On May 12, 2014, the U.S. Commodity Futures Trading Commission ("CFTC") announced a standardized, streamlined approach for no-action requests relating to delegation of commodity pool operator ("CPO") activities by an unregistered CPO to a registered CPO. Delegation typically arises where (1) the general partner of a hedge fund organized as a partnership appoints a separate investment adviser and delegates the investment adviser to perform CPO responsibilities, or (2) the board of directors of a hedge fund organized as a corporation delegates CPO responsibilities to the fund's investment adviser.

Under previous CFTC guidance and no-action letters, a CPO, such as a general partner or independent director described above, could delegate CPO responsibilities to a registered CPO under certain circumstances. It was generally understood that the guidance applied to delegation arrangements that satisfied those conditions even if the specific parties had not obtained their own no-action relief. More recently, however, the CFTC indicated that a CPO wanting to delegate its CPO obligations to a registered CPO would be required to obtain its own no-action relief for that delegation. The new approach announced on Monday affirms that position and requires any CPO delegating its CPO responsibilities to submit a no-action request using the new procedure.

The new relief is relevant only to advisers that manage investment funds whose CPOs do not qualify for an exemption from CPO registration. It does not apply to a CPO that has claimed the exemption from registration in Rule 4.13(a)(3) under the U.S. Commodity Exchange Act (the "CEA").

Criteria. The CFTC will provide no-action relief from the CPO registration requirements in CEA section 4m(1) to a delegating CPO who requests relief through the approach set forth below if:

- Pursuant to a legally binding document, the delegating CPO (in the examples above, the general partner or a director) has delegated to the designated CPO (in the examples above, the investment adviser) all of its investment management authority with respect to the commodity pool; the delegating CPO does not participate in the solicitation of participants for the commodity pool; and the delegating CPO does not manage any property of the commodity pool;
- The designated CPO is registered as a CPO;
- The delegating CPO is not subject to statutory disqualification under CEA section 8(a)(2) or (3);
- There is a business purpose for the designated CPO being a separate entity from the delegating CPO that is not solely to avoid registration by the delegating CPO under the CEA and the CFTC's regulations;
- The books and records of the delegating CPO with respect to the commodity pool are maintained by the designated CPO in accordance with CEA Regulation 1.31;
- If the delegating CPO and the designated CPO are each a non-natural person, then one such CPO controls, is controlled by or is under common control with the other CPO;
- If a delegating CPO is a non-natural person, then such delegating CPO and the designated CPO have executed a legally binding document whereby each undertakes to be jointly and severally liable for any violation of the CEA or the CFTC's regulations by the other in connection with the operation of the commodity pool;
- If a delegating CPO is a natural person and is not an Unaffiliated Board Member, as defined below, then the delegating CPO and the designated CPO have executed a legally binding document whereby each undertakes to be jointly and severally liable for any violation of the CEA or the CFTC's regulations by the other in connection with the operation of the commodity pool; and
- If a delegating CPO is an Unaffiliated Board Member, then such delegating CPO must be subject to liability as a board member in accordance with the laws under which the commodity pool is established.

An "Unaffiliated Board Member" is a natural person who is a voting member of the board of directors or an equivalent governing body of the commodity pool and who: (1) is not a member of the management or an employee of the designated CPO or any of its affiliates; (2) is not a substantial beneficial owner of the designated CPO or any of its affiliates or of any company holding more than 5% of such designated CPO's beneficial ownership interests or any affiliate thereof; and (3) has no other interest or relationship that could interfere with his/her ability to act independently of management of the designated CPO or any of its affiliates or of any company holding more than 5% of such designated CPO's beneficial ownership interests or any affiliate thereof.

Claiming No-Action Relief. If a fund's CPO activities have been delegated, the delegating CPO generally will need to submit a no-action request (if it has not already done so). Existing and new delegation arrangements must meet the criteria described above. For example, the investment advisory agreement or other agreement by which delegation is made must cover the CPO activities that are described in the CFTC's criteria outlined above, and the delegating CPO must be a party to the agreement. The delegating CPO must submit its request for relief pursuant to CEA Regulation 140.99 in the form specified by the CFTC.

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This letter only generally summarizes the requirements for requesting no-action relief, and is not intended as specific or complete advice. For further assistance, please contact John Broadhurst, Carolyn Reiser, Neil Koren, Jim Frolik, Christina Hamilton, Joan Grant or David Suozzi.

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