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Significant Changes to CFTC Regulations Impacting Registered Investment Companies

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Introduction

Prior to 2003

- In order to claim an exclusion from the definition of CPO under the Commodity Exchange Act (CEA) pursuant to CFTC Regulation 4.5 prior to 2003, you needed to file a notice of eligibility pursuant to Regulation 4.5(c) that represented, in part, that you:
  - were not, and had not, marketed participations to the public in a commodity pool or investment vehicle for trading in the commodity futures or commodity options markets and
  - would use commodity futures or commodity options contracts solely for *bona fide* hedging purposes and, with respect to positions held for non-*bona fide* hedging purposes, would not establish positions where the initial margin and premiums required to establish such positions would exceed 5% of the liquidation value of the portfolio
- CFTC removed these restrictions in 2003 in part for the following reasons:
  - "otherwise regulated" nature of entities seeking exclusion under Regulation 4.5
  - provisions were "too restrictive for many operators of collective investment vehicles to meet" and, as such, the operators "avoided participation in the commodity interest markets"

CFTC Re-Imposes Limitations (2010-2012)

- June 2010 – Petition for Rulemaking by National Futures Association (NFA)
  - According to CFTC Proposing Release, NFA and CFTC "became aware of certain registered investment companies that were offering series of de facto commodity pool interests [and] claiming exclusion under [Regulation 4.5]"
- January 2011 – CFTC Proposes Regulations that Reinstate Pre-2003 Restrictions – only for registered investment companies (Funds)
- February 2012 – CFTC Adopts Amendments to Regulation 4.5

Commodity Pools, CPOs and CTAs

Commodity Pool Definition

- Commodity Pool: the statutory term for a Fund or other pooled vehicle that invests in futures contracts (including security futures), options on futures contracts, certain other options, leverage contracts and/or retail forex and other retail commodity transactions (collectively, commodity interests)
- Even indirectly through another pool
- When the CFTC and SEC finalize regulations further defining the terms “swap” and “security-based swap,” investing in swaps will also make a pooled investment vehicle a commodity pool
  - Swaps involve an agreement, contract or transaction based upon an exchange of payments tied to a notional amount of an asset, index or rate

Commodity Pool Definition (cont'd)

- Swaps also include options on physical commodities, so-called "event" contracts, and "mixed" swaps
- Security-based swaps, generally swaps on a single security or a narrow-based index, are not swaps and not included – contrast with security futures
  - Special rule for self-developed broad-based security index where component securities may be changed
- For currency-related instruments, if there is an exchange of currencies, the instrument will likely be exempt from swap definition
  - However, if settlement is in a single currency like dollars, such as in the case of "non-deliverable forwards," the instrument will likely be classified as a swap

CPO vs. CTA

- The CEA regulates the operator of a commodity pool, as opposed to the pool itself
- Each commodity pool has at least one CPO and one CTA, although this may be the same entity
- Each commodity pool may also have multiple CPOs and/or CTAs

Definition of CPO

- CPO is someone who operates a commodity pool and who solicits investors with regard to that pool
  - often the investment adviser to a fund
- Title VII of Dodd-Frank amended the definition of CPO to, among other things, include swaps
- The CFTC, through a series of orders, has delayed the effective date of the Dodd-Frank changes to the definition of CPO
- Currently, the effective date will be the earlier of July 16, 2012 or the effective date of the regulations adopted by the CFTC and the SEC further defining the term “swap”

Definition of CTA

- CTA is someone who provides trading advice with respect to commodity interests
  - the investment adviser to a fund is usually both the CPO and the CTA
  - in a separate account, the investment adviser is a CTA; there is no CPO
- Title VII of Dodd-Frank amended the definition of CTA to, among other things, include swaps
- The CFTC, through a series of orders, has delayed the effective date of the Dodd-Frank changes to the definition of CTA
- Currently, the effective date will be the earlier of July 16, 2012 or the effective date of the regulations adopted by the CFTC and the SEC further defining the term “swap”

Who is Considered the CPO of a Fund?

