

## **Securities Regulation Daily Wrap Up, CFTC NEWS AND SPEECHES—CFTC amends Part 4 rules notwithstanding Commissioner Berkovitz's dissent regarding registration exemption for family offices, (Dec. 2, 2019)**

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

The Commission approved two sets of final rule amendments relating to the registration and compliance requirements for CPOs and CTAs in an effort to harmonize CFTC and SEC regulations.

With an eye towards streamlining and simplifying requirements for asset managers, the CFTC voted to approve amendments to its Part 4 regulations at an [open meeting](#) during the final week of November 2019. According to CFTC Chairman Heath Tarbert, each amendment was designed to advance the Commission's strategic goal of "encouraging innovation and enhancing the regulatory experience for market participants at home and abroad." He also stated that amendments to Part 4 will improve harmonization for market participants subject to concurrent CFTC and SEC jurisdiction.

**Codification of relief for family offices and relief related to the JOBS Act.** Despite a strident dissent from Commissioner Dan Berkovitz, on a 4-1 vote, the CFTC [approved](#) the first set of amendments which related to Rules 4.7, 4.13, and 4.14. These amendments adopted exemptions from CPO and CTA registration for entities that qualify as "family offices" under SEC rules, and which were also consistent with past CFTC staff no-action relief. This rulemaking also amended certain exemptions in Part 4 to permit general solicitation in these dually regulated offerings as contemplated by the JOBS Act, which was enacted in 2012.

**The chairman's enthusiastic support.** In support of the amendment exempting family offices from registration requirements, Chairman Tarbert [noted](#) that these entities do not solicit the public or market themselves as an investment strategy or product available to the public. Consequently, family offices do not raise the same customer protection concerns as do other types of pool operators and commodity pools. In the chairman's view, requiring family offices to file exemption claims with the CFTC creates a paperwork burden that does not provide any meaningful customer protection benefit. Moreover, he sees the amendments as being justified due to the low risks these entities pose to customers.

**Commissioner Berkovitz's harsh dissent.** In his highly critical [dissenting statement](#), Commissioner Berkovitz asserted that customer protection should trump relief for billionaires, the typical beneficiary for many family office organizations. Berkovitz noted the proposed regulations considered last year balanced the family office exemption with an annual notice filing requirement and a prohibition on persons who were statutorily disqualified from operating commodity pools from claiming the exemption.

Commissioner Berkovitz was particularly chagrined that the final rule provided a blanket exemption for the operators of commodity pools in family offices without either of these minimal checks and balances. He stated, "It is absurd that the Commission is excusing billionaires from the notice-filing requirement that generally applies to other persons—who have a fraction of that immense wealth—who claim exemptions from CPO registration." The commissioner was also troubled that persons who are statutorily disqualified from registering should not be permitted to operate under an exemption from registration. In Berkovitz's view, "Disqualified persons should be disqualified."

**Commissioner Behnam senses a lack of perfection.** While voting in favor of the rule amendment, Commissioner Rostin Behnam [noted](#) the rules are not perfect. In particular, he expressed concern over the Commission's decision to omit a notice filing requirement for a CPO or CTA claiming an exemption for

family offices as direct visibility into the identity of the entities claiming these exemptions may be frustrated. Nonetheless, Commissioner Behnam supported the amendments generally, noting that these amendments "represent the latest step in the Commission's ever evolving understanding of the needs of this dynamic segment of the derivatives market, along with the needs of consumers and the national public interest we are charged with protecting."

**Unanimous approval for updating exclusions and adding reporting relief.** The Commission unanimously approved a second set of amendments related to Rules 4.5 and 4.27 exempting certain commodity trading advisors and pool operators from certain registration requirements. Many of the parties impacted by these amendments previously received exemptions through no-action letters on an ad hoc basis. These amendments also clarified an existing exclusion from the CPO definition for registered investment companies and expanded it to also exclude registered investment advisers operating or soliciting on behalf of business development companies. This rulemaking also eliminated certain duplicative and unnecessary regulatory filings by carving out particular classes of CPOs and CTAs from the filing requirements. Commissioner Berkovitz issued a [separate statement](#) fully supporting these amendments.

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