

## CLIENT MEMORANDUM

# CFTC Amends CPO Rules

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## AUTHORS

Rita M. Molesworth | Deborah A. Tuchman | Jonathan Burwick

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The Commodity Futures Trading Commission has adopted amendments to its disclosure and recordkeeping rules for commodity pool operators.<sup>1</sup> The rules described below apply to all registered CPOs absent an exemption. The amendments become effective 30 days after publication in the Federal Register, unless indicated otherwise.

**Location of Books and Records.** CFTC rules currently require a CPO to maintain all books and records at its main business office.

As amended, CFTC Rules 4.7 and 4.23 will permit a CPO to maintain its books and records either at its main business office or at the office of an administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity. If records are not maintained at the CPO's main business office, the CPO must make notice filings that include, among other things, the identity of each alternative record-keeper and an undertaking from each such record-keeper to maintain the books and records in accordance with CFTC regulations.

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<sup>1</sup> Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister081213.pdf>.

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## CFTC Amends CPO Rules

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**Disclosure Document Acknowledgement.** CFTC Rule 4.21 currently requires a CPO to obtain a signed disclosure document acknowledgement prior to accepting funds from an investor.

As amended, Rule 4.21 will no longer require a CPO to obtain a signed acknowledgement. This amendment becomes effective upon publication in the Federal Register.

**Ledgers Regarding Pool Participants.** CFTC Rule 4.23 currently requires a CPO to maintain a ledger (or other record) for each investor that shows the investor's name and address, and all funds received from or distributed to the investor.

As amended, Rule 4.23 will be satisfied if such records are maintained by a transfer agent. Where shares are held in omnibus accounts or through intermediaries, Rule 4.23 will permit the transfer agent to maintain a list of such intermediaries.

**Disclosure Document Updates.** CFTC Rule 4.26 currently requires a CPO to update its pool disclosure document at least every nine months.

As amended, Rule 4.26 will permit a CPO to use a pool's disclosure document for up to 12 months before it must be amended.<sup>2</sup>

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If you have any questions concerning the matters described in this memorandum, please contact Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Deborah A. Tuchman (212-728-8491, dtuchman@willkie.com), Jonathan Burwick (212-728-8108, jburwick@willkie.com) or the Willkie attorney with whom you regularly work.

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<sup>2</sup> CFTC Rule 4.36(b) was also amended to permit a registered commodity trading advisor to use its disclosure document for up to 12 months before it must be amended. Consistent with current requirements for both CPOs and CTAs, a disclosure document that becomes materially inaccurate must be updated promptly.