

MEMO# 26302

July 16, 2012

CFTC Staff Issues No-Action Relief on CPO and CTA Registration Compliance Date for Advisers to New Funds

[26302]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 42-12
COMPLIANCE MEMBERS No. 12-12
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 33-12
ETF (EXCHANGE-TRADED FUNDS) COMMITTEE No. 25-12
ETF ADVISORY COMMITTEE No. 24-12
FIXED-INCOME ADVISORY COMMITTEE No. 16-12
INVESTMENT ADVISER MEMBERS No. 20-12
SEC RULES MEMBERS No. 62-12
SMALL FUNDS MEMBERS No. 25-12
UNIT INVESTMENT TRUST MEMBERS No. 6-12
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 7-12 RE: CFTC STAFF ISSUES
NO-ACTION RELIEF ON CPO AND CTA REGISTRATION COMPLIANCE DATE FOR ADVISERS TO
NEW FUNDS

As a result of recent amendments to Rules 4.5 and 4.13 under the Commodity Exchange Act, investment advisers to certain registered investment companies and private funds (together, “funds”) will be required to register with the Commodity Futures Trading Commission (“CFTC”) as commodity pool operators (“CPOs”) or may be required to register as commodity trading advisors (“CTAs”). [\[1\]](#) Earlier this year, ICI and other trade associations filed letters with the CFTC requesting: (1) an extension of the time during which an investment adviser may rely on Rule 4.5 or 4.13(a)(3) without considering swaps for purposes of determining compliance with the rules’ trading thresholds, and (2) an extension of the registration compliance date for advisers to “new funds” launched after the amendments’ April 24, 2012 effective date that, prior to the CFTC’s amendments to Rule 4.5 and the rescission of Rule 4.13(a)(4), were excluded from the definition of CPO or exempt from registration. [\[2\]](#)

Recently, the staff of the CFTC issued a no-action letter to ICI and the other trade associations in response to their letters. [\[3\]](#) The no-action letter provided an extension until December 31, 2012 of the compliance date by which CPOs or CTAs of funds launched

after April 24, 2012 are required to register with the CFTC as CPOs or CTAs. The letter, however, denied the associations' request for an extension of the compliance date with respect to the inclusion of swaps in the trading thresholds in Rules 4.5 and 4.13(a)(3). As a result, compliance with the trading thresholds, including with respect to swaps, will be required by December 31, 2012. The relief granted in the no-action letter is not self-executing – a CPO or CTA that wishes to rely on it must electronically file a claim with the CFTC that includes certain information, prior to the date upon which the CPO or CTA first engages in business that would otherwise require registration. The relief granted in the letter is not available to funds launched prior to the issuance of the letter. In addition, to rely on the Rule 4.13 relief, a CPO must remain in compliance with specified criteria with respect to the pool.

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endnotes

[1] Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (February 24, 2012), (Adopting Release), correction notice published at 77 Fed. Reg. 17328 (Mar. 26, 2012). In this rulemaking, the CFTC also adopted amendments to Rule 4.13(a)(3) under the CEA, and rescinded Rule 4.13(a)(4), which exempt from CPO registration the operators of certain private funds.

[2] See Letter from Karrie McMillan, General Counsel, Investment Company Institute, to Mr. David A. Stawick, Secretary, Commodity Futures Trading Commission, dated May 21, 2012; Letter from Managed Funds Association, Investment Adviser Association and Alternative Investment Management Association, to Mr. David A. Stawick, Secretary, Commodity Futures Trading Commission, dated April 30, 2012. The Securities Industry and Financial Markets Association's Asset Management Group submitted a similar request for relief. See Letter from Asset Management Group, Securities Industry and Financial Markets Association, to Mr. David A. Stawick, Secretary, Commodity Futures Trading Commission, dated May 3, 2012.

[3] See CFTC no-Action Letter No. 12-03 (July 13, 2012), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-03.pdf>.