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CFTC Adopts Final Rules Clarifying CPO and CTA Exemptions for Family Offices, BDCs

January 6, 2020

On November 25, 2019, the Commodity Futures Trading Commission (CFTC) approved final rule amendments intended to simplify certain existing CFTC rules, codify certain previously granted no-action relief, and better coordinate CFTC and Securities and Exchange Commission (SEC) rules. The new changes include:

- **Family Offices**: New Regulations 13(a)(6) and 4.14(a)(11) were adopted codifying relief previously granted to family offices from commodity pool operator (CPO) and commodity trading advisor (CTA) registration through CFTC Letters 12–37 and 14–143. The new rules incorporate by reference the definitions of "family office" and "family client" from SEC Rule 202(a)(11)(G)–1.
- **General Solicitation**: CFTC Regulations 4.7 and 4.13 were amended to permit the exemptions under those rules to apply to offerings involving general solicitation as permitted under SEC Rule 506(c) (codifying relief previously granted in CFTC Letter 14-116), and to clarify that non-U.S. persons participating in exempt offerings under those rules are not required to satisfy certain eligibility requirements.
- **RICs and BDCs**: CFTC Regulation 4.5 was amended to clarify that the exclusion from the CPO definition currently provided for a registered investment company (RIC) should be claimed by the RIC's investment adviser, as it is the entity most commonly understood to solicit for or "operate" the RIC, and to provide that the exemption also applies to investment advisers of business development companies (BDCs).
- **Reporting Relief**: The "Reporting Person" definition in CFTC Regulation 4.27 was amended to eliminate the requirement of certain CPOs and CTAs to file Forms CPO–PQR (Pool Quarterly Reports) and CTA–PR (CTA Quarterly Reports), including CPOs that operate only pools for which the CPO has claimed either a definitional exclusion under Regulation 4.5, or an exemption from CPO registration under Regulation 4.13.

CFTC registered CPOs should check their fund subscription documents to see if the provision confirming compliance with National Futures Association By-Law 1101 needs to be updated to refer to the new exemptions.

The rule changes were published in the federal register on December 10, 2019 and will become effective on January 9, 2020.