- Any person who organizes pools of investor money for the purpose of trading in commodity interests – for Funds, the investment adviser usually is the CPO
- Unless able to claim an exclusion from registration, CPOs (not the pools themselves) are required to register under the CEA prior to acting as a CPO
- NFA processes applications for registration and NFA membership through its Online Registration System
- Associated Persons (APs), *i.e.,* those who solicit investors or supervise those who do, and the principals of CPOs are subject to extensive background checks, and APs also are required to have passing scores on one or more proficiency examinations
- Generally, personnel who work for a broker-dealer do not need to register as APs – see CFTC Regulation 3.12(h)

Controlled Foreign Corporations (CFCs)

- *Who is the CPO of a CFC?*
  - CFTC also clarified that CFCs wholly owned by registered investment companies and used for trading commodity interests are commodity pools and are required to have their operator register with the CFTC as a CPO unless they can claim an independent exemption or exclusion
  - In discussions with CFTC staff, they have indicated that the investment adviser to a CFC would be the CPO in arrangements where a Fund uses an offshore subsidiary
- *Will operators of CFCs be able to rely on Regulation 4.7 with respect to the Funds that invest in them?*

Multi-Managed Funds and Funds-of-Funds

- *Who has to register as the CPO of a multi-manager fund: just the investment adviser or both the adviser and the subadviser(s)? To the extent registration is required, who has to register as a CTA?*
  - The investment adviser would be the CPO
  - CTA defined very generally to include any person who provides advice about trading in commodity interests for compensation or profit, and includes persons who make commodity interest trading decisions on behalf of pools

- *For Funds that invest in underlying funds that hold commodity interests, may those Funds rely on the guidance in Appendix A to Regulation 4.13(a)(3) in determining whether their operators must register as CPOs?*
  - A member of the CFTC staff has said that a new version of the Appendix will be republished and will cover Regulations 4.5 and 4.13(a)(3)
  - A member of the CFTC staff has stated that firms may rely on the existing version of Appendix A until the new version is adopted

Exclusions and Exemptions

- While one may fit the definition of a CPO or CTA, registration may not be required if you fit under an existing exclusion or exemption
- As Regulation 4.5 is an exclusion, all of the CFTC's CPO requirements are not applicable
- CFTC Regulation 4.6(a)(2) excludes from the definition of CTA any person who is excluded from the definition of CPO under Regulation 4.5
- See also Regulations 4.14(a)(4) (registered CPO) and (5) (exempt CPO)

Regulation 4.5 Exclusion – Introduction

Regulation 4.5 Overview

- CFTC Regulation 4.5 excludes from the definition of CPO persons that operate pools that are regulated by some other regulatory authority
- As this is an exclusion, the CFTC's CPO requirements do not apply to those qualifying for the exclusion

Regulation 4.5 Overview (cont'd)

- Regulation 4.5 excludes from CPO regulation certain "qualifying entities" and their principals and employees, subject to certain conditions
- A qualifying entity is:
  - a registered investment company;
  - an insurance company subject to state regulation with respect to the operation of a separate account;
  - a bank, trust company or any financial depository institution subject to regulation by any state or the United States with respect to the assets of a trust, custodial or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment discretion; or
  - a trustee of, named fiduciary of, or an employer maintaining, a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA)

Regulation 4.5 Overview – Limitations for Registered Investment Companies

- On February 8, 2012, the CFTC adopted amendments to Regulation 4.5 as it applies to registered investment companies
  - under the amendments, a registered investment company wishing to continue to claim the Regulation 4.5 exclusion from CPO status is required to comply with certain trading limitations and a marketing restriction and must file annual notices with the National Futures Association affirming that it qualifies for the exclusion

Regulation 4.5 – *Bona Fide* Hedging

Bona Fide Hedging

- Defined in Regulation 1.3(z)(1) as positions that:
  - "normally represent a substitute for . . . positions to be taken at a later time in a physical marketing channel"
  - "are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise"
  - arise from the potential change in the value of the Fund's current or anticipated assets or liabilities
  - are for the purpose of "offset[ting] price risks incidental to commercial cash or spot operations" and
  - comply with relevant trading and position limit requirements

Bona Fide Hedging (cont'd)

- When Regulation 4.5 was originally adopted, the only commodity interest trading permitted was for hedging
- Subsequent amendment permitted non-hedging subject to 5% limit
- Limits on commodity interest trading were removed in 2003
- According to a July 1987 CFTC interpretation, the *bona fide* hedging definition should not be interpreted in a restrictive way with respect to balance sheet and other risk-reducing trading strategies, including "portfolio insurance or dynamic asset allocation strategies that provide protection equivalent to a put option for an existing portfolio of securities" (52 Fed. Reg. 27195 (July 20, 1987))

Bona Fide Hedging (cont'd)

