

CLIENT MEMORANDUM

CFTC Compliance Alert: CPO and CTA Annual Affirmations Due By March 2, 2015

February 9, 2015

AUTHORS

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Each entity excluded from the definition of “commodity pool operator” by Commodity Futures Trading Commission Rule 4.5, or exempt from CPO registration by Rule 4.13, must comply with an annual affirmation requirement if the entity wishes to maintain its excluded or exempt status. Each commodity trading advisor exempt from CFTC registration pursuant to Rule 4.14(a)(8) also must affirm its claim of exemption on an annual basis. Affirmation filings are due within 60 days of each year end. Filings for 2015 must be made with the National Futures Association no later than Monday, March 2, 2015.

Failure to file the required affirmations by March 2, 2015 will result in the automatic withdrawal of the applicable notice of claim of exemption or exclusion. CPOs and CTAs can complete the affirmation process by accessing NFA’s Exemption System.

In connection with affirming exemptions and exclusions, CPOs and CTAs should confirm that their information is properly reflected on the NFA website. Many NFA members rely on the information available on the NFA website in order to comply with NFA Bylaw 1101. That bylaw 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 review NFA’s website to confirm that the fund-of-funds’ CPO is in compliance with CFTC registration requirements. Similarly, a CPO or CTA should expect that a futures commission merchant, prior to opening a trading account for a pool or managed account, will seek to confirm the CPO’s or CTA’s registration status.

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If you have any questions concerning the foregoing or would like further information, please contact Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Deborah A. Tuchman (212-728-8491, dtuchman@willkie.com), James E. Lippert (212-728-8945, jlippert@willkie.com), or Christopher M. Chan (212-728-8841, cmchan@willkie.com) or the Willkie attorney with whom you regularly work.

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