

MEMO# 30692

May 3, 2017

CFTC Staff Issues Clarification Regarding Ability of Registered Fund CPOs to File Consolidated Annual Reports for Subsidiaries

[30692]

May 3, 2017 TO: ICI Members

Accounting/Treasurers Committee

Registered Fund CPO Advisory Committee SUBJECTS: Audit and Attest

Audit Committees

Derivatives

Fund Accounting & Financial Reporting

Investment Advisers RE: CFTC Staff Issues Clarification Regarding Ability of Registered Fund CPOs to File Consolidated Annual Reports for Subsidiaries

On May 3rd, the staff of the Commodity Futures Trading Commission (“CFTC”) issued a letter to the Investment Company Institute clarifying the ability of advisers to registered investment companies (“funds”) that are registered with the CFTC as commodity pool operators (“registered fund CPOs”), and that invest in commodities through wholly-owned controlled foreign corporations (“CFCs”), to satisfy their obligation to file annual reports under CFTC regulation 4.22(c) by using an audited consolidated schedule of investments that includes the holdings of both the registered fund and its CFCs. The May 3rd letter, which is attached, and is summarized briefly below, is intended to clarify certain language in the staff’s 2013 letter to ICI and SIFMA AMG.[\[1\]](#)

Background

In Letter 13-51, the CFTC staff stated that it would not recommend that the CFTC take enforcement action against a registered fund CPO that trades in commodity interests through a CFC for failure to, among other things, file a separate annual report for the CFC with the National Futures Association (“NFA”) pursuant to CFTC regulation 4.22(c).[\[2\]](#) Letter 13-51 requires, among other things, that to obtain relief from regulation 4.22(c), the registered CPO must:

- i. prepare an annual report of the registered fund that contains consolidated audited financial statements for the registered fund that includes, *and also separately indicates*, the holdings, gains and losses, and other financial statement amounts

- attributable to the CFC; and
- ii. submit such annual report of the registered fund to NFA, in lieu of a separate annual report of the CFC . . .[3]

Relief

ICI had requested that the CFTC staff clarify that it is not necessary for registered fund CPOs to *separately indicate* the holdings, gains and losses, and other financial statement amounts attributable to the CFC, because separate identification is inconsistent with the objectives of consolidated financial reporting and investment company reporting practices. The staff's May 3rd letter confirms that, in order to comply with these conditions in Letter 13-51, the CPO only must distribute to the participants in the registered fund, and file with NFA, an audited consolidated annual report for the registered fund and its CFCs. The staff further explains that the audited consolidated annual report must be presented in accordance with Generally Accepted Auditing Principles ("GAAP"), which require a consolidated schedule of investments that includes the holdings of both the registered fund and its CFCs.[4]

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[Attachment](#)

endnotes

[1] See CFTC No-Action Letter No. 13-51 (Sept. 5, 2013), *available at* <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/13-51.pdf> ("Letter 13-51"). For a summary of that letter, see ICI Memorandum No. 27548 (Sept. 6, 2013), *available at* https://www.ici.org/my_ici/memorandum/memo27548.

[2] The letter also provided conditional relief to permit such a registered fund CPOs to file a separate report with the NFA pursuant to CFTC regulation 4.27(c) (which, as relevant, requires reporting on Form CPO-PQR).

[3] Letter 13-51 (emphasis added).

[4] We are aware that paragraphs 7.17 and 7.236 of the AICPA Audit and Accounting Guide for Investment Companies reference the language in Letter 13-51 regarding "separately indicat[ing] the holdings, gains and losses, and other financial statement amounts attributable" to a CFC. AICPA Audit and Accounting Guide: Investment Companies (May 1, 2016). We understand those paragraphs were added in 2015 to the audit guide in response to Letter 13-51. We have shared the staff's May 3rd letter with the AICPA, and recommended that they consider deleting the paragraphs from the guide at the next annual update. We note that the inclusion of these paragraphs in the guide does not

indicate that the disclosures described are required by GAAP.

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