- CFTC declined to expand the exception in Regulation 4.5 to include risk management, noting:
  - risk management transactions likely present more market risk because they are not offset by exposure in the physical markets
  - if risk management were included without limit, it would permit Funds to engage in a greater volume of commodity interest trading without registration than other entities who would have to register as CPOs and
  - a lack of consensus as to the appropriate definition of risk management transactions

Bona Fide Hedging (cont'd)

- A September 1987 CFTC release distinguishes between risk management transactions and risk reduction strategies that would qualify as *bona fide* hedging:
  - Example: a fund manager wants to temporarily increase exposure to equities relative to debt but, instead of purchasing more equity securities or selling some Treasury securities, enters into long broad-based stock index futures and shorts Treasury bond or note futures
  - Short Treasury bond or note futures would be a *bona fide* hedge against previously purchased Treasury securities
  - Long stock index futures would not be a hedge of the existing equity securities in the portfolio, because in effect the fund would be "long" equities and "long" a stock index future
  - Subject to certain conditions intended to prevent excessive leverage, the long stock index futures position could be eligible for classification as a risk management position

(52 Fed. Reg. 34633, 34635 (September 14, 1987))

Regulation 4.5 – *De Minimis* Tests

5% Test

- Aggregate initial margin and premiums required to establish non-*bona fide* hedging positions may not exceed 5% of the "liquidation value" of the Fund's portfolio, taking into account unrealized profits and unrealized losses
- Liquidation value is net of the amount borrowed or net asset value (58 Fed. Reg. 6371 (January 28, 1993))

Notional Test

- Aggregate net "notional value" of non-*bona fide* hedging positions may not exceed 100% of the liquidation value of its portfolio, taking into account unrealized profits and unrealized losses
- Especially useful alternative to the 5% Test because margin levels for broad-based stock index futures and security futures tend to exceed levels for other commodity interests, which may make it difficult to satisfy the 5% Test

Notional Test (cont'd)

- Notional value determined by asset class:
  - For futures contracts, multiply the number of contracts by the size of the contract, in contract units (taking into account the multiplier in the contract)
  - For options, multiply the number of contracts by the size of the contract, adjusted by the delta, in contract units (taking into account the multiplier specified in the contract)
  - For cleared swaps, by the value as determined consistent with CFTC's Part 45 regulations
  - Notional value is not defined for uncleared swaps
- Netting determined by asset class:
  - For futures contracts, net across designated contract markets or foreign boards of trade
  - Options not addressed
  - For cleared swaps, net if cleared by the same derivatives clearing organization and "where appropriate"
  - Not permitted for uncleared swaps

De Minimis Tests – Other Matters

- Does a Fund have to satisfy the 5% Test or the Notional Test every day?
- What about inadvertent, temporary failures to meet the 5% or Notional Tests?
- 5% and Notional Tests apply only to Funds
- Difficult for funds-of-funds to comply with either *de minimis* test because it would require monitoring trading activities of underlying managers
- Status of Appendix A

Regulation 4.5 – Marketing Restriction

Regulation 4.5 Exclusion – Marketing Restriction

- Amended Regulation 4.5 prohibits a Fund whose adviser has not registered as a CPO from marketing the Fund as a commodity pool or as a fund for trading in commodity interests (Marketing Restriction)
- CFTC provided a list of factors, with no single factor being conclusive, that would be considered on a case-by-case basis when evaluating whether a Fund satisfies the Marketing Restriction

Marketing Restriction – Factors

- The CFTC identified the following factors as relevant in determining whether a Fund satisfies the Marketing Restriction:
  - Fund name
    - The CFTC clarified that a fund name that includes the terms “futures” or “derivatives,” or otherwise indicates a possible focus on futures or derivatives, will not be a dispositive factor, but rather one of many that should be considered in making the determination
  - Primary investment objective tied to a commodity index
  - Use of a CFC for derivatives trading
    - The CFTC stated that a Fund’s use of a CFC may indicate that such Fund is engaging in derivatives trading in excess of the trading threshold

Marketing Restriction – Factors (cont'd)

