Update Regarding Certain CPO Registration Exemptions (September 2020)

The Commodity Futures Trading Commission ("CFTC") has amended the requirements to qualify for the commodity pool operator ("CPO") exemptions from registration, including, among others, under Rule 4.13(a)(3), which is commonly known as the "de minimis exemption." This particular exemption is by far the most commonly claimed means by which Securities and Exchange Commission-registered investment advisers to private funds avoid full CPO registration status.

Beginning this month, an investment manager that is effectively a CPO (i.e., because its relationship with the private fund or funds managed by that investment adviser results in the investment manager meeting the definition of "commodity pool operator" under the Commodity Exchange Act ("CEA")) and that seeks to claim an exemption from CPO status will be required to represent that neither it nor any of its "principals" has in their respective background a CEA disqualification "event" (i.e., which would mean that the person is "statutorily disqualified"). If the investment manager has claimed the standard 4.13(a)(3) exemption from registration prior to this month, then the registrant is required to represent that neither it nor any of its principals is subject to a statutory disqualification in connection with the 2021 exemption renewal cycle.

Accordingly, it will be necessary for each private fund manager claiming a CPO exemption to determine whether it and any of its principals are subject to statutory disqualification, before renewing their exemption status (which, in the ordinary course, is required to be completed before the end of March 2021).

As context, the term "principal" includes any director, CEO, president, COO, CFO, CCO, any person in charge of a major business unit whose activities are subject to CFTC regulation, and any individual who directly or indirectly (a) owns ten percent (10%) or more of the outstanding shares of any class of voting securities of the registrant, (b) is entitled to vote or to sell ten percent (10%) or more of any class of voting securities or to receive ten percent (10%) or more of the profits, or (c) has the power to exercise a controlling influence over the registrant's CFTC-regulated activities. A "principal" is also an entity that is the direct owner of ten percent (10%) or more of any class of equity securities (other than non-voting securities) of the registrant.

The types of offenses for which a person may be disqualified are among the most serious, and include theft, fraud, misappropriation, and extortion.

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