

THE REVIEW OF  
**SECURITIES & COMMODITIES  
REGULATION**

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AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

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## PREPARING TO BE A COMMODITY POOL OPERATOR: NFA COMPLIANCE OBLIGATIONS

*The CFTC has adopted sweeping regulatory changes that will compel more operators of private and registered funds to register as commodity pool operators and become members of the National Futures Association. As members, CPOs must make sure that their investors and counterparties in commodity interest transactions are appropriately registered or exempt. There are also advertising rules, ethics training requirements, supervisory procedures, and annual and quarterly reporting obligations.*

By Cary J. Meer and Kathy K. Ingber \*

Last year, the Commodity Futures Trading Commission adopted sweeping changes to its regulations exempting and excluding operators of private and registered funds from regulation as commodity pool operators ("CPOs"). The CFTC rescinded the exemption from CPO registration under Regulation 4.13(a)(4) for operators of private funds that limit investors to highly sophisticated investors.<sup>1</sup> The CFTC also amended Regulation 4.5 to significantly narrow the exclusion for operators of registered funds.<sup>2</sup> As a result, fund operators have had to consider whether they must register as CPOs or if they

can rely on the exemption in Regulation 4.13(a)(3) for private funds or the amended exclusion in Regulation 4.5 for registered funds. In light of these regulatory changes, operators of private and registered funds that are no longer exempt or excluded from regulation as CPOs must have registered with the CFTC and become members of the National Futures Association ("NFA") by January 1, 2013.<sup>3</sup>

<sup>1</sup> *Commodity Pool Operators and Commodity Trading Advisors, Compliance Obligations*, 77 Fed. Reg. 11252 (February 24, 2012); correction notice published at 77 Fed. Reg. 17328 (March 26, 2012) ("Amendment Release").

<sup>2</sup> *Id.*

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<sup>3</sup> In CFTC Letter No. 12-68 (December 21, 2012), the CFTC's Division of Swap Dealer and Intermediary Oversight stated that it would not recommend enforcement action against CPOs, commodity trading advisors ("CTAs"), and the principals and associated persons ("APs") of CPOs and CTAs who are required to register as a result of the amendment to Regulation 4.5 or the rescission of Regulation 4.13(a)(4), for engaging in activities as

### IN THIS ISSUE

- **PREPARING TO BE A COMMODITY POOL OPERATOR:  
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# Guide To Becoming A Commodity Pool Operator

**D Keegan**



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## **Table of Contents Guide To Becoming A Commodity Pool Operator**

1. Understanding the eBook Guide To Becoming A Commodity Pool Operator
  - The Rise of Digital Reading Guide To Becoming A Commodity Pool Operator
  - Advantages of eBooks Over Traditional Books
2. Identifying Guide To Becoming A Commodity Pool Operator
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Guide To Becoming A Commodity Pool Operator
  - User-Friendly Interface
4. Exploring eBook Recommendations from Guide To Becoming A Commodity Pool Operator
  - Personalized Recommendations
  - Guide To Becoming A Commodity Pool Operator User Reviews and Ratings

- Guide To Becoming A Commodity Pool Operator and Bestseller Lists
- 5. Accessing Guide To Becoming A Commodity Pool Operator Free and Paid eBooks
  - Guide To Becoming A Commodity Pool Operator Public Domain eBooks
  - Guide To Becoming A Commodity Pool Operator eBook Subscription Services
  - Guide To Becoming A Commodity Pool Operator Budget-Friendly Options
- 6. Navigating Guide To Becoming A Commodity Pool Operator eBook Formats
  - ePub, PDF, MOBI, and More
  - Guide To Becoming A Commodity Pool Operator Compatibility with Devices
  - Guide To Becoming A Commodity Pool Operator Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Guide To Becoming A Commodity Pool Operator
  - Highlighting and Note-Taking Guide To Becoming A Commodity Pool Operator
  - Interactive Elements Guide To Becoming A Commodity Pool Operator
- 8. Staying Engaged with Guide To Becoming A Commodity Pool Operator
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Guide To Becoming A Commodity Pool Operator
- 9. Balancing eBooks and Physical Books Guide To Becoming A Commodity Pool Operator
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Guide To Becoming A Commodity Pool Operator
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Guide To Becoming A Commodity Pool Operator
  - Setting Reading Goals Guide To Becoming A Commodity Pool Operator
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Guide To Becoming A Commodity Pool Operator
  - Fact-Checking eBook Content of Guide To Becoming A Commodity Pool Operator
  - Distinguishing Credible Sources

13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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