

Alert

CFTC Regulatory Update

July 11, 2017

Position Limits Aggregation

Aug. 14, 2017 is the effective date of the CFTC's new rule requiring firms relying on an exemption from position limits aggregation to make a notice filing with the CFTC.¹ Asset managers should use the next month to reevaluate if an aggregation exemption is necessary, whether for the asset manager itself, its funds, owners of the asset manager, or large investors in the fund. Futures exchanges such as the CME exchanges and ICE Futures U.S. would also generally expect firms to apply for an aggregation exemption directly with the exchanges, particularly when implementing an aggregation exemption within the firm (i.e., disaggregating two trading desks at the same asset manager). While firms should be prepared to file by Aug. 14, 2017, they may also want to delay making any filings before that date in the event that CFTC staff provides additional relief.

Increased NFA Focus on Financial Health of Asset Managers

Over the past several months, in addition to focusing on the financial health of fund entities, we have also seen regulators turn their focus to scrutinizing the assets and financial health of asset manager entities as well. Regulators have historically focused on the financial condition of sell-side entities such as broker-dealers, futures commission merchants and swap dealers. While asset managers are not subject to the extensive capital requirements that some of these sell-side entities are subject to, we have seen regulators paying closer attention to how a fund manager would be able to handle a period of financial stress.

In particular, the National Futures Association ("NFA") has implemented a new requirement for the Form PQR and PR. While these forms generally focus on information concerning fund entities and managed accounts, registered CPOs and CTAs that file Form PQR and Form PR, respectively,² will now be required to provide two financial ratios concerning the CPO/CTA entity itself on a quarterly basis: (i) current assets/current liabilities, and (ii) total revenue/total expenses. This requirement will be effective for the 2017 second quarter filing (i.e., due Aug. 14 for CTA-PR and Aug. 29 for CPO-PQR). Affected CPOs and CTAs should be prepared for this new requirement. Specifically, affected asset managers should:

- Determine which entity they will be reporting on; while it will generally be the registered CPO/CTA entity, the NFA will permit reporting at the parent level when part of a holding company/subsidiary structure;

¹ Please see SRZ's Dec. 21, 2016 *Alert*, "[Recent CFTC Rule Changes That Affect Hedge and Private Equity Fund Managers](#)."

² A registered CPO is only required to file the Form PQR if it operates at least one fund that does not rely on Rule 4.13(a)(3) or Rule 4.5. A registered CTA is not required to file CTA-PR if it does not direct any commodity interest accounts.

- Maintain financial records supporting calculation of the ratios;
- Review the requirements of the new rule to confirm that the asset manager has the necessary information available to calculate the ratios. For example, the NFA is requiring the ratios to be computed using the accrual method of accounting; firms using the cash method should determine what steps need to be taken in advance to make the necessary calculations and
- Be prepared to discuss with NFA staff in situations where such financial ratios will look unusual or where there will be significant fluctuations from quarter to quarter; while the NFA does not have any minimum financial ratio requirements, they will be looking to identify trends.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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