

**COMMODITY FUTURES TRADING COMMISSION
PROPOSES TO REPEAL EXEMPTIONS**

The Commodity Futures Trading Commission voted unanimously today to publish proposals that, if adopted, would repeal or amend several registration exemptions generally relied upon by the sponsors of, and advisors to, hedge funds and registered investment companies.

The rules impacted include:

- **CFTC Rule 4.13(a)(3)**, which provides an exemption from commodity pool operator (“CPO”) registration for CPOs of privately offered funds that trade only a *de minimis* amount of futures.
- **CFTC Rule 4.13(a)(4)**, which provides an exemption from CPO registration for CPOs of privately offered funds that are offered only to certain sophisticated investors.
- **CFTC Rule 4.5**, which provides an exclusion from the definition of CPO for certain entities that are subject to oversight by another regulator. These otherwise regulated entities include investment companies registered with the Securities and Exchange Commission.
- **CFTC Rule 4.14(a)(8)(i)(D)**, which provides an exemption from registration for commodity trading advisors (“CTAs”) to funds whose CPOs rely on Rule 4.13(a)(3) or 4.13(a)(4).

Repeal of these exemptions would require many CPOs and CTAs to register with the CFTC and become members of the National Futures Association. Registered CPOs and CTAs are subject to various disclosure, reporting and recordkeeping requirements.

The rules noted above have been in their present form since 2003. At that time, as part of its continuing implementation of the Commodity Futures Modernization Act of 2000, the CFTC adopted Rules 4.13(a)(3) and 4.13(a)(4) and removed the trading restrictions that previously appeared in Rule 4.5.¹ Since 2003, thousands of claims for exemption have been filed with the National Futures Association by CPOs relying on Rules 4.13(a)(3) and 4.13(a)(4).

¹ Our prior client memoranda on Rule 4.5 can be found at: http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/3406/National%20Futures%20Association%20Petitions%20Commodity%20Futures%20Trading%20Commission.pdf and http://www.willkie.com/files/tbl_s29Publications/FileUpload5686/3513/CFTC-Seeks-Public-Comment-On-NFAs-Petition.pdf.

The proposals will be subject to a public comment period after publication in the Federal Register.

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