

**MEMO# 32881**

October 30, 2020

# **CFTC Approves Amendments to Form CPO-PQR, Plans to Share Data with Office of Financial Research**

[32881]

October 30, 2020 TO: ICI Members

Registered Fund CPO Advisory Committee SUBJECTS: Alternative Investments

Closed-End Funds

Compliance

CPO/CTA

Derivatives

Exchange-Traded Funds (ETFs)

Fund Accounting & Financial Reporting

Investment Advisers RE: CFTC Approves Amendments to Form CPO-PQR, Plans to Share Data with Office of Financial Research

This memorandum briefly summarizes two actions that were taken by the CFTC earlier this month:

- The CFTC unanimously approved a final rule to amend the reporting requirements for commodity pool operators (CPOs) on Form CPO-PQR;[\[1\]](#) and
- The CFTC entered into a memorandum of understanding (MOU) with the Office of Financial Research (OFR) to share information that is reported on Form CPO-PQR with OFR.[\[2\]](#)

## **CFTC Approves Final Rule to Amend Reporting Requirements for CPOs**

### **Overview**

The amendments, which were adopted largely as they were originally proposed in April, consist of the following changes:

- The amendments eliminate the pool-specific reporting requirements in existing Schedules B and C of Form CPO-PQR, other than the Pool Schedule of Investments (SOI);
- The amendments amend the information requirements and instructions to request

Legal Entity Identifiers for CPOs and their operated pools that have them and to eliminate questions regarding pool auditors and marketers; and

- The amendments make certain other changes due to the rescission of Schedules B and C, including the elimination of all existing reporting thresholds.

Under the amendments, all CPOs will be required to file an amended Form CPO-PQR on a quarterly basis. A CPO can satisfy this requirement by filing National Futures Association (NFA) Form PQR on a quarterly basis. The CFTC will no longer accept Form PF filing in lieu of the amended Form CPO-PQR. The first filing of amended Form CPO-PQR will cover information for the first quarter of 2021 and will be due at the end of May 2021.

### ***Response to ICI's Recommendations***

The CFTC did not adopt ICI's recommendation to clarify the "broker" definition in Form CPO-PQR and limit its application to brokers used for commodity interest transactions. The CFTC observed that "the trading activity or investments of pools in asset classes other than commodity interests may impact the viability of that pool and/or the overall operations of its CPO."[\[3\]](#) On this basis, the CFTC reached the following conclusions:

Therefore, the Commission finds that collecting data on CPO and pool activity outside of commodity interests is also of general regulatory interest and concern to the Commission with respect to its effective oversight of CPOs and their operated pools. The Commission has concluded that limiting the brokers reported solely to those used in connection with commodity interest transactions would not be conducive to its effective oversight, would be a significant departure from its clear past positions and interpretations of the form, and further, would result in internal inconsistency in the Revised Form, where some aspects of the data collection would be limited to commodity interests, whereas others would not. Therefore, after considering the comments, the Commission is not changing the scope of the definition of the term "brokers," and confirms, in the context of the Revised Form as adopted, that the term is not limited to those brokers used in connection with commodity interest transactions.[\[4\]](#)

The CFTC did not adopt ICI's recommendation to amend the SOI in Form CPO-PQR so that it aligns with NFA's Form PQR from 2010. Although the CFTC recognized the value of a streamlined schedule, it "determined not to make material revisions at this time."[\[5\]](#) The CFTC observed that "[e]vents in the bond and energy markets . . . [have] emphasized the importance of understanding how CPOs are positioned vis-à-vis their counterparties and the economy as a whole" and therefore "reducing the amount of information collected with respect to multiple asset classes, particularly those that are under the Commission's primary jurisdictional mandate, is premature."[\[6\]](#) The CFTC also did not adopt ICI's recommendation to increase the threshold for a pool's reportable assets from 5% to 10%, asserting that it would "lose a material portion of the data that it has been receiving regarding pool positions in derivatives and alternative investments."[\[7\]](#) Notwithstanding, the CFTC instructed its staff to evaluate the ongoing utility of Form CPO-PQR information in the next 18-24 months through the following actions:

- The staff should consider whether it is appropriate to adopt the SOI that appeared in NFA's Form PQR in 2010;
- The staff should continue to explore the use of data available from designated

contract markets, swap execution facilities, and swap data repositories and application of this data to the oversight of CPOs and commodity pools, as compared to use of the information that is provided on Form CPO-PQR; and

- The staff should continue to engage with the staff of the Securities and Exchange Commission (SEC) regarding potential modifications to Joint Form PF, which could inform further revisions to Form CPO-PQR.