- References in a prospectus or other disclosure document to the benefits of using derivatives or comparisons to a derivatives index
  - The CFTC clarified, however, that it will not consider the mere disclosure to investors or potential investors that the Fund may engage in derivatives trading incidental to its main investment strategy and the risks associated therewith as being violative of the Marketing Restriction
- Net short speculative exposure to any commodity through a direct or indirect investment in other derivatives in the course of normal trading activities
- Commodity interests as a primary source of potential gains and losses
- Explicitly offering a managed futures strategy
  - The CFTC will give this factor more weight in determining whether a Fund is a *de facto* commodity pool
  - The CFTC stated that, if a Fund offers a strategy with several indicia of a managed futures strategy, but avoids explicitly describing the strategy as such in its offering materials, that Fund could still be found to have violated the Marketing Restriction based on these other factors

Regulation 4.5 – Notice Filings

Regulation 4.5 Exclusion – Notice Filings

- Currently, Regulation 4.5 requires operators of Funds claiming relief from CPO registration to electronically file with NFA a notice claiming such exclusion at inception
- Amended Regulation 4.5 requires the operator of a Fund claiming the Regulation 4.5 exclusion to re-affirm its eligibility within 30 days of the end of each calendar year, withdraw the notice if it ceases to conduct activities requiring registration or exclusion from registration, or withdraw the notice and apply for registration

CTA Exemptions

Regulation 4.14(a)(8) Exemption from CTA Compliance Obligations Without Registration for Other Registered Investment Advisers

- Under Regulation 4.14(a)(8), certain persons may be exempt from registration as CTAs and from complying with the CFTC's CTA disclosure and recordkeeping requirements
- Such persons include persons who are:
  - registered as investment advisers under the Advisers Act
  - excluded from the definition of "investment adviser" pursuant to Sections 202(a)(2) (certain banks and trust companies) or 202(a)(11) of the Investment Advisers Act
  - U.S. state-registered investment advisers or
  - investment advisers that are exempt from federal and state registration

Regulation 4.14(a)(8) Exemption from CTA Compliance Obligations Without Registration for Other Registered Investment Advisers (cont'd)

- However, to qualify for this exemption, the investment adviser must comply with the following requirements:
  - advice must be furnished only to certain entities excluded from the commodity pool definition
    - "qualified entities" and entities excluded from the commodity pool definition under Regulation 4.5 (*i.e.,* non-contributory, governmental and church plans),
    - pools that are organized and operated outside of the United States and have only non-U.S. person investors, and
    - Regulation 4.13(a)(3) pools
  - advice must be "solely incidental" to investment adviser's business
  - the investment adviser must not otherwise hold itself out as a CTA
  - Regulation 4.14(a)(8) also contains certain notice filing requirements and requires the retention of certain records, and persons who rely upon the exemption are subject to special calls by CFTC staff

Exemption From CTA Compliance Obligations Without Registration for Registered Investment Advisers

- Under CEA Section 4m(3), persons who are registered as investment advisers under the Advisers Act whose business does not consist primarily of acting as CTAs, and who do not act as CTAs to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity interest, are exempt from registration as CTAs
- If a CTA holds itself out to the public as being primarily engaged in advising on commodity interests or investing, reinvesting, owning, holding or trading them, it cannot rely on this exemption

Exemption from CTA Compliance Obligations Without Registration for Persons with 15 or Fewer Clients

- Section 4m(1) of the CEA exempts from registration a CTA who provides commodity interest trading advice to 15 or fewer persons within the preceding 12 months and who does not hold itself out to the public as a CTA
  - The CFTC adopted Regulation 4.14(a)(10) in 2003 to provide that any entity advised by a CTA that receives commodity interest trading advice based on its investment objectives, rather than on the individual investment objectives of its investors, would count as only one "person" for purposes of determining eligibility for the exclusion from registration under Section 4m(1) of the CEA
- This exemption, if applicable, also exempts the CTA from the CFTC's CTA disclosure and recordkeeping requirements
- However, if a CTA holds itself out to the public as a CTA, this exemption does not apply, regardless of how many persons the CTA advises

Regulation 4.14(a)(8) Exemption and CEA Section 4m(3) or Section 4m(1) Exemptions

- May rely on both Regulation 4.14(a)(8) exemption and the CEA Section 4m(3) or Section 4m(1) exemptions
  - Relief provided by Regulation 4.14(a)(8) is not mutually exclusive from that provided by CEA Section 4m(1) – depending on the nature of its activities, a CTA may be exempt from registration as such under either or both provisions
  - According to CFTC Interpretive Letter No. 05-13, relief provided by Regulation 4.14(a)(8) is also not mutually exclusive from that provided by Section 4m(3) – a CTA may rely on the CTA registration exemption provided by Section 4m(3) and claim exemption from CTA registration under Regulation 4.14(a)(8)
- An investment adviser to a Fund that does not satisfy the conditions for exclusion under Regulation 4.5 will be unable to rely on the Regulation 4.14(a)(8) exemption for CTAs

