sup> Some of the ramifications of the CPO-CTA Rule include:

- The registration exemption for operators of pools with only certain sophisticated investors will no longer be available.
- Some investment advisers to various types of investment funds, including private equity funds, venture capital funds, private funds,<sup>8</sup> as well as registered investment companies who were previously exempt from registration as CPOs, will now be required to register as CPOs.
- Persons exempt or excluded from CPO registration will need to recertify annually that they qualify for the applicable exemption or exclusion.
- Persons who advise others, including CPOs, with respect to investments in commodity pools may need to register as CTAs.
- Registered CPOs and CTAs will be required to make more disclosures to commodity pool participants, including specific disclosures for swaps.
- Persons who act as salespersons for investment funds may have to register with the National Futures Association (NFA) as "associated persons"

and satisfy certain proficiency requirements.

Certain provisions of the CPO-CTA Rule will become effective 60 days after the rule's publication in the Federal Register.<sup>9</sup> Persons that have relied on the now-rescinded sophisticated-investor exemption (Rule 4.13(a)(4)) that have to register as a result of that rule's rescission will have until December 31, 2012 to do so. Registered investment companies that have previously relied on Rule 4.5 will have at least that long to register.<sup>10</sup>

Importantly, though, all persons that qualify as a CPO but have *not* claimed exemptive relief under Rule 4.13(a)(4) will have to register as a CPO within 60 days of the date that the CPO-CTA Rule is published in the Federal Register. Moreover, persons who qualify as a CPO and who form new commodity pools after the effective date of the rescission will have to be registered at the time of such formation. Because the CPO-CTA Rule will not go into effect until 60 days after its publication, however, operators of commodity pools may claim relief under Rule 4.13(a)(4) until that date.

*Entities Captured by the CPO-CTA Rule.* The CPO-CTA Rule may affect a broad range of persons such as operators, managers, partners, officers, employees, consultants, and agents of many types of investment funds (such as private equity funds, venture capital funds, private funds,<sup>11</sup> and registered investment companies), as well as the investment advisers of these funds.

*Inclusion of Swaps.* The trading thresholds under the remaining exemption and exclusion described below will include the amount of swaps in addition to the futures contracts in which an investment fund engages. This is a change from existing Rule 4.13(a)(3) — *i.e.*, the limited trading exemption — which had excluded the value of swaps from the trading calculation. This change will not become effective

until 60 days after the CFTC's product definition and margin rules become effective.<sup>12</sup>

## Revised CPO and CTA Exclusions and Exemptions

*In General.* The CPO-CTA Rule amends but retains the Rule 4.13(a)(3) CPO exemption for certain types of investment funds, including private funds, that engage in a limited amount of commodity interest trading from the requirement to register as a CPO (the Limited Trading Exemption). The CPO-CTA Rule also retains Rule 4.5, a previously existing CPO exclusion for certain registered investment companies (the Registered Investment Company Exclusion), although the CPO-CTA Rule narrows this exclusion by capping the amount of commodity interest trading such excluded investment companies may engage in. Importantly, any registered investment adviser or person exempt from such registration that provides trading advice to a person exempt from CPO registration pursuant to one of these provisions will also be exempt from CTA registration requirements (as discussed further below).<sup>13</sup>

*The Limited Trading Exemption.* The CFTC maintained Rule 4.13(a)(3), which exempts persons who are investment advisers of investment funds for which: (i) interests in the pool are exempt from registration under the Securities Act of 1933 (the Securities Act); (ii) the pool engages in a limited amount of commodity interest trading; (iii) participation in the pool is limited to certain types of investors and (iv) the pool is not marketed as a vehicle for trading in commodity interests.<sup>14</sup> While the CFTC originally proposed to eliminate this exemption in the Proposed CPO-CTA Rule, the CFTC ultimately opted against doing so in response to several public comments.

