

CLIENT MEMORANDUM

DSIO Issues Self-Executing CPO Delegation Relief

October 15, 2014

AUTHORS

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The Division of Swap Dealer and Intermediary Oversight of the Commodity Futures Trading Commission today issued a letter setting forth the criteria upon which a commodity pool operator¹ may delegate its registration and compliance responsibilities.² Any person granted CPO delegation relief in the past, pursuant to Letter 14-69 or otherwise, may continue to rely on such relief. Today's letter expands the universe of CPOs who may delegate without seeking bespoke registration relief.

A CPO (the "Delegating CPO") that delegates its investment management authority to a registered CPO (the "Designated CPO") may avail itself of the relief in the Letter without filing any notice or claim with the CFTC, provided that the criteria of the Letter are satisfied.

¹ A commodity pool operator ("CPO") is generally a general partner, managing member, trustee or director, as applicable, of a commodity pool.

² CFTC Staff Letter No. 14-126 (Oct. 15, 2014) (the "Letter"). The Letter supersedes CFTC Staff Letter No. 14-69 (May 12, 2014) ("Letter 14-69"), revises certain of the criteria for CPO delegation contained in Letter 14-69 and eliminates the requirement in Letter 14-69 that a delegating CPO meeting the delegation criteria must affirmatively seek no-action relief from the CFTC. For more information on Letter 14-69, please see our client memorandum dated May 13, 2014, entitled *CPO Delegation Alert: Action Required*.

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The CFTC Staff understands that the Letter does not cover all circumstances in which no-action relief may be appropriate. Thus, a CPO that cannot satisfy the criteria set forth in the Letter may seek no-action relief on an individual basis.

Criteria for Self-Executing Relief

The criteria for self-executing relief generally are as follows:

1. The Delegating CPO:
 - a) has delegated to the Designated CPO all of its investment management authority with respect to the commodity pool pursuant to a legally binding agreement. The Delegating CPO may appoint one or more investment managers for the pool and still satisfy this criterion.
 - b) does not participate in the solicitation of investors for the pool other than in its capacity as a registered or properly exempt associated person of the Designated CPO.
 - c) does not manage any property of the pool other than in its capacity as a principal or employee of the Designated CPO or of the commodity trading advisor of the pool.³
2. The Designated CPO is registered as a CPO.
3. The Delegating CPO is not subject to a statutory disqualification.
4. There is a business purpose for the Designated CPO being a separate entity from the Delegating CPO, which purpose is not solely to avoid registration.
5. The books and records of the Delegating CPO with respect to the commodity pool are maintained by the Designated CPO.
6. If the Delegating CPO and the Designated CPO are each a non-natural person, they must be under common control.
7. If the Delegating CPO is either (i) a non-natural person or (ii) a natural person who is not an "Unaffiliated Board Member" (as defined in the Letter), then the Delegating CPO and the Designated CPO must each agree to be jointly and severally liable for any violation of the Commodity Exchange Act or CFTC rules by the other in connection with the operation of the commodity pool.
8. If the Delegating CPO is an Unaffiliated Board Member, then the Delegating CPO must remain fully responsible as a board member under applicable law.

³ For purposes of this criterion, management of pool property does not include responsibilities that are administrative, clerical or ministerial in nature.

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October 15, 2014

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