

CLIENT ALERT

CFTC Proposes to Streamline Reporting Requirements for CPOs

JUNE 3, 2020

On April 14, 2020, the Commodity Futures Trading Commission (CFTC) unanimously approved a proposal to amend certain compliance requirements for commodity pool operators (CPOs) in Regulation 4.27 and Form CPO-PQR (the Proposal).¹ In general, the Proposal eliminates certain pool-specific reporting requirements in existing Schedules B and C of Form CPO-PQR and amends the information in existing Schedule A of the form to (i) request Legal Entity Identifiers (LEIs) for CPOs and their commodity pools, and (ii) eliminate questions regarding pool auditors and marketers. Further, the Proposal requires all CPOs (regardless of their size) to file the amended Form CPO-PQR on a quarterly basis, but would allow CPOs to file NFA Form PQR in lieu of the revised Form CPO-PQR. Conversely, the CFTC would no longer accept filing Form PF by dual registrants in lieu of the revised Form CPO-PQR.

Legislative Background

The Commodity Exchange Act (CEA) defines a CPO as any person engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, with respect to that commodity pool, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests.² The CEA requires each person who satisfies the CPO definition to register with the CFTC³ and file such reports in such form and manner as may be prescribed by the CFTC.⁴

The CFTC thus requires registered CPOs to periodically report certain information to the agency on Form CPO-PQR.⁵ The amount of information a CPO is currently required to disclose on Form CPO-PQR varies depending on the size of the operator and the size of the operated pools. The form identifies three classes of filers: Large CPOs,⁶ Mid-Sized CPOs,⁷ and Small CPOs.⁸ The reporting period for Large CPOs is any of the individual calendar quarters, while the reporting period for Small and Mid-Sized CPOs is the calendar year-end.⁹

Form CPO-PQR consists of three schedules: Schedules A, B, and C. Schedule A requires all CPOs to disclose basic identifying information about the CPO and each of the CPO's pools and the service providers they used. Schedule B requires additional detailed information for each pool operated by Mid-Sized and Large CPOs. Schedule C requires further detailed information about the pools operated by Large CPOs on an aggregate and pool-by-pool basis. If a

CPO is dually registered with the Securities and Exchange Commission (SEC) as an Investment Adviser to a private fund and is thus required to file Form PF, the CPO is deemed to have satisfied its Schedule B and C filing requirements by completing and filing certain questions in Form PF.^[10] Such dual registrants, however, must still file Schedule A of Form CPO-PQR with the CFTC.

In addition to Form PF and Form CPO-PQR, in 2010 the National Futures Association (NFA) implemented NFA Form PQR.^[11] Current NFA Form PQR is essentially identical to current Schedule A of Form CPO-PQR combined with the pool of investments question from Schedule B. However, all CPO NFA members, which include all CPOs registered with the CFTC, are required to file NFA Form PQR on a quarterly basis.^[12] NFA accepts the filing of Form CPO-PQR, but not Form PF, in lieu of filing its form for any quarter in which a Form CPO-PQR filing is required under CFTC Regulation 4.27.^[13]

As a result, Small and Mid-Sized CPOs are currently required to file (at least) Form CPO-PQR on an annual basis, and NFA Form PQR for every quarter other than the quarter ending December 31. Large CPOs are currently required to file (at least) Form CPO-PQR on a quarterly basis.

Dually registered Mid-Sized CPOs can currently either file Form PF (plus Schedule A of Form CPO-PQR) annually and NFA Form PQR every quarter, or file both Forms CPO-PQR and PF on an annual basis, and NFA Form PQR for every quarter other than the quarter ending December 31. Dually registered Large CPOs can currently either file Forms CPO-PQR and PF every quarter, or file Form PF (plus Schedule A of Form CPO-PQR) and NFA Form PQR for the quarters ending March 31, June 30, and September 30, and Form PF (plus a Schedule A of Form CPO-PQR) for the quarter ending December 31.

