

MEMO# 33563

June 2, 2021

ICI Staff Issues Updated FAQs on Form CPO-PQR

[33563]

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TO: ICI Members

Accounting/Treasurers Committee

Registered Fund CPO Advisory Committee SUBJECTS: Alternative Investments

Compliance

CPO/CTA

Derivatives

Fund Accounting & Financial Reporting

Investment Advisers RE: ICI Staff Issues Updated FAQs on Form CPO-PQR

On May 26, the Market Participants Division of the Commodity Futures Trading Commission (CFTC or "Commission") issued updated responses to frequently asked questions (FAQs) regarding CFTC Regulation 4.27 and CFTC Form CPO-PQR.[\[1\]](#) The FAQs are summarized briefly below.

Background

In October 2020, the CFTC approved a final rule to amend the reporting requirements for commodity pool operators (CPOs) on Form CPO-PQR.[\[2\]](#) Those amendments (i) eliminated the pool-specific reporting requirements in existing Schedules B and C of Form CPO-PQR, other than the Pool Schedule of Investments; (ii) amended 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 (iii) made certain other changes due to the rescission of Schedules B and C, including the elimination of all existing reporting thresholds. In the release adopting the amendments, the Commission stated that its staff planned to update its 2015 FAQs[\[3\]](#) on Form CPO-PQR to reflect the changes to the form.[\[4\]](#) The May FAQs are the culmination of that effort and supersede the FAQs that were issued in 2015.

Summary of FAQs

Many of the FAQs are substantially similar to the 2015 FAQs and have been updated in non-substantive ways to conform to amended Form CPO-PQR. The FAQ document is significantly shorter than the 2015 FAQ document, reflecting the rescission of Schedules B and C of

Form CPO-PQR, which made many of the previous FAQs no longer relevant.

We have highlighted below several FAQs that reflect the amendments to Form CPO-PQR:

General Filing Requirements

FAQ 1: This FAQ confirms that, if one or more of a CPO's pools cease operations on or before the end of a Reporting Period, the reporting CPO should exclude that pool from its Form CPO-PQR filing. The staff notes, however, that other compliance obligations may apply, depending on the facts and circumstances, such as filing a final annual report under CFTC regulations.

A registered CPO that did not operate a pool, or operated only pools for which the CPO is not required to be registered (e.g., pools operated in reliance on CFTC regulations 4.13(a)(3) or 4.5), generally is not required to complete and file Form CPO-PQR for that Reporting Period. A registered CPO that operates a pool that has not yet commenced operations is required to complete and file Part 1 of Form CPO-PQR, but is not required to complete and file Part 2 until trading has begun.

A registered CPO that did not operate any pools during the Reporting Period or operated only offshore pools in reliance on CFTC regulation 3.10(c)(5)(i) generally is not required to complete and file Form CPO-PQR.

FAQ 2: Similar to 2015 FAQ 2, the staff clarifies that, if a pool is operated by two or more CPOs during a Reporting Period, each co-CPO must file Part 1 of Form CPO-PQR, but only one of the co-CPOs must file Part 2 for the pool. Typically, the co-CPO that files Part 2 will be the CPO with the most knowledge of and access to the jointly operated pool's information and trading activities. That co-CPO should be the reporting CPO of the co-operated pool consistently going forward.

FAQ 3: The CFTC's amendments to regulation 4.27 provide that dually registered investment adviser (IA)-CPOs no longer may file Form PF in lieu of filing Form CPO-PQR. This FAQ confirms, however, that a CPO may prepare and file NFA Form PQR in lieu of Form CPO-PQR. Thus, a dually registered IA-CPO that is required to file Form PF may meet its filing obligation with the SEC, and with the CFTC and NFA, by completing and filing, respectively, Form PF with the SEC, and NFA Form PQR with NFA.

