

### **NFA Issues Guidance for Persons Effectuated by Rescinded CFTC Rule 4.13(a)(4)**

On June 27, 2012, the National Futures Association (“NFA”) issued “Guidance to Persons Operating or Advising Funds Pursuant to an Exemption under CFTC Regulation 4.13(a)(4)” (“Guidance”). On February 24, 2012, the Commodity Futures Trading Commission (“CFTC”) issued final rules regarding the adoption of CFTC Rule 4.5, which also rescinded CFTC Regulation 4.13(a)(4) effective December 31, 2012. The rescission means that those persons currently claiming an exemption under CFTC Regulation 4.13(a)(4) must determine if they qualify for a different exemption under CFTC regulations or whether Commodity Pool Operator (“CPO”) registration by the advisor will be necessary. The Guidance provides those persons affected by the rescission with information to aid in the process of determining CPO registration exemptions and the registration process. The Guidance can be found online at <http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4059>.

**Source:** Guidance to Persons Operating or Advising Funds Pursuant to an Exemption under CFTC Regulation 4.13(a)(4), NFA Notice No. I-12-12 (June 27, 2012).

### **SEC Sues Sub-Adviser for Misrepresentations Made to Fund’s Board**

On June 26, 2012, the Securities and Exchange Commission (“SEC”) filed a complaint in U.S. District Court for the District of Columbia (the “Complaint”) against AMMB Consultant Sendirian Berhad (“AMC”), sub-adviser to The Malaysia Fund, Inc. (“Fund”) for misrepresentations made to the Fund’s Board of Directors (“Board”) between 1996 and 2007. As sub-adviser, AMC agreed to furnish the adviser with investment advice and research, as requested by the adviser. Over the course of the sub-advisor relationship, the Fund paid AMC advisory fees of approximately \$1.8 million. According to the Complaint, AMC misrepresented to the Board the services it provided to the Fund during the Board’s annual contract review under Section 15(c) of the Investment Company Act of 1940. Additionally, the SEC alleges AMC also falsely certified it had adopted and implemented written policies and procedures. The SEC seeks injunctive relief, disgorgement of fees, and civil penalties against AMC for these misrepresentations.

**Source:** Complaint – <http://www.sec.gov/litigation/complaints/2012/comp-pr2012-120.pdf>

### **SEC Announces New Rules for Evaluating Clearing Submissions for Swaps Pursuant to Dodd-Frank**

On June 28, 2012, the SEC announced the implementation of new procedures for evaluating clearing submissions for security-based swaps. The rules established specific procedures to file, provide notice for, and ultimately clear swaps and other over-the-counter derivatives which may or may not require mandatory clearing. The new clearing submissions will be filed utilizing the amended Form 19b-4. The SEC will evaluate submissions to determine whether these security-based swaps should be subject to mandatory clearing. Additionally, the final rule also designates “systemically important” clearing agencies which must provide advance notice to the SEC of changes to their rules, procedures, or operations.

#### **HIGHLIGHTS**

**NFA Issues Guidance on CPO Registration Exemptions**

**Sub-adviser Sued Over Board Misrepresentations**

**SEC Adopts New Regulatory Procedures for Trading in OTC Derivatives**

**SEC Adopts Final Rules Implementing Compensation Committee and Compensation Adviser Requirements**

The effective date of the final rule will be 60 days after publication in the Federal Register. However, the requirement to file submissions and advance notices electronically with Form 19b-4 is not effective until December 10, 2012.

**Source:** “SEC Adopts New Procedures for Reviewing Clearing Submissions Under Dodd-Frank Act.” SEC News Room. Press Releases., June 28, 2012. 2012-124.

### **SEC Adopts Final Rules Regarding Listing Standards for Compensation Committees**

On June 20, 2012, the SEC adopted final rules directing national securities exchanges to require listing companies to have independent compensation committees under new Section 10C of the Securities Exchange Act of 1934, as added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The adoption of new Rule 10C-1 requires national securities exchanges to create or modify their current listing standards to mandate the independence of compensation committee members and recommend independence of compensation advisers or consultants. The SEC does not provide a definition of “independence” or “compensation committee,” but does provide guidelines on factors to consider when creating the listing standards. The final rules also modify Item 407 of Regulation S-K to extend the current requirements to include disclosure regarding “any role” a compensation consultant might have in determining executive or director compensation. New Section 10C will pertain to issuers

with listed equities securities, and not to issuers with only listed debt securities.

The effective date of new Section 10C will be 30 days after publication in the Federal Register. The securities exchanges must present the proposed listing standards to the SEC within 90 days of the publication. The disclosure regarding compensation consultant conflict of interest will be applied to proxy statements for annual meetings after January 1, 2013.

**Source:** Listing Standards For Compensation Committees, Final Rule, Release No. 33-9330; 34-67220. 17 CFR Parts 229 and 240. (2012)

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