The CFTC rejected ICI's recommendation to implement a substituted compliance approach to periodic reporting by CPOs of registered investment companies, in view of the comprehensive reporting that registered fund CPOs and their registered fund pools provide to the SEC. The CFTC concluded that such an approach "would simply not be practical."[\[8\]](#) In the Commission's view, "[i]ncorporating those [SEC] filings into the Commission's filing regime via substituted compliance would be difficult to accomplish and would require the devotion of significant time and resources by both the Commission and NFA," an effort made more complex because "none of these [SEC] filings is a direct analog" to revised Form CPO-PQR.[\[9\]](#)

Several commenters, including ICI, raised concerns that significant revisions to Form CPO-PQR could render the 2015 CPO-PQR FAQs obsolete or inaccurate. The CFTC stated that staff have reviewed the FAQs and expect to publish updated FAQs that reflect the amendments "as soon as practicable" following adoption of the amendments.[\[10\]](#)

### ***Commissioners' Statements***

The final amendments were adopted by a 5-0 vote. Chairman Tarbert stated that the amendments both enhance insight into CPOs' activities and reduce reporting burdens while reflecting the Commission's aim to be "selective about the data we collect" from market participants. Commissioner Behnam remarked that the amendments are "the first of several steps in the Commission's ongoing assessment of Form CPO-PQR." Commissioner Berkovitz observed that the amendments incorporate "lessons learned" by the Commission and eliminate information that has not proven to be valuable. Commissioners Quintenz and Stump both voted in favor of the amendments, but expressed that the staff should have gone further, including recommending changes to the SOI to align it with the version first adopted by the NFA in 2010.

## **CFTC Enters Memorandum of Understanding to Share Form CPO-PQR Information with Office of Financial Research**

### ***Overview***

On October 6, 2020, the CFTC entered into a memorandum of understanding with the Office of Financial Research (OFR) that will allow the CFTC to share with OFR historical and ongoing information that is reported on Form CPO-PQR. Specifically, OFR intends to use this information to carry out its statutory responsibilities, including monitoring and analyzing systemic risks.

### ***Commissioners' Statements***

The MOU was approved by a 3-2 vote. Commissioner Berkovitz stated that having one central repository to aggregate information is "a powerful tool in identifying and managing risks to the financial system." The two dissenting Commissioners, Quintenz and Stump, questioned the justification for sharing Form CPO-PQR information with the OFR.

Commissioner Quintenz expressed “strong doubts” whether Form CPO-PQR information is necessary for OFR to monitor and analyze systemic risks. Commissioner Stump explained that the MOU could establish bad precedent for other agencies in seeking broad disclosure of information, and the Commission should “remain vigilant in safeguarding the data we collect, especially sensitive, proprietary and personally identifiable information,” such as Form CPO-PQR information.

Rachel H. Graham  
Associate General Counsel

Kaylena Ferrin  
Legal Intern

#### endnotes

[1] [CFTC Unanimously Approves a Final Rule Amending Form CPO-PQR](#), Release No. 8277-20 (October 6, 2020). The press release contains a link to the voting draft of the adopting release (Voting Draft), which will be published in the *Federal Register*.

[2] See ICI [Memorandum No. 32433](#) for a summary of the proposal.

[3] Voting Draft at 39.

[4] *Id.*

[5] *Id.* at 17.

[6] *Id.*

[7] *Id.* at 21.

[8] *Id.* at 47.

[9] *Id.*

[10] *Id.* at 41.