

## CLIENT MEMORANDUM

# NFA Contemplates Capital Requirements for CPOs and CTAs

January 24, 2014

## AUTHORS

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National Futures Association is contemplating the adoption of a series of new requirements for commodity pool operators and commodity trading advisors.<sup>1</sup> NFA is seeking industry feedback on ways to provide greater protection for customer funds in the wake of recent events involving shortfalls in some commodity pools. The issues under consideration are summarized below. Comments are due by April 15, 2014.

### **CPO/CTA Capital Requirement**

CPO and CTA members are not currently subject to a minimum capital requirement. To ensure that such members have sufficient funds to operate as a going concern, NFA has asked whether CPOs and CTAs should be subject to a capital requirement. NFA also asked for suggestions regarding appropriate alternatives to a capital requirement.

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<sup>1</sup> Notice to Members I-14-03, [Request for Comments – CPO/CTA Capital Requirement and Customer Protection Measures – Comments Due by April 15, 2014](http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4377), (January 23, 2014). The Notice solicits responses to 25 specific questions and is available at <http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4377>.

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## **NFA Contemplates Capital Requirements for CPOs and CTAs**

Continued

### **Additional CPO Customer Protection Measures**

NFA is also seeking comment on whether:

- a CPO member should be required to seek an independent third party's review and authorization before disbursing pool funds;
- a CPO member should be required to use an independent third party to prepare and/or verify pool performance and periodic account statements; and
- an entity holding the assets of a pool operated by a CPO member (such as a bank or futures commission merchant) should be required to report the balance in the pool's account to NFA.

### **Inactive Members**

Currently, a registered CPO or CTA may be a member of NFA even though it does not presently trade commodity interests. NFA stated that it has hundreds of such members. NFA is seeking comment on whether the membership of such "inactive" CPOs and CTAs should be terminated.

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If you have any questions regarding this memorandum, please contact Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Deborah A. Tuchman (212-728-8491, dtuchman@willkie.com), Jonathan C. Burwick (212-728-8108, jburwick@willkie.com), James E. Lippert (212-728-8945, jlippert@willkie.com) or the Willkie attorney with whom you regularly work.

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