Update: 13F-2 Delayed

Breathing a sigh of relief this morning are institutional investment managers subject to complying with Exchange Act Rule 13f-2 (Short Position and Short Activity Reporting) and the required filing of Form SHO. The Securities and Exchange Commission ("SEC") announced last night yet another temporary extension to January 2, 2028, with the filing of the first monthly Form SHO due February 14, 2028. Rule 10c-1a (Securities Lending Reporting) was also provided a temporary exemption with respect to the reporting date until September 28, 2028.

Rule 13f-2 became effective January 2, 2024, and requires that institutional investment managers that exercise investment discretion over gross short positions in equity securities exceeding certain reporting thresholds submit a Form SHO filing to the SEC within fourteen (14) calendar days of month end. The necessary analysis institutional investment managers are required to undertake can be daunting. The filing thresholds, broken down into Reporting Company Issuers and Non-Reporting Company issuers, require detailed identification. Investment managers will welcome additional guidance from the SEC required for this reporting.

Please contact Optima Partners for additional information and regulatory compliance support at info@optima-partners.com

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CFTC approves no-action relief from having to register as a CPO / CTA

Exemptive Relief: The CFTC, in response to a request from the Managed Funds Association ("MFA"), have approved interim no-action relief from having to register with the CFTC as a Commodity Pool Operator ("CPO") and Commodity Trading Advisor ("CTAs"), provided the following conditions are met:

- The relief is limited to managers who:
  - Are registered with the SEC as Registered Investment Advisers ("RIAs").
  - The pool (fund) interests are offered solely in non-public offerings under the Securities Act.
  - The pool (fund) interests are only available to Qualified Eligible Persons ("QEPs").
- The no-action relief is subject to conditions, including:
  - Filing Form PF with the SEC.
  - Reasonable belief that all pool participants are QEPs at the time of investment.
  - Notice of reliance on the no-action position must be filed via email with the CFTC.

The CFTC also confirmed that CPOs deregistering solely due to this no-action position are not subject to mandatory redemption offer requirements under Rule 4.13(e).
Accordingly, until such time as the CFTC promulgates rules, or publicly determines not to promulgate rules, addressing the reinstatement of the QEP Exemption (4.13(a)(4)), CFTC will not recommend commencing enforcement action against any person that (A) fails to register with the Commission as a CPO, or (B) withdraws from registration with the CFTC as a CPO, subject to the above conditions.
This is a welcome relief to investment firms that are required to comply with SEC and CFTC requirements, significantly reducing their regulatory burdens. If you would like to discuss this further and how this may impact your firm, please contact Greg Worsfold, Anthony Visone or your usual Optima contact.

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