To qualify for the Limited Trading Exemption, an otherwise-eligible fund must confirm that *either*: (i) the aggregate initial margin and premiums connected to the commodity interest positions is 5 percent or less of the liquidation value of the pool's portfolio, or (ii) the aggregate "net notional value" of regulated commodity contracts (*i.e.*, futures and swaps) amounts to 100 percent or less of the liquidation value of the pool's portfolio.<sup>15</sup> Importantly, *all* positions (or margin) in commodity interests — including those associated with *bona fide* hedging — must be included in calculating a pool's commodity positions under this exemption.<sup>16</sup> Additionally, the investment adviser of the pool must also have a reasonable basis to believe that the participants are: (i) accredited investors;<sup>17</sup> (ii) knowledgeable employees;<sup>18</sup> (iii) qualified eligible persons<sup>19</sup> or trusts formed by an accredited investor for the benefit of a family member.<sup>20</sup>

*The Net Notional Test Under Rule 4.13(a)(3).* Because the second prong of the Limited Trading Exemption (based on net notional value) may provide registration relief for many investment advisers of investment funds, the calculation of net notional value is critical. The rule sets forth separate formulae for determining net notional value for futures, options, retail foreign exchange transactions and swaps.<sup>21</sup> Importantly, pools may net futures contracts across designated contract markets (DCMs) or foreign boards of trade (FBOTs), whereas swaps may only be netted if they are cleared by the same designated clearing organization (DCO).<sup>22</sup> Netting may result in reduction of the net notional amount, thereby increasing the potential availability of the Limited Trading Exemption. Funds therefore have at least some incentive to effect transactions in DCMs, FBOTs nettable and (for swaps) DCOs.

*The Registered Investment Company Exclusion.* Under Rule 4.5 as amended by the CPO-CTA Rule, investment advisers of investment companies registered under the Investment Company Act of 1940 will be excluded from the definition of a CPO if: (i) the pool engages in a limited amount of commodity interest trading; and (ii) the pool is not marketed as a vehicle for trading in commodity interests.<sup>23</sup> Specifically, in order to be excluded from the CPO definition, the investment adviser of a registered investment company must *either*: (i) limit the aggregate initial margin and premiums connected to commodity interest positions to 5 percent or less of the liquidation value of the pool's portfolio, *or* (ii) limit the aggregate net notional value of regulated commodity contracts amounts to 100 percent or less of the liquidation value of the pool's portfolio.<sup>24</sup> Notably, unlike the Limited Trading Exemption, positions used solely for *bona fide* hedging purposes, as defined in 17 C.F.R. § 1.3(z), *can* be excluded when calculating a company's commodity interest positions under this exception.<sup>25</sup> However, risk management transactions cannot be excluded.<sup>26</sup>

*Marketing Restrictions.* Under new Rule 4.5 and existing Rule 4.13(a)(3), an investment adviser that engages in commodity transactions may not "market the pool as a vehicle for trading in commodity interests" unless that entity or person registers as a CPO. The CPO-CTA Rule lists several factors which the CFTC will consider in determining whether a pool is being marketed as a vehicle for trading in commodity interests.<sup>27</sup> These factors are: (i) the name of the fund; (ii) whether the fund's primary investment objective is tied to a commodity index; (iii) whether the fund makes use of a controlled foreign corporation for its derivatives trading; (iv) whether the fund's marketing materials, including its prospectus or disclosure document, refer to the benefits of the use of derivatives

in a portfolio or make comparisons to a derivatives index; (v) whether, during the course of its normal trading activities, the fund or entity on its behalf has a net short speculative exposure to any commodity through a direct or indirect investment in other derivatives; (vi) whether the futures/options/swaps transactions engaged in by the fund or on behalf of the fund will directly or indirectly be its primary source of potential gains and losses and (vii) whether the fund is explicitly offering a managed futures strategy.

On its face, the CPO-CTA Rule only addresses these factors in the context of Rule 4.5 because the marketing restriction has always applied under Rule 4.13(a)(3). However, the same factors will likely apply to activities under Rule 4.13(a)(3) as well because the rules use almost identical language.

#### *Annual Notification Requirement.*

As in the past, any entity or person relying on the exclusion or exemption provided for in Rule 4.5 or 4.13(a)(3), respectively, must notify the CFTC that it is claiming such exemption by filing a notice with the NFA. The notice filings are fairly straightforward and are made electronically. However, the CPO-CTA Rule now requires this notification to be re-affirmed on an annual basis (within 30 days of the calendar year-end).

