



December 17, 2018

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: RIN 3038—AE76: Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) proposal to amend its regulations regarding registration and compliance requirements for Commodity Pool Operators (CPOs) and Commodity Trading Advisors (CTAs), which was published in the Federal Register on October 18, 2018. The proposal includes an amendment that would prohibit a person that is subject to a statutory disqualification, or who employs a principal subject to a statutory disqualification, from claiming or affirming an exemption from CPO registration. It also seeks to amend existing CFTC regulations by codifying existing staff guidance and no action relief. NFA supports the proposed changes, and respectfully requests that the Commission consider the following comments.

A. Prohibition on Statutory Disqualifications for Exemptions under CFTC Regulation 4.13

Commission Regulation 4.13 contains a number of exemptions from registration as a CPO. None of the exemptions, however, include a provision that the person seeking the exemption may not be statutorily disqualified from registration under Section 8a(2) or 8a(3) of the Commodity Exchange Act (CEA). As a result, a person is permitted to operate and solicit participants for an investment in an exempt commodity pool, although the person may not be permitted to register as a CPO with the Commission and operate and solicit for the same pool.

NFA fully supports the Commission's proposed amendment to Regulation 4.13 to require any person claiming (or affirming) a registration exemption under Regulations 4.13(a)(1)-(5) to represent that neither the person claiming the exemption nor any of its principals are subject to a statutory disqualification under CEA Sections 8a(2) or 8a(3). NFA believes the Commission aptly states in the *Federal Register* release that the proposed prohibition would provide a substantial customer protection benefit. In particular, the proposed change addresses a significant regulatory gap in the

Commission's exemption framework and will certainly strengthen customer protection by ensuring that a person who may be prohibited from registering as a CPO is not able to operate an exempt fund outside of the Commission's and NFA's regulatory oversight.

NFA also notes that the proposed amendment is consistent with current Commission requirements for registered entities seeking other exemptive relief. In particular, Commission Advisory 18-96¹, which provides relief to qualified registered CPOs operating offshore commodity pools from certain disclosure, reporting and recordkeeping requirements with regard to the offshore pools, requires the person seeking the exemption to make the same representation as proposed regarding the existence of statutory disqualifications. Similarly, Regulation 4.7, which provides relief from certain reporting and recordkeeping requirements to certain registered CPOs and CTAs with respect to their offerings to qualified eligible persons, requires the same representation from persons seeking the exemption.

The Commission's proposal, however, also includes two limited exceptions available in Commission Advisory 18-96 and Regulation 4.7 that would permit a person with a statutory disqualification to properly claim an exemption. In particular, a person would not be prohibited from claiming one of the exemptions based on statutory disqualifications that were previously disclosed in registration applications that were granted, or that were disclosed more than 30 days prior to the claim of exemption to NFA or the Commission. NFA staff supports an exception related to statutory disqualifications that were previously disclosed in registration applications that were granted. Under these circumstances, the Commission or NFA has previously reviewed the statutory disqualification and determined that the person does not pose a substantial risk to the public and should be permitted to register.

NFA, however, has concerns regarding the exception related to statutory disqualifications that were disclosed to NFA or the Commission at least 30 days prior to the claim of exemption. This exception appears premised on the idea that the person claiming the exemption would be under an obligation, and have a method, to report an existing statutory disqualification to the Commission or NFA, and then if the Commission or NFA did not act on this information within 30 days, the statutory disqualification would not disqualify the person from claiming the exemption.

Unlike entities claiming relief under Advisory 18-96 and Regulation 4.7, which are registered and under an affirmative obligation to notify the Commission and NFA by updating their Registration Form 8-R if they become subject to a statutory disqualification after they become registered, the vast majority of persons seeking an exemption under Regulation 4.13 are not registered. Therefore, there is no requirement

¹ As part of this rule proposal, the Commission is proposing to codify the relief provided in Advisory 18-96 into Commission Regulation 4.13(a)(4), which will include the prohibition that neither the person claiming nor its principals may be subject to a statutory disqualification.

that these persons update a registration application, nor any method for these persons to report the existence of a statutory disqualification to the Commission or NFA.