FAQ 4: This FAQ confirms that a CPO that operates a pool that invests in other pools must itemize and include those investments in the Pool Schedule of Investments in Question 11 of Form CPO-PQR. This includes investment in pools operated in reliance on the exemption under regulation 4.13(a)(3) or the exclusion under regulation 4.5. The staff clarifies that NFA Form PQR similarly requires a CPO to report "total net assets under management of all the commodity pools operated by the CPO as of the reporting date," including investment in excluded or exempt pools.

FAQ 5: This FAQ confirms that a registered CPO must file a Form CPO-PQR with respect to (i) offshore pools operated pursuant to CFTC Advisory 18-96;[\[5\]](#) or (ii) pools operated pursuant to the exemption provided by CFTC regulation 4.7. Importantly, the staff confirms that pools not requiring the CPO to be registered, such as those operated pursuant to CFTC regulations 3.10, 4.5, or 4.13, are generally excluded from the Form CPO-PQR reporting requirement.

FAQs on Specific Form CPO-PQR Requirements

FAQ 6: Unlike 2015 FAQ 9, which stated that all CPOs were required to use US generally accepted accounting principles (GAAP) in completing Form CPO-PQR, this FAQ, reflecting the CFTC's 2016 amendments to regulations 4.22 and 4.27, states that certain alternative accounting standards (including but not limited to International Financial Reporting Standards (IFRS)) may be used in completing the form if the reporting CPO meets the conditions in CFTC regulation 4.22(d)(2). The staff also notes that CPOs that qualify may be able to rely on staff no-action relief permitting the consolidation of pool financial statements, under certain circumstances, for purposes of a CPO's annual report and its Form CPO-PQR filings.[\[6\]](#)

FAQ 8: This FAQ confirms that, subject to certain exceptions, a reporting CPO may continue to disregard a pool's equity investments in other pools in completing Form CPO-PQR (e.g., for purposes of calculating "Total Assets Under Management" in question 2(a) and "Net Assets Under Management" in question 2(b)), provided it does so consistently. The reporting CPO must, however, include any such "disregarded assets" in its response to questions 8 ("Pool's Statement of Changes Concerning Assets Under Management") and, as noted above, 11 ("Pool Schedule of Investments").

FAQ 11: This FAQ confirms the position in 2015 FAQ 26 that, if a clearing FCM or prime broker performs both clearing and custodial services, then the reporting CPO may list the FCM or prime broker under question 5 of Form CPO-PQR as a broker of the pool, and not include that FCM or prime broker as a pool custodian in question 7. The reporting CPO must indicate under question 5 that the listed broker also performs custodial services for the pool. The FAQ also reiterates that a reporting CPO must provide all requested information about a pool's brokers and custodians. The FAQ adds that reporting CPOs must list all brokers and custodians employed by the CPO with respect to pool assets during the reporting period, regardless of the type of transaction involved.[\[7\]](#)

FAQ 12: This FAQ updates 2015 FAQ 31 to provide that, in reporting rates of return of a pool with more than one share class without a limitation of liability among the classes, the "preferred approach going forward" is for the reporting CPO to provide monthly rates of return on an aggregate basis across all share classes based on the net asset value of the pool. The staff notes that the monthly rates of return for series funds with no limitations on liability among series should also be calculated and reported on an aggregate basis.

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endnotes

[\[1\]](#) The updated FAQs are *available at* https://www.cftc.gov/media/5906/faq_CPO-PQR052621/download.

[\[2\]](#) For a summary of the amendments, *please see* ICI Memorandum No. 32880 (October 30, 2020), available at <https://www.ici.org/memo32881>.

[\[3\]](#) The 2015 FAQs are *available at* https://www.cftc.gov/idc/groups/public/@newsroom/documents/file/faq_cpocta110515.pdf.

[4] See Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 71772, 71782.

[5] CFTC Staff Advisory 18-96, *available at* <https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm>.

[6] See CFTC Staff Letter 13-51 (Sept. 5, 2013), *available at* <https://www.cftc.gov/csl/13-51/download/>; CFTC Staff Letter 14-112 (Sept. 8, 2014), *available at* <https://www.cftc.gov/csl/14-112/download/>.

[7] In amending Form CPO-PQR, 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.

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