

MEMO# 30556

February 1, 2017

CFTC Staff Issues Exemptive Relief to Registered Fund CPOs from Aspects of Liquidation Statement Requirement

[30556] February 1, 2017 TO: ICI Members

Investment Company Directors

ICI Global Members

Accounting/Treasurers Committee

Registered Fund CPO Advisory Committee SUBJECTS: Alternative Investments

Audit and Attest

Compliance

Derivatives

Fund Accounting & Financial Reporting

Investment Advisers RE: CFTC Staff Issues Exemptive Relief to Registered Fund CPOs from Aspects of Liquidation Statement Requirement

On January 26th, the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“CFTC”) issued a letter that provides exemptive relief to registered fund commodity pool operators (“CPOs”) with respect to satisfying the CFTC’s annual report requirement when a series of the fund is liquidating. The letter is attached,[\[1\]](#) and is summarized briefly below.

Background

The Division’s letter was issued in response to ICI’s request for clarification regarding how the liquidation statement requirement under CFTC Regulation 4.22(c) applies to a registered fund CPO. When a commodity pool liquidates, Regulation 4.22(c) requires the pool’s CPO to provide each participant in the pool, and file with the National Futures Association (“NFA”), an annual report containing audited liquidating statements (i.e., Statements of Operations and Changes in Net Assets), within 90 calendar days after the end of the pool’s fiscal year, or the permanent cessation of trading, whichever is earlier, unless pool participants waive the audit requirement.[\[2\]](#) The CFTC, in a 2013 rulemaking, harmonized certain CFTC compliance obligations applicable to registered fund CPOs, with rules of the Securities and Exchange Commission (“SEC”) to which registered fund CPOs are subject.[\[3\]](#) It did not, however, harmonize the requirements relating to liquidation statements when a series of a registered fund liquidates.[\[4\]](#)

Relief Granted

The Division's letter recognizes that it is difficult for registered fund CPOs to obtain waivers to the audit requirement from pool participants, as required by CFTC Regulation 4.22(c)(7)(iii), because a registered fund CPO generally cannot determine the identity of each of the fund's participants who purchase their ownership interests through financial intermediaries. The letter therefore grants a registered fund CPO of a liquidating series of a fund relief from the participant waiver provision to permit the CPO to prepare, and provide to participants and the NFA, unaudited Statements of Operations and Changes in Net Assets, in accordance with Regulation 4.22(c)(7). The Division notes that the CPO remains subject to the timing requirements of the rule, meaning that it must provide the unaudited Statements of Operations and Changes in Net Assets, either through electronic or physical delivery, and either directly to all participants in the fund or through the relevant financial intermediaries (e.g., a broker, bank, trust or retirement plan) that sell the pool's shares and to the NFA within 90 calendar days of the permanent cessation of trading.^[5]

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endnotes

^[1] CFTC Letter No. 17-04 (Jan. 26, 2017), *available at* <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/17-04.pdf>.

^[2] See Regulation 4.22(c)(7).

^[3] See *Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators*, 78 Fed. Reg. 52308 (Aug. 22, 2013), *available at* <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-19894a.pdf> ("Harmonization Adopting Release").

^[4] Although the Harmonization Adopting Release stated that registered fund CPOs are still subject to the CPO annual report requirement under Regulation 4.22(c), it provided they may satisfy the requirement by "submit[ting] to NFA a copy of the annual financial statements the [registered fund] provides to the SEC." Harmonization Adopting Release, *supra* note 3, at 52331. The CFTC notes in the letter that, in the instance of the liquidation of the entire corporate entity that constitutes a registered fund, or the concurrent liquidation of all of the series of the fund, the filing of a Form N8-F under SEC rules with the SEC and with NFA will serve as substituted compliance with the registered fund CPO's obligation to satisfy the liquidation statement requirement under Regulation 4.22(c).

^[5] See Regulation 4.22(c)(7). The Division notes, however, that this timing requirement does not otherwise limit the CPO's ability to apply to NFA for relief for an extension of the filing period, if available. See Regulations 4.22(c)(7)(ii)(c) and 4.22(f)(1)(i).

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