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CFTC Extends Registered Futures Association Membership Requirement to Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors That Use Swaps

The Commodity Futures Trading Commission ("CFTC") unanimously approved a final rule ("Final Rule") that formally extends the existing registered futures association ("RFA") membership requirement to registered introducing brokers ("IBs"), commodity pool operators ("CPOs") and commodity trading advisors ("CTAs").[1] Under the longtime CFTC RFA membership rule, registered futures commission merchants, swap dealers and major swap participants have been required to become members of an RFA.[2] While not subject to this CFTC rule, for many years IBs, CPOs and CTAs that facilitate the trading of futures contracts also have been *required* to become RFA members, due to a bylaw of the only RFA — the National Futures Association ("NFA") — which prohibits members from dealing with nonmembers that are required to be registered with the CFTC with respect to transacting in futures contracts ("NFA Bylaw 1101").[3]

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, additional IBs, CPOs and CTAs that facilitate swap but not futures transactions have been required to register with the CFTC, due to swaps being added to the definition of a "commodity interest." While these new IBs, CPOs and CTAs have registered with the CFTC through the NFA, they are not subject to NFA Bylaw 1101, which only applies to transacting in futures and not swaps. Accordingly, registered IBs, CPOs and CTAs that transact in swaps but not futures to date have not been required to become NFA members. Under the Final Rule, all registered IBs and CPOs and almost all registered CTAs[4] now will be required to become members of NFA.

Practically, the Final Rule should have little effect, as most IBs, CPOs and CTAs already have become NFA members or will not be subject to the rule, because they have claimed

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[1] The Final Rule is available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister091015.pdf.

[2] *See* 17 C.F.R. §§ 170.15-170.16.

[3] For example, an NFA member that is a CFTC-registered futures commission merchant is prevented from taking futures contract orders from a CFTC-registered CTA unless the CTA also becomes an NFA member. See NFA Bylaw 1101, *available at* http://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=BYLAW%201101&Section=3.

[4] Persons who qualify for the exemption from CTA registration under CFTC Regulation 4.14(a)(9) (i.e., those who do not direct client accounts or provide advice tailored to a particular client) but nonetheless choose to register are exempt from the requirement to become a member of an RFA.

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exemptions from registration such as the 4.13(a)(3) *de minimis* exemption for CPOs.[5] It will, however, require registered CPOs operating funds pursuant to CFTC Regulation 4.7 that trade only swaps and no futures to become NFA members. Registered IBs, CPOs and CTAs must comply with the Final Rule no later than December 31, 2015, and can do so by completing a supplement to their existing registration statement through NFA's online registration system.

[5] The CFTC approximated that 61 CPOs, 573 CTAs and 41 dual CPO/CTAs are currently registered with NFA but are not NFA members. See Final Rule at 18.