

Commodity Pools

Winstead's Commodity Pool Practice Group supports commodity pool operators (CPOs) and commodity trading advisors (CTAs) with registration, exemptions, disclosure, recordkeeping and reporting requirements under the Commodity Exchange Act (CEA).

Our [Investment Management and Private Funds](#) attorneys have deep experience in representing registered CPOs and CTAs, which are typically subject to different regulatory requirements than those that apply to hedge fund managers and investment advisers focused on equity and debt securities. For instance, unique regulatory compliance obligations arise from being a member of National Futures Association (NFA). Among other things, these include compliance with the self-policing mechanism under NFA Bylaw 1101 and completing the NFA Schedule of Investments required to accompany most filings by registered CPOs on Form PQR.

Our services for CPOs and CTAs span the full range of client needs, including:

Fund Formation and Adviser Launches. Our team counsels CPOs, both registered and exempt, on structuring, forming and operating commodity pools. We also help CTAs with launching their operations to provide commodity trading advice to manage account clients.

Scope and Exemptions. We advise whether manager activities fall within the scope of the CEA and the registration categories for CPOs and CTAs. If a fund (or other entity) holds a single futures contract, swap or other "commodity interest" or invests in another fund holding commodity interests, the CFTC has historically taken the position that the fund is itself a commodity pool. This result can be startling to many fund managers, such as fund-of-funds and family offices who never considered themselves to be 'in scope' as CPOs or CTAs. If an adviser's activities are within scope, our team will help the adviser to determine whether there are any exemptions or exclusions from CPO/CTA registration available to the firm.

CFTC Registration and NFA Membership. Our team seeks to streamline the process of CFTC registration and NFA membership from enrollment to acceptance. It is essential to take time to correctly identify an adviser's principals, associated persons and branch offices. This planning step is often overlooked by clients without a support team knowledgeable in CFTC and NFA-related matters. However, it can avoid significant compliance difficulties later.

Many registered CPOs only permit qualified eligible persons (QEPs) to invest in the commodity pools they operate. Similarly, registered CTAs often allow only QEPs to open managed accounts. These CPOs and CTAs file for an exemption under CFTC Rule 4.7 from additional CFTC disclosure, reporting and recordkeeping requirements under the CEA, such as the requirement to file a disclosure document with NFA.

Disclosure Documents and Account Agreements. We help CPOs to craft private placement memoranda for commodity pools. We also prepare commodity trading advisory agreements and disclosure documents or statements for managed account clients. If a CPO or CTA is not exempt from filing a disclosure document with NFA, we assist with preparing the document to satisfy the requirements under Part 4 of the CFTC's regulations, as well as NFA's review process. Among other things, performance and other disclosures must be presented in prescribed formats such as performance capsules and in a break-even analysis.

Regulatory Compliance. We help clients to design compliance and operational risk control policies and procedures and checklists to address ongoing CPO and CTA compliance responsibilities. We also frequently interface with the client's team and compliance consultants on legal issues which arise in ongoing regulatory compliance, as well as during NFA on-site inspections.