## **Who Must Register as a CPO and/or CTA?**

Any entity or person providing investment advice to an investment fund that engages in commodity transactions (such as interest rates, credit, foreign exchange, broad-based indices or physical commodities) may have to register as a CPO if that entity or person cannot meet one of the limited trading thresholds discussed above. Additionally, any entity or person providing investment advice regarding the commodity trading decisions may have to register as a CTA, and persons

associated with a registered CPO or CTA may have to register with the NFA as Associated Persons.

*Rescission of "Sophisticated Investor" Exemption Under Rule 4.13(a)(4).* Previously, investment advisers of many investment funds that issued their interests pursuant to offerings that were exempt from registration under the Securities Act could qualify for an exemption from CPO registration requirements under Rule 4.13(a)(4), which only required that participation in the pool be limited to certain classes of sophisticated investors. The CPO-CTA Rule rescinds Rule 4.13(a)(4) outright, on the basis that the exemption theoretically permitted pools to engage in an unlimited amount of commodity trading.<sup>28</sup> Due to the rescission of Rule 4.13(a)(4), operators of commodity pools will have to register as a CPO unless they limit their trading in commodities as required under Rules 4.5 and 4.13(a)(3), regardless of the sophistication of their investors. Notably, in practice, any person or entity required to register as a CPO must also become a member of the NFA.

*Who Will Register.* With respect to registered investment companies, the CPO-CTA Rule expressly states that the investment adviser would be the appropriate person to register as a CPO if such registration is required.<sup>29</sup> For other types of investment funds, any person who operates the commodity pool would be the appropriate person to register. The CPO can be an individual or an organization.

*Commodity Trading Advisors.* CFTC Rule 4.14 provides an exemption from CTA registration requirements for, among other things, registered or exempt investment advisers whose commodity interest trading advice is directed solely to an exempt commodity pool operator.<sup>30</sup> While the CPO-CTA Rule does not substantively amend this rule, to the extent that fewer persons can claim an exemption from the CPO registration requirement, fewer

persons will be able to rely on Rule 4.14 for exemption from CTA registration requirements.

*Issues for Funds of Funds.* Several commenters urged the CFTC to exempt funds of funds that invest in unaffiliated commodity pools from registration requirements because these funds do not actually trade in commodity interests. The CFTC declined to exempt such funds, however; because the CEA does not distinguish between direct and indirect investment in commodity interests and due to concerns about creating incentives for evasion.<sup>31</sup> As a result, investment advisers of funds of funds must register as CPOs if they invest in any commodity pools. However, the CFTC stated that it will consider case-by-case exemptive requests for funds of funds.<sup>32</sup>

*Implications for Controlled Foreign Corporations and Extraterritorial Reach.* For several reasons, including certain tax restrictions, registered investment companies frequently engage in commodity interest transactions by investing up to 25 percent of their assets in a controlled foreign corporation (CFC), which then engages in actively managed derivatives strategies. These CFCs have previously been exempt from CPO registration requirements under Rule 4.13(a)(4) because the sole participant in the CFC is the registered investment company. The CPO-CTA Rule makes clear that, even if a registered investment company is excluded from registration requirements under Rule 4.5, the company's CFC (to the extent it engaged in commodity interest transactions) must independently satisfy an exclusion or exemption (for which 4.13(a)(4) is no longer available) or else it will have to have a person or organization registered as a CPO.

The rule does not address the extraterritorial reach of the existing or new CPO or CTA registration requirements. Therefore, it is unclear whether operators of or advisors to non-

US pools will have to register as a CPO or CTA if they have US participants. The CFTC is expected to propose a general rule on the extraterritorial reach of all of its regulations in the near future, and that may provide more insight into the reach of this rule.

