

Registration Relief for Some Delegating CPOs

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In May, the Commodity Futures Trading Commission (CFTC) staff announced a streamlined process that allows persons seeking no-action relief to avoid registering as commodity pool operators (CPOs). They must, however, designate another person to serve as the registered CPO of the commodity pool at issue.

Staff Letter 14-69 sets forth the criteria that must be satisfied to use the streamlined approach, as well as the form of no-action request that must be submitted by the requesting CPO. While Letter 14-69 does not, by itself, provide no-action relief, the staff intends to issue responses to each request for relief made in compliance with that letter.

The applicable criteria are based on numerous requests the staff has received over the past several years. Generally, those requests have sought relief for a CPO that delegates its investment management authority over a commodity pool to another person (registered as a CPO) and does not solicit participants for, or manage property of, the applicable commodity pool. Under these circumstances, the staff has issued no-action relief, for example, regarding pools organized as limited partnerships or limited liability companies, such that an affiliated investment manager could serve as the registered CPO instead of the general partner or managing member.

In prior no-action positions for natural persons serving as members of the governing body of a commodity pool (mostly involving pools domiciled and located outside the United States), the staff generally has required the delegating and designated CPOs to agree to be jointly and severally liable for any commodity law violation that either commits regarding the pool. **Letter 14-69 notably clarifies that the staff intends to provide relief for such members without requiring them to agree to joint and several liability if they are not affiliated with the designated CPO.**

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