Regulation 4.5 – Compliance Dates

Effective Dates

- Amendments to Regulation 4.5 are generally effective April 24, 2012
- Recordkeeping, reporting, and disclosure requirements apply 60 days after publication of final regulations "harmonizing" SEC and CFTC regulations
- Registration required for CPOs of Funds relying on Regulation 4.5 with notices filed prior to April 24, 2012, on the later of:
  - December 31, 2012 or
  - 60 days after publication of final regulations defining "swap" and establishing swap margin requirements
- Registration required for CPOs of Funds filing Regulation 4.5 notice on or after April 24, 2012, at launch – based on discussions with CFTC staff
- CPOs of Funds do not count "swaps" for purposes of compliance with Regulation 4.5 until final swap definition regulations are effective

CPO Regulation

Registration as CPO and/or CTA

- The CPO and its APs must register as such under the CEA
- The CPO must also become a member of NFA and its APs must become associate members of NFA
- NFA handles registration processing on behalf of CFTC
- Applicants for registration as a CPO and membership in NFA must file Form 7-R and must submit a Form 8-R for each AP and natural person principal

APs & Principals: Definitions and Responsibilities

- If an entity is registered as a CPO or CTA, its “principals” and “associated persons” must be identified
- Who is a “principal”?
  - anyone with controlling influence, such as directors and officers
  - anyone with certain titles (regardless of ownership or controlling influence), including Director, President, CEO, COO, CFO for corporations, LLCs and LPs, general partner for LPs and manager and managing member for LLCs and LLPs
  - any natural person who owns 10% or more of the voting securities or contributed 10% or more of the capital
  - any entity that owns 10% of shares or contributed 10% or more of the capital
- Consequences of being a “principal”?
  - unlike “AP” status, being a “principal” does not entail any test-taking requirement but does require each natural person “principal” to file a Form 8-R with a fingerprint card for purposes of fitness screening

APs & Principals: Definitions and Responsibilities (cont'd)

- Who is an "AP"?
  - natural person involved in soliciting funds, securities or property for participation in a commodity pool or opening a discretionary commodity interest trading account
  - as well as supervisors of such persons, even if those supervisors do not personally solicit
  - does not have to be employed solely by the CPO/CTA; may have multiple sponsors
  - someone may be both a principal and an AP
  - for an adviser to a Fund distributed through a broker-dealer, it may be possible to limit who must register as an AP

APs & Principals: Definitions and Responsibilities (cont'd)

Consequences of being an "AP"?

- registration on Form 8-R
- fingerprint card
- ethics training required by CFTC regulations
- oversight requirements
- Series 3 exam
- Examination waivers

CPO/CTA Compliance Obligations

Disclosure Document

- see Regulations 4.21, 4.24, 4.25 and 4.26 for CPOs and Regulations 4.31, 4.34, 4.35 and 4.36 for CTAs
- past performance disclosure regulations
  - if pool has less than a 3-year operating history, performance information must be supplied for other persons and entities (in addition to performance information for the offered pool), including the performance of other pools and managed accounts operated or traded by the CPO/CTA and the trading manager of the offered pool
  - CFTC past performance disclosure regulations may be in conflict with the SEC's regulations
    - on February 8, 2012, the CFTC proposed harmonization of compliance obligations for registered investment companies required to register as CPOs
    - in its release, the CFTC requested comments on whether it should consider harmonizing its past performance disclosure obligations with the SEC's requirements – comments are due by April 24, 2012 (unless extended)

CPO/CTA Compliance Obligations (cont'd)

- must be distributed to each prospective pool participant/client
- must be filed with the NFA, pre-cleared by the NFA and updated every 9 months

Reporting to Both NFA and Investors

- CPOs must furnish to each pool participant certain prescribed reports

Recordkeeping

- a CPO or CTA must keep, at its main business office, accurate books and records regarding each pool/client account it operates/advises
- but see Regulation 4.12(c)
- records are subject to inspection by the CFTC, the NFA, and the U.S. Department of Justice

NFA By-Law 1101

- "Self-policing" mechanism that requires that registered CPOs and CTAs only transact business with persons who are:
  - NFA Members (futures commission merchants (FCMs), introducing brokers (IBs), CPOs, CTAs) or
  - exempt from registration
- Impacts due diligence process with managers of underlying funds in a Fund-of-Funds relationship

