

meets and remains in compliance with the following criteria:

a. It claims relief from CPO registration under the no-action relief provided herein and its commodity interest trading advice is directed solely to, and for the sole use of, the pool or pools that it operates;⁷⁵ or

b. It is registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term "investment adviser" pursuant to section 202(a)(2) or 202(a)(11) of the Investment Advisers Act of 1940, provided that:

(A) The person's commodity interest trading advice:

(1) Is directed solely to, and for the sole use of, pools operated by CPOs who are eligible to claim relief from CPO registration under the no-action relief;

(2) Is solely incidental to its business of providing securities advice to each such pool;

(3) Is consistent with the criteria of the CPO registration no-action relief;⁷⁶ and

(B) The person is not otherwise holding itself out as a CTA.

By this **Federal Register** release, the Commission similarly confirms that, regardless of whether a pool to which the CTA sought to provide commodity interest trading advice was operated by an unregistered CPO that had claimed registration no-action relief or a registered CPO, in each case the CTA would be entitled to rely upon a representation by the CPO that the CPO was operating the pool in compliance with the requirements of the CPO registration no-action relief stated above.

3. Claim of Registration No-Action Relief

As stated in the ANPR, this registration no-action relief for CPOs and CTAs is not self-executing. Rather, a CPO or CTA eligible for the no-action relief must file a Claim to perfect the relief and must make a one-way disclosure to its participants and clients, respectively, whether prospective or existing. A Claim of Registration No-Action Relief will be effective upon filing, so long as the Claim is materially complete.

Specifically, the Claim of Registration No-Action Relief must:

a. State the name, main business address, and main business telephone number of the CPO or CTA claiming the relief;

b. State the capacity (*i.e.*, CPO, CTA or both) and, where applicable, the name of the pool(s), for which the Claim is being filed;

c. Represent that the CPO and CTA qualifies for the no-action relief, that it will comply with the criteria of the no-action relief, and that it will provide the CFTC-specified disclosure, set forth below;

d. Be signed by a duly authorized representative of the CPO or CTA; and

e. Be filed with the NFA at its headquarters office in Chicago, Illinois (Attn: Director of Compliance), with a copy to the Commission at its headquarters office in Washington, DC (Attn: Division of Clearing and Intermediary Oversight, Audit and Financial Review Section), prior to the date upon which the CPO or CTA first engages in business that otherwise would require registration as such.

4. One-Way Disclosure by CPOs and CTAs

a. For CPOs: To comply with the terms of a Claim of Registration No-Action Relief that it has filed, a CPO must provide the following disclosure to prospective and existing participants in each pool it operates or intends to operate prior to engaging in activities that otherwise would require it to register as a CPO:

Pursuant to No-Action Relief issued by the Commodity Futures Trading Commission, [Name of CPO] is not required to register, and is not registered, with the Commission as a CPO. Among other things, the No-Action Relief requires this CPO to file a Claim of No-Action Relief with the National Futures Association and the Commission. It also requires that at all times either: (a) The aggregate initial margin and premiums required to establish commodity interest positions does not exceed two percent of the liquidation value of the pool's portfolio; or (b) the aggregate net notional value of this pool's commodity interest positions does not exceed fifty percent of the liquidation value of the pool's portfolio.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a registration exemption rule that differs from the No-Action Relief, [Name of CPO] must comply with that rule to be exempt from CPO registration. If [Name of CPO] determines not to comply with that rule, it must either register with the Commission or cease having this pool trade commodity interests. A reasonable opportunity to trade for liquidation only will be provided.

b. For CTAs: To comply with the terms of a Claim of Registration No-Action Relief that it has filed, a CTA must provide the following disclosure to each pool it advises or intends to advise prior to engaging in activities that

otherwise would require it to register as a CTA:

Pursuant to No-Action Relief issued by the Commodity Futures Trading Commission, [Name of CTA] is not required to register, and is not registered, with the Commission as a CTA. Among other things, the No-Action Relief requires this CTA to file a claim of No-Action Relief with the National Futures Association and the Commission. It also requires that this CTA provide advice solely to pools whose CPOs have filed a corresponding claim of No-Action Relief.

You should also know that this registration No-Action Relief is temporary. In the event the Commission ultimately adopts a registration exemption rule that differs from the No-Action Relief, [Name of CTA] must comply with that rule to be exempt from CTA registration. If [Name of CTA] determines not to comply with that rule, it must either register with the Commission or cease providing commodity interest trading advice to this pool. A reasonable opportunity to trade for liquidation only will be provided.

5. Effect of Filing a Claim of No-Action Relief

Persons that have filed a Claim of No-Action Relief will be exempt from Commission registration requirements under Section 4m(1) of the Act. Such persons will remain subject, however, to prohibitions in the Act and the Commission's rules against fraud that apply to all CPOs and CTAs regardless of registration status. They also will remain subject to all other relevant provisions of the Act and the Commission's rules that apply to all commodity interest market participants, such as the prohibitions on manipulation and the trade reporting requirements.

C. Other Matters

1. Effect of Final Rulemaking on No-Action Relief

The no-action relief the Commission is announcing today by this **Federal Register** release will remain in effect until such time as the Commission takes final action on the related rules it is proposing herein. Any final rules that the Commission adopts as a result of this proposed rulemaking will supersede this no-action relief. In the event final rules differ from the requirements of the no-action relief, the Commission will provide affected eligible persons, CPOs and CTAs with sufficient time within which to comply with such requirements, or, in the event an eligible person, CPO or CTA is unable or unwilling to so comply, with sufficient time to register with the Commission (or, if applicable, to withdraw a previously filed Claim of No-Action Relief) and to cease engaging in business as a CPO or CTA. Following

⁷⁵ This provision is patterned after Rule 4.14(a)(5).

⁷⁶ In response to comments received by the Commission, this provision was simplified by replacing the words "Employs only strategies that are" with "Is."