

CFTC Regulatory Roundup

December 2019

CFTC Examination Initiative Postponed

In October 2019, the CFTC's Division of Swap Dealer and Intermediary Oversight announced a "thematic review" exam initiative that was expected to encompass examinations of at least some hedge fund managers.¹ In December 2019, DSIO disclosed that it has decided to postpone that program for at least a year. The examination program currently conducted by the National Futures Association will, of course, continue and not be affected by this decision.

CFTC Amends Several Registration and Compliance Rules

The CFTC recently approved amendments to several registration and reporting exemptions.² These are mostly technical changes, but will (positively) affect family offices claiming a registration exemption and simplify the Bylaw 1101 process for funds that accept investments from family offices. Other amendments ratify market practice on certain offerings to non-U.S. persons and formally harmonize the CFTC's rules with Securities Act Rule 506(c).

NFA Updates CTA Performance and Disclosure Rules

Effective Feb. 1, 2020, private fund managers that are registered with the NFA as commodity trading advisors will be subject to new (i.e., amended) NFA disclosure and performance rules.³ (These changes should only affect a small number of private fund managers, most of which will register as commodity pool operators and claim an exemption from CTA registration.) These new obligations include the following: (i) CTAs will be required to receive written client confirmations from all clients holding accounts where actual funds differ from an agreed-upon nominal account size that must explain how cash additions, cash withdrawals and net performance affect nominal account size, (ii) accounts with an unrepresentative nominal size should be excluded from a composite performance capsule when necessary to avoid distorting overall performance, even if the account otherwise satisfies one or more of the NFA's "material similarity" tests, and (iii) for programs where net performance does not affect nominal account size (and therefore profits are not reinvested), the amended rules now instruct CTAs to sum- rather than compound-monthly performance returns when calculating annual returns, peak-to-valley drawdown percentage and net lifetime rate of return.

Contacts >

¹ See "CFTC 2020 Examination Initiative — Guidance for Private Fund Managers," *SRZ Alert*, Nov. 8, 2019, available [here](#).

² See "CFTC Amendments to Registration and Compliance Rules — Lessons for Private Fund Managers," *SRZ Alert*, Dec. 17, 2019, available [here](#).

³ See Notice to Members I-19-31: "Effective Date for Amendments to NFA Requirements Related to CTA Performance Reporting and Disclosures," Dec. 18, 2019, available [here](#).

SchulteRoth&Zabel Private Funds Regulatory UPDATE

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