*NFA Registration for Principals and Associated Persons.* If an entity or person registers as a CPO or CTA, its directors, president, officers and managers must register with the NFA as "principals."<sup>33</sup> Note that this requirement does not apply if an individual, such as an investment adviser, registers as the CPO. Additionally, any individual who solicits orders, customers or customer funds on behalf of a CPO or CTA must register with the NFA as an "associated person."<sup>34</sup> Associated persons must submit fingerprint cards and satisfy certain proficiency requirements (typically the Series 3 exam).<sup>35</sup> Under NFA rules, each CPO and CTA must have at least one registered associated person.<sup>36</sup>

## Implications of CPO or CTA Registration — Additional Reporting and Disclosures

*Disclosure Obligations.* Under both the old and new rules, a registered CPO or CTA must deliver specific disclosures to a prospective participant prior to or simultaneously with delivery of a subscription agreement.<sup>37</sup> These include general disclosures, many of which are spelled out by the CFTC, and performance disclosures. The CPO-CTA Rule adds new required language as to general disclosures regarding swaps. Importantly, though, existing Rule 4.24(g) requires disclosure of the principal risk factors of participating in the offered pool.<sup>38</sup> This provision may require pools to provide a more detailed and individualized risk disclosure statement, similar to those required under the external business conduct standards applicable to swap dealers and major swap participants.<sup>39</sup>

*Reporting.* CPOs of pools with more than \$500,000 in assets must distribute monthly account statements to participants, and all CPOs must deliver annual reports to participants.<sup>40</sup> The monthly account statements must include detailed information about the pool's activities.<sup>41</sup> This information includes: (i) the total amount of realized net gain or loss on commodity interest positions; (ii) the net asset value of the pool as of the beginning of the reporting period; (iii) the total amount of additions to the pool, whether voluntary or involuntary, made during the reporting period; (iv) the total amount of withdrawals from and redemption of participation units in the pool, whether voluntary or involuntary, for the reporting period; (v) the total net income or loss of the pool during the reporting period; (vi) the net asset value of the pool as of the end of the reporting period and (vii)(A) the net asset value per outstanding participation unit in the pool as of the end of the reporting period or (B) the total value of the participant's interest or share in the pool as of the end of the reporting period.

A copy of this annual report must be submitted to the NFA.<sup>42</sup> The CPO Rule maintains these existing rules and adds an additional rule requiring CPOs to file Form CPO-PQR (on an annual or quarterly basis, depending on the pool's size) and for CTAs to annually file Form CTA-PR.<sup>43</sup> These forms must be filed electronically with the NFA.

*Reporting by Dual Registrants.* The CPO-CTA Rule incorporates a provision from an earlier joint rule with the SEC applicable to CPOs or CTAs that are also registered with the SEC as an investment adviser (dual registrants). Under that rule, a CPO or CTA *must* file Form PF with the SEC<sup>44</sup> with respect to any commodity pool it manages that qualifies as a private fund if the CPO or CTA is a dual registrant. Additionally, dual registrants *may* file Form PF with the SEC with respect to a commodity pool it manages that is not also a private fund.<sup>45</sup>

## Other Issues

*Harmonization with the SEC.* The CFTC issued a proposed rule concurrently with the CPO-CTA Rule intended to harmonize certain CFTC and SEC regulations applicable to dually-registered investment companies. The proposed rule was issued in response to commenters who argued that, due to amendments to Rule 4.5, registered investment companies may be subject to duplicative, inconsistent, and possibly conflicting disclosure and reporting requirements. The proposed rule would provide relief from the delivery and acknowledgement requirements under Rule 4.21, certain periodic financial reporting obligations under Rule 4.22, and the requirement that records be maintained at the CPO's main office under Rule 4.23. Because this is only a rule proposal, entities that must register due to the amendments to the Registered Investment Company Exclusion need not comply with the CFTC's recordkeeping, reporting, or disclosure requirements until this harmonization rule is finalized.

