

Investment Funds Alert

CFTC Adopts Complex New Reporting Regime

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On February 9, 2012, the Commodity Futures Trading Commission (CFTC) voted to approve several final changes to its regulations in order to increase its oversight of funds trading futures. Among other things, the final changes to the CFTC regulations will greatly expand the information that commodity pool operators (CPOs) and commodity trading advisors (CTAs) will be required to report through the National Futures Association (NFA) on Form CPO-PQR (for CPOs) or form CTA-PR (for CTAs). The type of information collected on the new Form CPO-PQR, is similar to information collected on Form PF, which was recently adopted by the Securities and Exchange Commission (SEC). The CFTC will permit filers to omit certain information if they also file Form PF. Portions of Form CPO-PQR will be exempted from disclosure to the public under CFTC regulations.¹

With the CFTC's recent rescission of the unlimited trading exemption under Regulation 4.13(a)(4) and its decision not to exempt registered CPOs benefiting from recordkeeping, reporting and disclosure relief under Regulation 4.7 from the requirement to file Form CPO-PQR or Form CTA-PR, most CPOs will be required to file Form CPO-PQR and most CTAs will be required to file Form CTA-PR when it is effective. The requirement to file the forms generally becomes effective on July 2, 2012, but this compliance date is subject to a phase-in. CPOs with more than \$5 billion in gross aggregated assets under their control (AUM)² attributable to commodity pools as of the last day of the fiscal quarter most recently completed prior to September 15, 2012, must file a Form CPO-PQR for the calendar quarter ending on or after September 15, 2012. All other CPOs and all CTAs must file a report relating to the period ending on or after December 15, 2012.

Reporting Requirements for CPOs and CTAs

All registered CPOs are required to file Form CPO-PQR, and all registered CTAs are required to file Form CTA-PR. As with the SEC's Form PF reporting regime, the amount of information collected from a CPO and the timing of the report vary with the CPO's AUM. Timing is advanced and information required is more extensive if the CPO's AUM equals or exceeds \$150 million or \$1.5 billion.

Form CPO-PQR

All CPOs are required to file a Form CPO-PQR, but the information required and timing for submission of the form will vary depending on the aggregate AUM of the CPO. A "Large CPO," i.e., a CPO with aggregate AUM of \$1.5 billion or more, must file a Form CPO-PQR within 60 days after each calendar quarter during which it satisfied the Large CPO threshold. All other CPOs must file the appropriate parts of Form CPO-PQR within 90 days after the end of the calendar year.

¹ Only portions of Schedule A of Form CPO-PQR are exempt from disclosure by the CFTC and the complete Schedules B and C are exempt from disclosure. Only portions of form CTA-PR are exempt from disclosure by the CFTC.

² Note that the CFTC definition of AUM does not match the definition of regulatory assets under management as defined by the SEC.



The information required by the form varies with the type of filer. All CPOs are required to file Schedule A. Large CPOs and CPOs with more than \$150 million in AUM but less than \$1.5 billion AUM (“Mid-Sized CPOs”) are required to file a separate Schedule B with respect to each pool operated during the relevant period. Large CPOs must file Part 1 of Schedule C and Large CPOs that operate commodity pools with a net asset value of \$500 million or more as of the close of business of the relevant period must complete Part 2 of Schedule C. Much of the information is duplicative of Form PF, so registered CPOs to private funds that file Form PF are not required to file schedules B or C of Form CPO-PQR.

Aggregation

A CPO will be required to aggregate its pools with similar commodity pools and similarly managed accounts that pursue the same investment objective to calculate whether a pool or an operator has satisfied the thresholds for filing or completing additional portions of Form CPO-PQR. For purposes of determining whether a CPO or a pool has satisfied any of the thresholds contemplated by Form CPO-PQR, the CPO will be required to aggregate the assets of the commodity pools it operates with (i) “parallel managed accounts” (other than accounts that exceed the size of the commodity pools on an individual or aggregate basis) operated by the CPO that pursue substantially the same investment objective and strategy and that invest in parallel in substantially the same positions,³ (ii) “parallel pools structures” operated by the CPO that pursue substantially the same investment objective and strategy and that invest side-by-side in substantially the same positions, (iii) parallel managed accounts and pools managed by the registered CPO’s affiliated entities⁴ and (iv) any commodity pools that are part of the same master-feeder arrangement.

