

MEMO# 30684

April 27, 2017

CFTC Staff Issues Exemptive Relief for CTAs to Use Third-Party Recordkeepers - Notice Filing Required

[30684]

April 27, 2017 TO: ICI Members
Investment Company Directors
ICI Global Members
Derivatives Markets Advisory Committee
Registered Fund CPO Advisory Committee SUBJECTS: Compliance
Derivatives
Investment Advisers
Recordkeeping RE: CFTC Staff Issues Exemptive Relief for CTAs to Use Third-Party Recordkeepers - Notice Filing Required

The Commodity Futures Trading Commission's ("CFTC") Division of Swap Dealer and Intermediary Oversight ("DSIO") recently issued exemptive relief that permits commodity trading advisors ("CTAs") to use third-party recordkeepers under certain circumstances. DSIO's letter is summarized briefly below and a link to it is attached.[\[1\]](#)

The letter grants relief from the requirement in CFTC Regulations 4.33 and 4.7(c)(2) that a CTA subject to recordkeeping requirements under those rules must maintain the required records at the CTA's "main business office."[\[2\]](#) The letter explains that the CFTC and its staff, recognizing that the "main business office" requirement may be unnecessarily restrictive in light of current data management practices, previously granted relief for commodity pool operators ("CPOs") to use third-party recordkeepers.[\[3\]](#) DSIO believes that similarly granting relief for CTAs to use third-party recordkeepers under Regulations 4.33 and 4.7(c)(2) results in consistent treatment for CPOs and CTAs with respect to their record maintenance and production requirements.[\[4\]](#)

In order to obtain the exemptive relief under the letter, at the time a CTA registers with the CFTC, delegates its recordkeeping obligations, or June 30, 2017, whichever is later, the CTA must file a notice with DSIO via email, using the email address dsionoaction@cftc.gov, with the subject line "CTA Third-Party Recordkeeping Relief" that:

- i. Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the CTA;
- ii. Sets forth the name and telephone number of a contact for each person who will be

- keeping required books and records in lieu of the CTA;
- iii. Specifies, by reference to the respective paragraph of CFTC Regulations 4.33 and 4.7(c)(2), the books and records that such third-party recordkeeper will be keeping; and
 - iv. Is signed by the CTA, and contains representations from the CTA that:
 - A. It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by CFTC Regulations 4.33 and 4.7(c)(2) changes, by identifying in such amendment the new location and any other information that has changed;
 - B. It remains responsible for ensuring that all books and records required to be maintained by Regulations 4.33 and 4.7(c)(2) are kept in accordance with CFTC Regulation 1.31;
 - C. Within 48 hours after a request by a representative of the CFTC, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the CTA's main business office; provided, however, that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the CTA will obtain and provide such original books and records for inspection at the CTA's main business office within 72 hours of such a request; and
 - D. It will disclose in its Disclosure Document, if any, the location of its books and records that are required under Commission Regulations 4.33 and 4.7(c)(2).

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endnotes

[1] See CFTC Letter 17-24 (Apr. 20, 2017), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/17-24.pdf>.

[2] Regulation 4.33 sets out recordkeeping requirements for CTAs registered, or required to be registered, under the Commodity Exchange Act ("CEA"). Regulation 4.7(c) provides relief from certain CFTC regulations to a registered CTA that anticipates directing or guiding the commodity interest accounts of "qualified eligible persons."

[3] See *Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators*, 79 Fed. Reg. 52308 (Aug. 22, 2013); CFTC Letter 14-114 (Sept. 8, 2014), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/14-114.pdf>.

[4] DSIO emphasizes that the requirement to produce and keep the books and records remains the obligation of the CTA under Regulations 4.33 and 4.7(c)(2) and that, accordingly, the failure of a third-party recordkeeper to keep or produce such books and records in accordance with CFTC regulations would be the CTA's failure.

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