

## CFTC Institutes Its First Anti-Money Laundering Rule Enforcement Action

August 2020

On Aug. 10, 2020, a CFTC-registered futures commission merchant agreed to a settlement with the CFTC<sup>1</sup> resolving allegations that it violated CFTC Rule 42.2 by administering a deficient anti-money laundering compliance program and failing to detect and report suspicious (and illegal) activity. This action is relevant to private fund managers registered as commodity pool operators or commodity trading advisors because it may signal that the CFTC is taking a more aggressive enforcement approach for *any* AML-related violations within its purview.

While CPOs and CTAs are not subject to Rule 42.2 (although the CFTC has publicly warned that it may seek to impose specific anti-money laundering regulations on them<sup>2</sup>), they are subject to numerous AML and sanctions obligations. For example, CPOs and CTAs are:

- Liable for violations of the federal criminal money laundering statutes, including 18 U.S.C. §§ 1956 and 1957 (which make it a felony, among other things, to engage in financial transactions involving criminal proceeds in order to conceal their nature or source or to promote additional criminal acts);
- Required to comply with U.S. sanctions regulations and orders, which generally prohibit U.S. persons from engaging in transactions with sanctioned individuals and jurisdictions; and
- Subject to AML-related reporting obligations, including reporting certain transactions in excess of \$10,000 and disclosing certain foreign accounts holding more than \$10,000.

Finally, brokers and other counterparties often require representations about the robustness of a CPO's or CTA's AML program and sanctions compliance processes.

Given the CFTC's new AML enforcement focus, private fund managers that trade in commodity interests should confirm that they have sufficient AML policies and procedures in place. Fortunately, CPOs and CTAs that are also registered with the SEC as investment advisers may well find that they have already instituted AML programs that satisfy some or all of the CFTC's and their counterparties' expectations.

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<sup>1</sup> See CFTC Orders Interactive Brokers LLC to Pay More Than \$12 Million for Anti-Money Laundering and Supervision Violations (Aug. 10, 2020) ("CFTC Release"), [available here](#).

<sup>2</sup> See CFTC, Anti-Money Laundering (webpage), [available here](#) (providing, "In the future, it is possible that commodity pool operators (CPOs), commodity trading advisors (CTAs), swap dealers (SDs), major swap participants (MSPs) and other CFTC registrants may be required to comply with anti-money laundering regulations.").

## SchulteRoth&Zabel Private Funds Regulatory UPDATE

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