For purposes of reporting and determining whether a threshold is satisfied, a CPO is required or permitted to disregard certain assets. First, a CPO that aggregates a master-feeder arrangement should disregard the investment by the feeder in the master to avoid double counting. Second, investments in other commodity pools may be disregarded. A CPO that disregards investments in other commodity pools must do so consistently, but must still include the performance of its investments in CPOs for the purpose of reporting its performance. A CPO to a commodity pool that invests all or substantially all of its assets in other commodity pools and otherwise holds only cash, cash equivalents or currency hedging instruments should be disregarded for reporting in Form CPO-PQR other than in Schedule A.⁵ Third, if a commodity pool is operated by more than one CPO, only one CPO must report for the entity.

Contents of the Form

Schedule A. Schedule A of Form CPO-PQR collects information regarding the CPO and each pool. Schedule A requests information that is similar to that requested in current Form PQR and the base information in Schedule 1 of Form PF, such as identifying information regarding the CPO and the pools it operates, information regarding material service provider relationships, AUM, rates of return, positions in various types of investments if the investments constitute 5 percent or more of the pool’s net asset value, performance information, redemptions and gates. All registered CPOs that are not Large CPOs must file Schedule A of the Form CPO-PQR annually, within 90 days after the close of each calendar year. A Large CPO must file Schedule A within 60 days after the close of each calendar quarter where at the close of business on any day during that calendar quarter it qualifies as a Large CPO.

Schedule B. A separate Schedule B of Form CPO-PQR is required for each commodity pool that a registered CPO operates that is not a private fund. Schedule B requires information regarding investment strategies, the portion of the pool managed by algorithms or using high frequency trading strategies, number and concentration of pool participants, pool borrowings and credit counterparty exposure, trading counterparty exposure to the commodity pool, the portion of

³ For determining whether a pool satisfies the criteria to be a Large Pool, a CPO should aggregate parallel managed accounts with the largest pool that is parallel to the commodity pool.

⁴ “Affiliated entity” means any entity that is directly or indirectly controlling, controlled by or under common control with the other entity.

⁵ Disregarded assets must be included in one specified question in Schedule A.

swaps traded through exchanges versus over-the-counter, information on trading and clearing mechanisms and a breakdown of the dollar value of the pool's investments in various classes of investment⁶ for the entire reporting period. Registered Mid-Sized CPOs are required to complete Schedule B annually within 90 days after the end of the calendar year in which they satisfied the definition of a Mid-Sized CPO. Large CPOs are required to complete Schedule B within 60 days after the end of the calendar quarter in which they satisfied the definition of a Large CPO.

Schedule C. In addition, Large CPOs are required to complete Schedule C within 60 days after the end of each calendar quarter. Part 1 of Schedule C requires certain aggregate information regarding geographic exposure and turnover frequency. If a Large CPO operates a pool with a net asset value, together with similar pools or managed accounts, of \$500 million or more, it also is required to complete Part 2 of Schedule C for each such pool, which would require pool-by-pool disclosure of the information in Part 1 of Schedule C, along with information regarding unencumbered cash, open positions, liquidity of assets, collateral posted, risk metrics,⁷ concentration of positions, collateral practices, financial information, borrowings information on a month-by-month basis, market value of the assets invested⁸ on a month-by-month basis and investor composition and liquidity.

Form CTA-PR

All CTAs registered or required to register with the CFTC are required to complete Form CTA-PR within 45 days after the end of the fiscal year, beginning with the first fiscal year ending after December 15, 2012. Entities registered as both CPOs and CTAs are required to complete Schedule A of Form CTA-PR in addition to completing the applicable schedules of Form CPO-PQR (and Form PF, if applicable). The CFTC did not adopt the proposed Schedule B to Form CTA-PR.

CFTC Proposed Rules for Harmonizing Reporting Requirements

The CFTC also proposed amendments to certain reporting, disclosure and recordkeeping rules to harmonize the obligations of registered investment companies that otherwise might be subject to duplicative, inconsistent and possibly conflicting requirements of the SEC under the Investment Company Act of 1940. The CFTC proposed to amend parts of Rule 4 and is also soliciting comments as to any other areas where harmonization may be needed.

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⁶ The form asks for separate disclosure of the amount invested on a long and a short basis and on the basis of positive and negative trade equity.

⁷ The risk metrics disclosure includes a sensitivity analysis on a long and short basis.

⁸ The form asks for separate disclosure of the amount invested on a long and a short basis but not on a trade-equity based basis.

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