As a result, NFA recommends that the Commission either eliminate this exception or limit it to persons that are currently registered. If the Commission determines to retain the exception for **registered** persons, NFA requests that the Commission re-examine and lengthen the 30 day time period because based on NFA's current review processes and procedures, 30 days is not a sufficient amount of time for NFA to investigate and make a determination of whether the disclosed information should result in a statutory disqualification registration action. NFA welcomes the opportunity to work with the Commission in determining a more appropriate time frame.

B. Codifying Existing CFTC Staff No Action Exemptions

The proposal also seeks to codify existing CFTC staff no-action relief and other regulatory guidance. NFA fully supports the codification of existing Commission relief. NFA believes that doing so will bring greater transparency to the CPO registration framework by including all registration exemptions (including those currently in staff no-action letters and guidance) in the Commission's regulations.

NFA notes, however, that in codifying the exclusion for business development companies under Regulation 4.5, the Commission modified the language with respect to the entity that claims the exclusion for all investment companies seeking the exclusion. Specifically, under current Regulation 4.5(a)(1), an *investment company* registered under the Investment Company Act of 1940 may claim an exclusion from CPO registration with respect to its operation of an investment company. Under the Commission's proposed amendment, the entity claiming the exclusion for operating an investment company has been amended to an *investment adviser* registered under the Investment Advisers Act of 1940.

There are currently over 200 investment companies that have filed for this exclusion under Regulation 4.5(c). While NFA has no objection to changing the person claiming the exclusion to an investment adviser, NFA requests that the Commission provide clarification regarding how this change impacts those entities that have previously filed a notice of exclusion in the name of the investment company. NFA would welcome the opportunity to discuss this issue further with Commission staff. Additionally, since these exclusions and affirmations are filed through NFA's Electronic Filing System, NFA requests that the Commission provide NFA with sufficient time to make appropriate changes to its Electronic Filing System.

The Commission's proposal also codifies the registration relief available in the CPO Family Office No Action Letter and the CTA Family Office No Action Letter. Entities seeking this relief currently file their claim for exemption with DSIO staff and it is

NFA's understanding that these claims are kept confidential. Under the Commission's proposed amendment, these notices would be filed with NFA through NFA's Electronic Filing System and, under current NFA procedures, would be displayed in NFA's BASIC system. Therefore, NFA requests that the Commission address whether it expects NFA to keep these claims confidential.

C. Proposed Adoption and Expansion of Exemptive Letter Relief From § 4.27 Filing—Form CPO-PQR and CTA-PR Filing Relief

Finally, the proposal seeks to codify existing CFTC staff no-action relief by limiting which CPOs and CTAs are included within the definition of "reporting persons" for the purposes of the Form CPO-PQR and CTA-PR filing requirements. In particular the following would not be included within the "reporting person" definition: (i) CPOs that operate only exempt pools; (ii) CTAs that are also registered as CPOs and limit their advice to pools for which they are registered as a CPO; (iii) CTAs that maintain their registration status but do not direct trading in any account; and (iv) CTAs that are registered as CPOs but only direct the accounts of a pool they operate as an exempt CPO. NFA has advocated and supports relief in each of these areas because these filings are burdensome to the filer and do not provide NFA with any meaningful data.

For the reasons discussed above, NFA supports the Commission's proposals but we request that the Commission address the concerns NFA raised regarding the proposed 30 day exception to the prohibition against statutory disqualifications for persons seeking exemption under Regulation 4.13, as well as the notice filing under Regulation 4.5 and the confidentiality issue related to exemptions filed by Family Offices. If you have any questions concerning this letter, please do not hesitate to contact me at 312-781-1409 or cwooding@nfa.futures.org or Regina G. Thoele at 312-781-1327 or rthoele@nfa.futures.org.

Very truly yours,



Carol A. Wooding
Vice President,
General Counsel and Secretary

/caw/comment letter: (nfa cpo cta comment letter 12 17 18 FINAL)