CFTC Registration

The U.S. Commodity Futures Trading Commission (CFTC) is an independent agency of the US government that regulates, amongst other entities, "commodity pool operators" (CPOs) and "commodity trading advisers" (CTAs). Hedge fund managers that meet at least two of the three criteria that follow will be required to register as either a CPO or a CTA with respect to each relevant client or fund, unless an exemption applies: (i) the hedge fund manager is located in the United States, (ii) the relevant client or any investor in the relevant fund is a U.S. person, and (iii) the hedge fund manager engages in any transaction in a "commodity interest" for the relevant client or fund.

Who is this relevant for?

A fund will be a "commodity pool" if it is a vehicle for collective investment which invests in commodity interests. This will also capture funds transacting in commodity interests, even for incidental hedging and funds of funds that invest in underlying funds that are commodity pools.

"Commodity interests" include all over-the-counter (OTC) derivatives falling into the definition of "swap" in the Dodd-Frank Wall Street Reform and Consumer Protection Act and all securities futures products, including all:

- Puts, calls, caps, floors, collar, or similar options on interest rates, currencies, etc.;
- OTC interest rate swaps, total return swaps, currency swaps, credit default swaps, etc.; and
- Any agreement contract or transaction that is, or in the future becomes, commonly known to the trade as a swap.

Each commodity pool has at least one CPO and one CTA, although these are often the same entity (the investment manager). The CPO typically is the person who promotes the pool and has the authority to hire and to fire the pool's CTA and to select (and change) the pool's futures commission merchant (FCM) (which, in the CFTC staff's view, can include directors of commodity pools formed as corporate entities). A commodity pool may have more than one CPO. A CTA advises the commodity pool with respect to the trading of, or the advisability of trading in, commodity interests.

What does it cover?

A person acting as either CPO or CTA to a commodity pool must register with CFTC unless subject to an exclusion or exemption from registration. CPOs and CTAs must comply with disclosure, record keeping and other requirements.

CPO and CTA principals and salespersons must file information on disciplinary history and employment history and must take Series 3 Exam. CPOs and CTAs will also be subject to the following requirements:

- Listing of principals
- NFA membership
- Ethics training
- Sales practice supervision
- Disclosure document – subject to Rule 4.7 exemption
- Reporting to investors – subject to Rule 4.7 exemption
- Systemic risk reporting on Form CPO-PQR (like SEC Form PF)
- Recordkeeping
- Anti-fraud prohibition
- Anti-money laundering procedures

Where can I find more information?

Contact AIMA's asset management regulation team for more detail on any aspect of the rules.