

CLIENT ALERT

CFTC Compliance Alert: Annual Affirmations and Virtual Currency Transaction Filings

Annual Affirmations Due By March 1, 2018

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CPO and CTA Exemption Affirmations

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 after the calendar year end. Filings for 2018 must be made with the National Futures Association no later than Thursday, March 1, 2018.

Failure to file the required affirmations by March 1, 2018 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 the 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’s website. Many NFA members rely on the information available on the NFA’s 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 the NFA’s website to confirm that the fund-of-funds’ CPO is in compliance with

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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.

Additional Reporting Requirements For Trading Virtual Currency Products

Under new reporting requirements, the CPO of any pool or the CTA of any managed account that executes transactions involving virtual currencies or virtual currency derivatives must notify NFA. In order to fulfill this obligation, such CPOs and CTAs must answer new questions that have been added to the firm-level section of their annual questionnaires.¹ This is an ongoing obligation; the CPO of any pool or the CTA of any managed account that does not currently trade virtual currencies or related derivatives must notify NFA if it begins to do so.

In addition, beginning in the first quarter of 2018, the CPO of any pool or the CTA of any managed account that executes transactions involving virtual currencies or virtual currency derivatives will be required to report, within 15 days after quarter end, the number of their pools or managed accounts that have executed such transactions.

If you have any questions regarding this client alert, please contact the following attorneys or the attorney with whom you regularly work.

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¹ CPOs and CTAs can access their annual questionnaire through the following link: <https://www.nfa.futures.org/electronic-filing-systems/annual-questionnaire.html>. Introducing brokers and futures commission merchants whose designated self-regulatory organization is NFA have similar reporting obligations.