*Eligible Contract Participants and Commodity Pools.* Although not covered by the CPO-CTA Rule, the CFTC has proposed another rule that may affect the ability of commodity pools to engage in certain swaps transactions. The Dodd-Frank Act generally prohibits persons from engaging in swaps transactions unless such persons are "eligible contract participants" (ECPs), subject to limited exceptions.<sup>46</sup> An ECP has been defined to include, among other things, a commodity pool with at least \$5 million in total assets that is formed by a regulated person (*e.g.*, a CPO). The Dodd-Frank Act amended this definition so that, with respect to certain retail foreign exchange transactions, every participant in a commodity pool must individually be an ECP in order for the commodity pool to qualify as an ECP.<sup>47</sup> If a commodity pool does not qualify as an ECP, its ability to enter into swaps will be severely limited.

The CFTC proposed a rule interpreting this provision in December 2010.<sup>48</sup> As proposed, not only would each individual participant of a pool be required to be an ECP, but a "look-through" would extend the ECP requirement to direct *and indirect* participants in that pool. The CFTC is scheduled to finalize this rule in the coming weeks.

**Endnotes**

- <sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).
- <sup>2</sup> A CPO is an individual or organization which operates a commodity pool and solicits funds for that commodity pool. A CTA includes an individual or organization which advises persons regarding trading in commodity contracts and swaps. See 7 U.S.C. §§ 1a(11), (12).
- <sup>3</sup> The Commodity Exchange Act (CEA) defines a “commodity pool” broadly to include any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading in “commodity interests.” See 7 U.S.C. § 1a(10). Typically, if there is a *pro rata* sharing of profits and losses in an investment vehicle that invests in “commodity interests,” that vehicle would qualify as a “commodity pool.”
- <sup>4</sup> We do not address herein any implications of investing in security-based swaps or security-based agreements.
- <sup>5</sup> Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 Fed. Reg. 7976 (Feb. 11, 2011).
- <sup>6</sup> The Commission has proposed to revise the term “commodity interest” transactions to include futures, options and swaps on commodities (such as interest rates, foreign exchange, credit, broad-based indices and physical commodities). See Amendments to Commodity Pool Operator and Commodity Trading Advisor Regulations Resulting From the Dodd-Frank Act, 76 Fed. Reg. 11701, 11703 (March 3, 2011) (to be codified at 17 C.F.R. § 4.10(a)). This rule has not yet been finalized.
- <sup>7</sup> The Commission estimated that 253 entities will claim an exclusion or exemption from CPO registration and 300 entities will claim an exemption from CTA registration. See CPO-CTA Rule, p. 80. The Commission estimated that as many as 4,060 CPOs will be registered (based on the number of reports it expects to receive), see *id.* at 87-88, and that 450 CTAs will be registered, see *id.* at 89.
- <sup>8</sup> Private funds are funds that rely on the exclusion from the definition of investment company provided by Section 3(c)(1) or 3(c)(7) of the Investment Company Act.
- <sup>9</sup> As of February 29, 2012, the CPO-CTA Rule has not yet been published in the Federal Register. Therefore, the general effective date of the CPO-CTA Rule will not be before the end of April 2012.
- <sup>10</sup> Registration will not be required for entities currently relying on Rule 4.5 until the later of December 31, 2012 or 60 days after the effective date of the CFTC’s product definitions and margin rules. This potential extension past December 31, 2012 results from the inclusion of swaps in the trading thresholds added to Rule 4.5 (discussed further below). See CPO-CTA Rule, pp. 23-24.
- <sup>11</sup> See footnote 8.
- <sup>12</sup> See CPO-CTA Rule, p. 24.
- <sup>13</sup> See 17 C.F.R. §§ 4.14(a)(8)(i)(A), 4.14(a)(8)(i)(D).
- <sup>14</sup> See 17 C.F.R. § 4.13(a)(3).
- <sup>15</sup> See 17 C.F.R. § 4.13(a)(3)(ii); see also CPO-CTA Rule, pp. 39-43; 124-125. The CPO-CTA Rule sets forth a formula for determining the net notional value, which differs for calculation with respect to futures and with respect to swaps.
- <sup>16</sup> See 17 C.F.R. § 4.13(a)(3)(ii) (exempting persons from registration requirements if, among other things, “the pool meets one or the other of the following tests with respect to its commodity interest positions, including positions in security futures products, whether entered into for bona fide hedging purposes or otherwise. . .”).
- <sup>17</sup> “Accredited investor” is defined by the SEC in Regulation D adopted under the Securities Act. The term includes, among other things: (i) any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of his purchase exceeds \$1,000,000, and (ii) any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year. See *id.* at § 230.501(5)-(6).
- <sup>18</sup> “Knowledgeable employee” is defined by the SEC at Investment Company Act Rule 3c-5.
- <sup>19</sup> As used for purposes of this rule, “qualified eligible person” means, with respect to an exempt pool, the CPO, CTA, investment adviser, and any principals, employees, or agents of the pool or the pool’s CPO, CTA, or investment adviser. However, certain employees and agents of the pool or the pool’s CPO, CTA, or investment adviser must meet certain additional criteria in order to qualify as a qualified eligible person. See 17 C.F.R. §§ 4.13(a)(3)(iii)(D); 4.7(a)(2)(viii)(A).
- <sup>20</sup> See 17 C.F.R. § 4.13(a)(3)(iii).



