

to prospective participants (proposed paragraph (a)(5)); the notice of registration exemption that the CPO would be required to file (proposed paragraph (b));⁴³ the CPO's obligations with respect to books and records, special calls, annual reports, and monthly statements⁴⁴ (proposed paragraph (c)); the CPO's obligations in the event it subsequently applies for registration (proposed paragraph (d));⁴⁵ and the effect of registration on a CPO who: (1) Is eligible for exemption under Rule 4.13 but registers as a CPO nonetheless (proposed paragraph (e)(1)); or (2) operates one or more pools for which it is required to register, and is registered, as a CPO and one or more pools for which it is eligible to claim an exemption from registration under Rule 4.13(a)(3) or 4.13(a)(4) (proposed paragraph (e)(2)).⁴⁶

5. Alternative Proposal for Relief

As an alternative to the foregoing proposals for certain CPOs, and the following proposals for certain CTAs, the Commission seeks comment on adoption of a notice registration scheme. The notice registration approach would be identical to the proposed exemption approach with respect to information required to be filed with the Commission and compliance with Part 4 requirements. Specifically, the Commission seeks comment on whether a notice registration scheme could make it more clear to the public and other regulatory authorities that this group of CPOs and CTAs remains subject to the CFTC's jurisdiction under the CEA, the Bank Secrecy Act and other statutes, while providing the same amount of regulatory relief as the proposed exemption.

⁴³ In addition to current requirements, the CPO would be required to provide its main facsimile number and main email address.

⁴⁴ Consistent with current Rule 4.13, the requirement to furnish monthly statements would be applicable solely to CPOs claiming relief under paragraph (a)(1) or (a)(2) of the rule.

⁴⁵ Also consistent with the current provisions of Rule 4.13, the obligation to file an annual report for its pool in the event the CPO subsequently applies for registration would be applicable to CPOs claiming relief under paragraph (a)(1) or (a)(2) of the rule. This obligation would not also be applicable to CPOs claiming relief under paragraph (a)(3) or (a)(4) of the rule, because the pool's annual report would not provide information sufficient to determine whether or not the CPO had been in compliance with the applicable criteria (*i.e.*, trading limitations and/or investor qualifications) throughout the pool's fiscal year.

⁴⁶ For the reasons provided above in its discussions of proposed paragraphs (a)(3) and (a)(4), the Commission has not included CPOs eligible for relief under paragraph (a)(1) or (a)(2) in proposed paragraph (e)(2).

C. Proposed Amendments to Rule 4.14: Expanding and Adding CTA Registration Exemptions

1. Proposed Amendments to Rule 4.14(a)(8)

a. Exemption for State-Registered Investment Advisers (IAs)

Currently, Rule 4.14(a)(8) provides an exemption from CTA registration for certain IAs registered as such, or excluded from such registration, under the Investment Advisers Act of 1940 (IAA)⁴⁷ who provide commodity interest trading advice to Rule 4.5 trading vehicles and who meet certain other criteria—*e.g.*, they do not otherwise hold themselves out as a CTA.

When the Commission adopted Rule 4.14(a)(8) in 1987,⁴⁸ absent the availability of an exemption, an IA was required to be registered under the IAA to be eligible for the CTA registration exemption provided by the rule. As a result of the National Securities Markets Improvement Act of 1996⁴⁹ and SEC rules issued thereunder, IAs may not register with the SEC unless they have \$25 million under management;⁵⁰ IAs who do not meet this criterion must register with state regulatory authorities.⁵¹ To update Rule 4.14(a)(8), and in response to Roundtable comments, the Commission is proposing to amend the rule so as to make it equally available to SEC-registered or excluded-from-registration IAs and state-registered IAs (proposed Rule 4.14(a)(8)(i)). Further, to conform the rule with the changes the Commission is proposing to make to Rule 4.5, as are discussed above (*e.g.*, deletion of the existing limitation on non-hedge commodity interest trading), the Commission is proposing to delete from Rule 4.14(a)(8) the current requirement that the IA's commodity interest advice "[e]mploys only such strategies as are consistent with eligibility status under § 4.5."

b. Exemption Where Advice Is Provided to Foreign Funds

Also in response to Roundtable comments, and to acknowledge and codify Commission staff's activity in this area,⁵² the Commission is proposing

relief from CTA registration for those IAs who provide commodity interest trading advice to commodity pools organized and operated outside of the U.S., its territories and possessions that meet certain criteria—for example, only non-U.S. persons may be pool participants, except for the pool's operator, advisor and their principals. (Proposed Rule 4.14(a)(8)(i)(C)(2)).

c. Exemption Where Advice Is Provided to Rule 4.13(a)(3) and 4.13(a)(4) Pools

Further, and based on the NFA Proposal, the Commission is proposing CTA registration relief for advisors to commodity pools that meet the requirements of the new exemptions being proposed based upon participant sophistication or trading limitations. (Proposed Rule 4.14(a)(8)(i)(D)). In response to the comments on the ANPR, the Commission also has included a proviso in this proposal to make clear that a person may claim relief from CTA registration if it also advises the other trading vehicles specified in the rule—*e.g.*, qualifying entities under Rule 4.5. (Proposed Rule 4.14(a)(8)(i)(A)).

The foregoing relief would remain subject to compliance with the existing criteria of Rule 4.14(a)(8)—*i.e.*, that the person provides commodity interest trading advice solely incidental to its business of providing securities or other investment advice to the trading vehicles specified in the rule and that it is not otherwise holding itself out as a CTA. (Proposed Rules 4.14(a)(8)(ii)(A) and (B)).

Several commenters on the registration no-action relief issued through the ANPR noted that, like the NFA Proposal, it only provided relief in the context of pools. They claimed that CTA registration relief should be available with respect to accounts that meet the criteria of Rule 4.14(a)(3) or 4.14(a)(4)—regardless of the form of the account (*i.e.*, collective trading vehicle or individual account). In response, the Commission notes that because of the intermediation of these collective trading vehicles by CPOs to whom the Commission is herein proposing registration relief, it is appropriate to so restrict CTA registration relief. The Commission further notes the expanded availability of the relief from CTA registration in Section 4m(1) of the Act that it is proposing below.

2. Proposed Rule 4.14(a)(10): Counting Legal Organizations as a Single "Person"

Section 4m(1) of the Act provides an exemption from CTA registration for any person:

who, during the course of the preceding twelve months, has not furnished commodity

⁴⁷ 15 U.S.C. 80b-1 *et. seq.* (2000).

⁴⁸ See 52 FR 41975 (Nov. 2, 1987).

⁴⁹ Pub L. No. 104-290, 110 Stat. 3416 (1996).

⁵⁰ SEC Rule 275.203A-1, 17 CFR 275.203A-1 (2002), provides that an IA is not required to register with the SEC unless it has at least \$30 million in assets under management, but may register with the SEC if it has between \$25 million and \$30 million in assets under management.

⁵¹ 17 CFR 275.203A-1 (2002).

⁵² See *e.g.*, CFTC Staff Letter No. 00-96 (Oct. 4, 2000).