Due Diligence on Underlying Managers

- Is the manager trading commodity interests? If yes, then:
  - identify the CPO(s) and the CTA(s)
  - determine whether the CPO(s) and CTA(s) are registered or exempt from registration
  - if exempt, on what basis
  - check the NFA website (www.nfa.futures.org) to confirm that appropriate filings have been made
  - check manager's CFTC/NFA compliance procedures
- It is theoretically possible that some underlying managers may also be "major swap participants," which is a new registration category post Dodd-Frank (regulations are pending adoption)

CFTC Harmonization Proposal for Fund Investment Advisers Required to Register as CPOs

Background on Harmonization Proposal

- Amendments to Regulation 4.5 will require investment advisers to funds that do not satisfy the conditions in the amended rule for exclusion from CPO regulation to register as CPOs and comply with CFTC's CPO regulations, which generally are set forth in Part 4 of the CFTC's regulations
- The CFTC's CPO regulatory scheme contains additional, duplicative, inconsistent and conflicting disclosure, reporting and other requirements as compared to SEC regulations
- Harmonization proposal seeks to address certain matters and requests comment
- Comments on the proposal are due on April 24, 2012

Areas of Harmonization – Disclosure Document

- Disclosure Document Delivery and Acknowledgement
  - Harmonization Proposal would exempt CPOs from the requirement to deliver a Disclosure Document to a prospective participant no later than the time the CPO delivers a subscription agreement and from the requirement to obtain a signed acknowledgement from the participant regarding receipt of the Disclosure Document, provided that the CPO: (1) posts the Disclosure Document on the CPO's web site, (2) updates the Disclosure Document as required, (3) informs prospective participants with whom it has contact of the web site address and directs intermediaries selling shares to so inform prospective participants, and (4) the Disclosure Document otherwise complies with Part 4 requirements
- Disclosure Document Updating
  - Harmonization Proposal would permit CPOs to update Disclosure Documents every twelve months, rather than every nine months

Areas of Harmonization – Disclosure

- Performance Information
  - Harmonization Proposal recognizes that CFTC performance reporting requirements may conflict with the SEC's requirements relating to the use of past performance and seeks comment on whether and how it should harmonize its performance reporting requirements
  - To the extent past performance disclosure is required, performance of other pools and accounts may be included in a Fund's SAI
- Break-Even Point and Other Fee Disclosure
  - Harmonization Proposal does not provide any relief from the substantive fee disclosure requirements, but permits Funds to include these disclosures in the section of the prospectus following the summary section

Areas of Harmonization – Reporting and Recordkeeping

- Periodic Reporting
  - Harmonization Proposal does not exempt CPOs from the monthly/quarterly account statement requirement, but permits CPOs to post account statements on a web site within 30 calendar days after the last day of the reporting period and continuing for a period of not less than 30 calendar days
- Recordkeeping
  - Harmonization Proposal provides an exemption from recordkeeping requirement to permit CPOs to maintain required books and records with the pool's administrator, distributor or custodian, rather than solely at the CPO's main business office, but does not permit use of other types of third parties such as professional record storage companies

Areas of Harmonization – Other Considerations

- Use of Summary Prospectuses
- NFA Review
- Impact on Closed-End Funds
- Impact on “40 Act Only” Funds
- Prospectus vs. SAI Disclosure

Next Steps and Industry Reaction

Next Steps

- Funds should review their current and expected use of commodity interests (including swaps) to determine whether they may continue to claim exemption from registration with the CFTC and NFA
- Check notices on NFA website
- Funds should take steps to ensure that they comply with the new trading limits, marketing restriction and annual notice filing requirement
- Submit comments and feedback to the CFTC regarding the harmonization proposal
- Seek advice from counsel regarding the numerous outstanding questions, issues and potential unintended consequences of the amended regulations

Industry Reaction?

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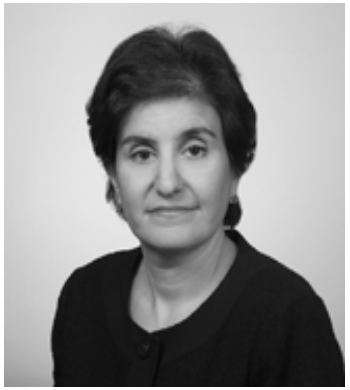

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