

## CFTC Follows SEC's Lead on "General Solicitation"

SECURITIES AND DERIVATIVE LITIGATION | SECURITIES TRANSACTIONS AND COMPLIANCE | FINANCIAL SERVICES REGULATORY | DECEMBER 22, 2014



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Seeking to harmonize governing rules, the staff of the Commodity Futures Trading Commission (CFTC), by letter dated September 9, granted exemptive relief that enables commodity pool operators (CPOs) to rely on CFTC Regulations 4.7(b) and 4.13(a)(3) even if they also rely on recent Securities and Exchange Commission (SEC) rule amendments that permit advertising or other "general solicitation" as to certain offerings or resales of interests in private funds.

In July 2013, the SEC, in response to the Jumpstart Our Business Startups (JOBS) Act, amended its Regulation D to permit, for the first time, the use of general solicitation in private offerings exempt from registration under SEC Rule 506, provided certain conditions are met. The SEC likewise amended its Rule 144A to allow resales of securities to qualified institutional buyers to be made by means of general solicitation.

CFTC Regulation 4.7(b) provides qualifying registered CPOs relief from certain CFTC disclosure, periodic and annual reporting, and recordkeeping requirements, while Regulation 4.13(a)(3) provides an exemption from CPO registration as to funds that trade commodity interests in limited amounts. Both of these CFTC regulations apply only to funds whose offerings qualify for certain exemptions from registration under the Securities Act of 1933. As such, **these regulations are frequently relied upon within the private fund industry to mitigate or avoid the burdens of compliance with CFTC regulatory requirements.**

Because these CFTC regulations are also predicated on interests in the applicable fund being offered or sold "without marketing to the public" or "solely to qualified eligible persons," absent relief, CPOs relying on either regulation cannot also take advantage of the recent liberalization of the SEC's limitations on general solicitations. The relief granted, however, is available only to CPOs that file a notice with the CFTC to claim the exemption, and is subject to certain conditions, as described in CFTC Letter No. 14-116.

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