

MEMO# 32306

March 23, 2020

01 CFTC Staff Issues No-Action Relief to CPOs from Certain Reporting and Dissemination Requirements

[32306]

March 23, 2020 TO: ICI Members

Accounting/Treasurers Committee

Registered Fund CPO Advisory Committee SUBJECTS: Compliance

Derivatives

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Recordkeeping RE: CFTC Staff Issues No-Action Relief to CPOs from Certain Reporting and Dissemination Requirements

On March 20, the Division of Swap Dealer and Intermediary Oversight (DSIO) of the Commodity Futures Trading Commission (CFTC) issued the attached no-action relief to commodity pool operators (CPOs) registered with the CFTC.[\[1\]](#) The no-action relief was issued in response to challenges CPOs may have in meeting their regulatory obligations, due to the COVID-19 pandemic. The letter recognizes that it may be challenging or impossible for registrants to comply with certain CFTC requirements at this time because employees may not currently be able to work from their normal business sites.

DSIO granted no-action relief from the following obligations, as described below:

1. **Filing of Form CPO-PQR under CFTC Regulation 4.27.** Any requirement that a Small or Mid-Sized CPO file an annual report on Form CPO-PQR pursuant to CFTC Regulation 4.27, provided that such filing is made by May 15, 2020; or any requirement that a Large CPO file a quarterly report on Form CPO-PQR for Q1 2020 pursuant to CFTC Regulation 4.27, provided that such filing is made by July 15, 2020.[\[2\]](#)
2. **Pool Annual Reports under CFTC Regulations 4.7(b)(3) and 4.22(c).** Any requirement that a CPO with a pool annual report due on or before April 30, 2020 file such report pursuant to CFTC Regulations 4.7(b)(3) or 4.22(c), provided that the annual certified financial statements for its operated commodity pools are filed with

the National Futures Association (NFA) and distributed to pool participants no later than 45 days after the due date for such report. This relief does not foreclose a CPO from requesting an additional extension of time not to exceed a total of 180 days from the end of the pool's fiscal year consistent with CFTC Regulation 4.22(f).^[3]

3. **Pool Periodic Account Statements under CFTC Regulations 4.7(b)(2) or**

4.22(b). Any requirement that a CPO distribute periodic account statements to pool participants on either a monthly or quarterly basis under CFTC Regulations 4.7(b)(2) or 4.22(b)(3), provided that such statements are distributed to participants within 45 days of the end of the reporting period for all reporting periods ending on or before April 30, 2020.^[4]

DSIO expects that: (i) registrants relying on the relief provided by the letter will establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic;^[5] and (ii) as COVID-19-related risks decrease, registrants will return to compliance with all the regulatory obligations from which relief has been provided.

Sarah A. Bessin
Associate General Counsel

Rachel H. Graham
Associate General Counsel

Gregory M. Smith
Senior Director, Fund Accounting and Compliance

[Attachment](#)

endnotes

^[1] CFTC No-Action Letter No. 20-11 (March 20, 2020). The letter and accompanying press release are available at <https://www.cftc.gov/PressRoom/PressReleases/8136-20>.

^[2] For purposes of Form CPO-PQR, a Small CPO is defined as any CPO that had less than \$150 million aggregated pool assets under management (AUM), a Mid-Sized CPO is any CPO that had more than \$150 million and less than \$1.5 billion aggregated pool AUM, and a Large CPO is any CPO that had at least \$1.5 billion aggregated pool AUM, each as measured as of the close of business on any day during the reporting period.

^[3] As a result of the CFTC's 2013 harmonization rulemaking, a registered fund CPO is permitted to satisfy its obligation to file a pool annual report under CFTC Regulation 4.22(c) by filing with NFA, within 90 days of the end of the fund's fiscal year, its Form N-CSR or the fund's audited financial statements, as filed with the Securities and Exchange Commission (SEC). See *Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators*, 78 Fed. Reg. 52308, 52325 (Aug. 22, 2013) ("Harmonization Rulemaking"). The SEC recently issued an exemptive order to registered funds providing, among other things, a 45-day delay for funds unable to prepare or transmit their annual or semi-annual reports to investors due to circumstances related to COVID-19. A fund relying on the exemptive order must (i) notify the SEC staff that it is

relying on the order; (ii) include a statement on the fund's public website stating that it is relying on the order and the reasons why it could not prepare and transmit its reports on a timely basis; and (iii) transmit the reports to shareholders as soon as practicable, but not later than 45 days after the original due date, and file the reports with the SEC within 10 days of their transmission to shareholders. See Investment Company Act Release No. 33817 (March 13, 2020), *available at* <https://www.sec.gov/rules/other/2020/ic-33817.pdf>. The CPO of a registered fund relying on this exemptive order likely will need to rely on DSIO's no-action relief to satisfy its annual report obligations under Regulation 4.22(c).

[4] As a result of the Harmonization Rulemaking, a registered fund CPO may claim an exemption from the periodic account statement requirements of CFTC Regulation 4.22(a) and (b), provided that the CPO makes the fund's net asset value available to investors and satisfies certain disclosure requirements. See CFTC Regulation 4.12(c)(3)(ii).

[5] DSIO also notes the recent relief issued by the NFA regarding the applicability of NFA's branch office requirements to NFA members that currently are working remotely. See NFA Notice to Members 1-20-12 (March 13, 2020), *available at* <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5214>.