

Investment Management Industry Challenges CPO Registration Requirement

On February 9th, the CFTC issued a final rule modifying its Rule 4.5 to require the advisers of an investment company registered under the Investment Company Act of 1940, such as a mutual fund or exchange-traded fund, to register as commodity pool operators (“CPOs”) if, generally, the fund invests a material amount of its assets in speculative commodity futures, options and swaps.¹ On April 17th, the Investment Company Institute and the U.S. Chamber of Commerce filed suit in the United States District Court for the District of Columbia, challenging the rule as “arbitrary and capricious” and asking for injunctive relief to prevent its implementation. The investment management industry has objected to the new requirements from when they were first proposed, arguing that regulation by the CFTC would be burdensome, expensive and unnecessary because registered investment companies are already subject to regulation by the SEC. Among other things, the suit contends that the CFTC failed to conduct an appropriate cost-benefit analysis in connection with the proposed rule and that the CFTC “nowhere explained or determined in any manner that SEC regulation was proving to be insufficient.”

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¹ Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations; Final Rules, 77 Fed. Reg. 11252 (Feb. 24, 2012).