WILLKIE FARR & GALLAGHER LLP

CLIENT MEMORANDUM

CFTC COMPLIANCE ALERT:
FIRST QUARTER 2013 COMPLIANCE REMINDERS

Annual Exemption and Exclusion Confirmation Requirements: March 1, 2013

The Commodity Futures Trading Commission adopted new rules in February 2012 that require each CPO that claims an exemption or exclusion from CPO registration, and each CTA that claims an exemption from CTA registration, to confirm such exemption or exclusion within 60 days of the end of each calendar year. Thus, each notice of claim of exclusion filed under CFTC Rule 4.5 and each notice of claim of exemption filed under CFTC Rule 4.13 or 4.14(a)(8) must, in effect, be refiled on an annual basis. Failure to comply with the annual affirmation requirement will result in the automatic withdrawal of the notice of claim of exemption or exclusion, as applicable, following the end of the 60-day period. CPOs and CTAs can complete the affirmation process by accessing NFA's Exemption System.

In connection with affirming exemptions and exclusions, CPOs and CTAs may also wish to review their page on NFA's BASIC system to confirm that their exemptions or exclusions are properly reflected.[1] Some NFA members rely on the information provided by BASIC to comply with their requirements under NFA Bylaw 1101, which prohibits NFA members from doing business with non-members who are required to be registered with the CFTC but are not. For example, the CPO of a fund of funds should anticipate that the CPO of any investee fund may check BASIC to confirm that the fund of fund's CPO is in compliance with CFTC registration requirements. Similarly, a CPO should expect that a futures commission merchant, prior to opening a trading account for any of the CPO's funds, may check BASIC to confirm the CPO's registration status.

Reporting Deadline for Form CTA-PR is February 14, 2013

All CTAs that were required to be registered on or before December 31, 2012, must file a Form CTA-PR annual report with NFA by February 14, 2013. The Form CTA-PR requires information about the CTA, its trading programs, its assets under management and the CPOs of any pools it advises. NFA has proposed amendments to NFA Compliance Rule 2-46 to require all CTA members to file CTA-PR information on a quarterly basis. NFA expects the first quarterly filing to be due on May 15, 2013 – forty-five days after the end of the first calendar quarter. Form CTA-PR must be filed electronically through NFA's EasyFile System.

[1] NFA's BASIC system can be accessed at: http://www.nfa.futures.org/basicnet/

Swaps Firm Designation

Effective January 1, 2013, NFA Bylaw 301 requires each NFA member that engages in activities involving swaps to be designated as a "swaps firm" ("Swaps Firm")[2] and each registered associated person of a Swaps Firm who engages in activities involving swaps subject to the jurisdiction of the CFTC to be designated as a "swaps associated person" ("Swaps AP"). Designation as a Swaps Firm is effected through amendment of the member's Form 7-R and the designation of at least one principal of the member who is also a registered AP of the member as a Swaps AP. Designation as a Swaps AP is effected through amendment to the AP's Form 8-R. Amendments to Form 7-R and Form 8-R must be filed electronically via NFA's Online Registration System.

Approaching Reporting Deadlines for CFTC Form CPO-PQR[3]

Each CPO that was required to be registered on or before December 31, 2012, is required to complete and file applicable schedules of CFTC Form CPO-PQR ("CPO-PQR") by the filing deadlines outlined below. CPO-PQR is divided into three schedules. Schedule A consists of basic identifying information about the CPO, each of its pools and any service providers used. Schedule B calls for information regarding each pool's trading strategy (including the percentage of the pool's capital invested in each strategy), borrowings by geographic area, the identities of significant creditors, credit counterparty exposure and trading and clearing mechanisms, as well as a schedule of investments. Schedule C is divided into two parts: Part 1, which includes a geographical breakdown of investments held by such pools and certain portfolio turnover information; and Part 2, which includes, among other information, the duration of fixed income investments, asset liquidity, counterparty credit exposure, pool risk metrics, pool borrowing information, derivative positions and posted collateral. Schedule C Part 2 must be completed separately for each operated "large pool" (a pool that has a net asset value of at least $500 million).

Since 2010, NFA Rule 2-46 has required each CPO member to file rate of return and other information for each of its pools on a quarterly basis. Thus, a CPO that is required to file CPO-PQR annually will also have to file certain information quarterly in order to satisfy NFA Rule 2-46. CPO-PQR and NFA Rule 2-46 filings are made through NFA's EasyFile System.

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2 The "swaps firm" requirements of NFA Bylaw 301 also apply to any registered FCM or IB.

3 A Registered CPO that is also an SEC-registered investment adviser may have the option to elect to file SEC/CFTC Joint Form PF in place of filing Schedules B and/or C, as applicable, of Form CPO-PQR with respect to its relevant pools. For more information regarding Form PF, see our client memoranda entitled "SEC Adopts Private Fund Reporting Rules and Form PF" and "SEC and CFTC Adopt Private Fund Reporting Rules: Agencies Adopt New Form PF," dated October 27, 2011 and November 16, 2011, respectively. For more information regarding Forms CPO-PQR and CTA-PR, see our client memorandum dated February 17, 2012, entitled "CFTC Adopts CPO and CTA Reporting Rules."

"Large CPO" Filing Deadline

A CPO with over $1.5 billion in assets under management is required to complete all three schedules of CPO-PQR and file on a quarterly basis within 60 days of each calendar quarter-end. The next filing deadline for a large CPO that was required to be registered on or before December 31, 2012, is March 1, 2013.

"Mid-Size CPO" Filing Deadline

A CPO with at least $150 million, but less than $1.5 billion in assets under management is required to complete only Schedules A and B of CPO-PQR and file on an annual basis within 90 days of each calendar year-end. The next filing deadline for a mid-size CPO that was required to be registered on or before December 31, 2012, is March 31, 2013.

"Small CPO" Filing Deadline

A CPO with less than $150 million in assets under management is required to complete only Schedule A of CPO-PQR and file on an annual basis within 90 days of each calendar year-end. The next filing deadline for a small CPO that was required to be registered on or before December 31, 2012, is March 31, 2013.

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If you have any questions concerning the foregoing or would like additional information, please contact Rita Molesworth (212-728-8727, rmolesworth@willkie.com), Deborah Tuchman (212-728-8491, dtuchman@willkie.com), Lisa Eskenazi (212-728-8509, leskenazi@willkie.com), Jonathan Burwick (212-728-8108, jburwick@willkie.com), Daniel Carpenter (212-728-8912, dcarpenter@willkie.com) or the Willkie attorney with whom you regularly work.

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