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From: NFA Notification <NFAN@NFA.Futures.Org>
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To: Fallon-Houle, Nancy
Subject: Guidance to NFA Member CPOs and CTAs that Operate or Advise Pools Pursuant to an Exemption under CFTC Regulation 4.13(a)(4)



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Guidance to NFA Member CPOs and CTAs that Operate or Advise Pools Pursuant to an Exemption under CFTC Regulation 4.13(a)(4)

On February 24, 2012, the CFTC issued final rules amending CFTC Part 4 Regulations to rescind the exemption from registration available to CPOs offering certain qualifying pools under CFTC Regulation 4.13(a)(4). Although Member CPOs that currently operate a pool(s) pursuant to a 4.13(a)(4) exemption may continue to operate the pool pursuant to that exemption until December 31, 2012, those CPOs must determine whether the 4.13(a)(4) exempt pool qualifies for an exemption from registration under CFTC Regulation 4.13(a)(3) or whether the CPO will become subject to CFTC Part 4 reporting and disclosure requirements for that pool subsequent to December 31, 2012. Similarly, any CTA that advises a 4.13(a)(4) exempt pool pursuant to an exemption under CFTC Regulation 4.14(a)(8)(D) may only continue to advise that pool after December 31 if the CTA continues to be eligible for that exemption because the CPO has filed a 4.13(a)(3) exemption for that pool. Otherwise, the CTA must comply with the applicable Part 4 requirements with respect to that pool.

The final rules also amend a number of CFTC Regulations to require CPOs and CTAs that claim an exemption under CFTC Regulation 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), 4.13(a)(5) and 4.14(a)(8) to annually reaffirm the applicable notice of exemption. CPOs and CTAs will have 60 days after the calendar year-end to reaffirm the notice of exemption through NFA's Electronic Exemption System. The first notice reaffirming these exemptions is due for the calendar year ending December 31, 2012 and annually thereafter. Any CPO or CTA that fails to file a notice reaffirming the exemption will be deemed to have requested a withdrawal of the exemption. If the exemption is deemed withdrawn, the CPO or CTA would be required to comply with the applicable Part 4 Requirements with respect to that pool.

Member CPOs and CTAs are encouraged to review the status of their exempt pools in order to ensure that they are in compliance with the new regulatory requirements.

Other Available Exemptive Relief

A CPO that currently operates a pool(s) pursuant to 4.13(a)(4) that will not qualify for a exemption under 4.13(a)(3) after December 31, 2012 may be able to avail itself of relief from certain regulatory requirements for qualifying pools by filing an exemption under Regulations 4.7, 4.12 or CFTC Advisory 18-96. Similarly, a CTA may be eligible under Regulation 4.7 for certain relief with respect to accounts of qualified eligible persons (QEPs). To determine whether you qualify for any of these exemptions, please consult [CFTC Regulations - Part](#)

4. All exemptions other than an exemption under CFTC Advisory 18-96 must be filed through NFA Electronic Exemption System at <http://www.nfa.futures.org/NFA-electronic-filings/exemptions.HTML>. An exemption under CFTC Advisory 18-96 must be filed in hard copy form with NFA's Compliance Department.

To assist CPOs in the process of withdrawing a 4.13(a)(4) exemption and claiming another available exemption, NFA will modify the Electronic Exemption System to give CPOs that currently hold a 4.13(a)(4) exemption the ability to pre-file for an available exemption that would become effective on January 1, 2013. A CPO that elects to use the pre-filing option will not become subject to the additional reporting and disclosure requirements related to the newly claimed exemption until 2013. Please be aware that a CPO that elects not to use the pre-filing option and withdraws its 4.13(a)(4) exemption and files for another available exemption (other than a 4.13(a)(3) exemption) prior to December 31, 2012 will immediately become subject to the CFTC and NFA regulatory requirements related to the new exemption, including the requirement to file a certified annual report for 2012.

Withdrawing the 4.13(a)(4) Exemption

CPOs may withdraw an exemption by accessing NFA's Electronic Exemption System at <http://www.nfa.futures.org/NFA-electronic-filings/exemptions.HTML>. Any CPO that elects to withdraw a 4.13(a)(4) exemption prior to December 31, 2012 and does not file a 4.13(a)(3) exemption or other available exemption, will become subject to all reporting and disclosure requirements under CFTC regulations and NFA rules for that pool. CPOs that are not eligible to claim another exemption for a current 4.13(a)(4) pool are not required to affirmatively withdraw that exemption since NFA will automatically terminate 4.13(a)(4) exemptions for all pools on December 31, 2012.

Cessation of Pool

CPOs that filed a 4.13(a)(3) or 4.13(a)(4) exemption for a pool that never commenced operations or that has subsequently ceased operating should update NFA's records with the applicable information. The CPO must first withdraw the exemption by accessing NFA's Electronic Exemption System at <http://www.nfa.futures.org/NFA-electronic-filings/exemptions.HTML>. At the time you withdraw the exemption, you will be directed to the Annual Questionnaire to delete or cease the pool.

Questions concerning these changes should be directed to Mary McHenry, Senior Manager, Compliance (mmchenry@nfa.futures.org or 312-781-1420) or Tracey Hunt, Senior Manager, Compliance (thunt@nfa.futures.org or 312-781-1284).

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