



Commodity Futures Trading Commission

Office of Public Affairs

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Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators

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The Commodity Futures Trading Commission (“Commission” or “CFTC”) has amended the reporting requirements applicable to certain investment companies registered under the Investment Company Act of 1940, whose advisors would be required to register with the Commission as commodity pool operators (CPOs) pursuant to changes adopted by the Commission to § 4.5.

Background

In February 2012, the Commission adopted modifications to the exclusions from the definition of CPO that are delineated in § 4.5 (“2012 Final Rule”). Specifically, the Commission amended § 4.5 to modify the exclusion from the definition of “commodity pool operator” for those entities that are investment companies registered as such with the Securities and Exchange Commission (“SEC”) pursuant to the Investment Company Act of 1940 (“’40 Act”). As such, pursuant to those modifications, certain advisors of registered investment companies (“RICs”) must register as CPOs with the Commission. Concurrent with that modification, the Commission issued a Proposed Rule that would harmonize to the fullest extent practicable the disclosure, reporting, and recordkeeping regimes of the Commission and the SEC for dually registered entities while maintaining the regulatory objectives of part 4 of the Commission’s regulations consistent with its experience to date with CPOs of RICs.

Rationale

The Commission received a number of comments regarding the changes to § 4.5. Specifically, commenters noted that dually registered entities may be subject to duplicative, inconsistent, and possibly conflicting, disclosure and reporting requirements if required to comply with both the Commission and SEC regimes. This final rule (“Harmonization Rule”) harmonizes, to the fullest extent practicable, the Commission’s compliance obligations with those of the SEC to facilitate compliance with both regimes, while maintaining the regulatory objectives of part 4 of the Commission’s regulations.

Compliance Obligations

Through the Harmonization Rule, the Commission effectively adopts a substituted compliance regime for CPOs of RICs largely premised upon such entities’ adherence to the compliance obligations under the SEC statutory and regulatory compliance regime. The Harmonization Rule provides that the Commission will accept compliance by such entities with the disclosure, reporting, and recordkeeping regime administered by the SEC as substituted compliance with substantially all of part 4 of the Commission’s regulations. Additionally, the Harmonization Rule amends certain provisions of part 4 of the Commission’s regulations that are applicable to all CPOs. Notably, all CPOs will be permitted to use third-party service providers to maintain their books and records and the signed acknowledgement requirement is being rescinded.