- <sup>21</sup> Net notional value (NNV) for futures and options is equal to the number of contracts multiplied by the contract size (adjusted by delta in the case of options). NNV for retail forex transactions is equal to the value in US dollars. NNV for swaps is equal to the “value as determined consistent with the terms of part 45.” Presumably, this refers to continuation data under part 45, which requires reporting of a daily mark of the transaction.
- <sup>22</sup> See CPO-CTA Rule, p. 42.
- <sup>23</sup> See CPO-CTA Rule, pp.120-21 (to be codified at 17 C.F.R. § 4.5(c)(2)(iii)).
- <sup>24</sup> See 17 C.F.R. § 4.13(a)(3)(ii); see also CPO-CTA Rule, pp. 39-43; 124-125. The CPO-CTA Rule sets forth a formula for determining the net notional value, which differs for futures and swaps.
- <sup>25</sup> See CPO-CTA Rule, pp. 120-21 (to be codified at 17 C.F.R. §§ 4.5(c)(2)(iii)(A)-(B)).
- <sup>26</sup> See CPO-CTA Rule, p. 18.
- <sup>27</sup> CPO-CTA Rule, pp. 26-27.
- <sup>28</sup> See CPO-CTA Rule, pp. 45-50.
- <sup>29</sup> See CPO-CTA Rule, p. 29.
- <sup>30</sup> See 17 C.F.R. § 4.14(a)(8)(i)(D).
- <sup>31</sup> See CPO-CTA Rule, p. 62.
- <sup>32</sup> See CPO-CTA Rule, p. 46.
- <sup>33</sup> See <http://www.nfa.futures.org/nfa-registration/principal/index.HTML>.
- <sup>34</sup> See <http://www.nfa.futures.org/nfa-registration/ap/index.HTML>.
- <sup>35</sup> See <http://www.nfa.futures.org/nfa-registration/proficiency-requirements.HTML>.
- <sup>36</sup> See NFA Bylaw 301(a)(iii).
- <sup>37</sup> See 17 C.F.R. § 4.21(a).
- <sup>38</sup> See 17 C.F.R. § 4.24(g).
- <sup>39</sup> See Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 Fed. Reg. 9734, 9824 (Feb. 17, 2012) (to be codified at 17 C.F.R. § 23.431).
- <sup>40</sup> See 17 C.F.R. §§ 4.22(a), (c).
- <sup>41</sup> See 17 C.F.R. § 4.22(a).
- <sup>42</sup> See 17 C.F.R. § 4.22(c).
- <sup>43</sup> See CPO-CTA Rule, apps. A, C.
- <sup>44</sup> CPOs and CTAs will file Form PF with the SEC through the filing system developed and maintained by FINRA.
- <sup>45</sup> See CPO Rule, pp. 129-30 (to be codified at 17 C.F.R. § 4.27(d)).
- <sup>46</sup> See Dodd-Frank Act, § 723(a)(2).
- <sup>47</sup> See 7 U.S.C. § 1a(18).
- <sup>48</sup> See Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” 75 Fed. Reg. 80174, 80211 (Dec. 21, 2010) (to be codified at 17 C.F.R. § 1.3(m)).

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