Proposed Amendments

A. Elimination of Pool-Specific Reporting Requirements in Schedules B and C

As indicated above, the Proposal would eliminate the pool-specific information currently required to be reported in Schedules B and C of Form CPO-PQR, with the exception of the pool schedule of investments.^[14] According to the CFTC, the agency originally believed the data in Schedules B and C would assist in monitoring commodity pool trends over time, including a pool's exposure to asset classes, the composition and liquidity of a commodity pool's portfolio, and a pool's susceptibility to failure in times of stress.^[15] However, after seven years of experience with Form CPO-PQR, the CFTC acknowledges that challenges with the data collected in Schedules B and C, combined with resource constraints in the face of broader CFTC priorities, have frustrated its ability to fully realize that vision.^[16]

More specifically, when Form CPO-PQR and Regulation 4.27 were adopted, the information available about the operations of CPOs and their operated pools was insufficient.^[17] However, in the years since the Dodd-Frank Act was passed, the CFTC has devoted significant resources to regulatory initiatives and data streams designed to enhance its ability to broadly surveil financial markets for risk posed by market participants, including CPOs and the pools they operate.^[18] These alternate data streams provide a more timely, standardized, and reliable view into relevant market activity than that provided under Form CPO-PQR, which makes them easier to combine into a holistic surveillance program.^[19] The CFTC believes that, taking into account its current priorities and resource availabilities, a revised Form CPO-PQR that could be more easily integrated with these existing and more-developed data streams would enable the CFTC, with some additional data analysis, to more effectively oversee and assess the impact of CPOs and their operated pools in the commodity interest markets.^[20]

B. Revised Form CPO-PQR

With the proposed elimination of the majority of the data fields in Schedules B and C of current Form CPO-PQR, the information in current Schedule A, as proposed to be amended, plus the schedule of investments from Schedule B would be combined to form the entirety of Form CPO-PQR (Revised Form CPO-PQR), which would be filed by all CPOs on a quarterly basis, regardless of AUM.^[21] As indicated above, the information required in current Schedule A

would remain with a few amendments, notably the addition of questions regarding LEIs and the elimination of questions regarding pool auditors and marketers.^[22]

According to the CFTC, the data currently collected in Form CPO-PQR cannot be easily aggregated with other data the CFTC collects, and as such, has not been integrated into the CFTC's market oversight function, which limits its utility to the CFTC.^[23] Correspondingly, the CFTC believes that knowing the LEI for each commodity pool (which is not currently requested by Form CPO-PQR) would enable the agency to more efficiently and accurately line up the data submitted in Form CPO-PQR with other data the CFTC has, including data reported to swap data repositories (SDRs).^[24] The CFTC also anticipates that the inclusion of LEIs would greatly facilitate the aggregation of data from commodity pools under different levels of common control.^[25]

However, in order to fully integrate the information reported in Revised Form CPO-PQR into the CFTC's ongoing oversight of the derivatives market and commodity pool industry, the CFTC believes that the reporting of this basic information on a more frequent (*i.e.*, quarterly) basis would be necessary.^[26] Therefore, the Proposal would require all CPOs to file the Revised Form CPO-PQR on a quarterly basis, instead of just those identified as Large CPOs.

The changes to Form CPO-PQR would also eliminate questions regarding the pool's auditors and marketers. According to the CFTC, the CFTC and NFA receive this information through other means, so they do not need CPOs to provide this information in Form CPO-PQR.^[27]

The pool schedule of investments, currently in Schedule B, provides a detailed breakdown of how a pool's investment are allocated by asset category. However, under current Form CPO-PQR, only Mid-Sized and Large CPOs are required to submit information in Schedule B, and Mid-Sized CPOs only submit it annually. The CFTC believes that obtaining a pool schedule of investments from all CPOs with respect to their operated pools on a regular, quarterly basis would assist the CFTC in understanding the composition of a pool's portfolio with a limited, if any, increase in their filing burden, as NFA Form PQR currently requires all CPOs regardless of size to file a pool schedule of investments each quarter.^[28] Therefore, the Proposal would require all CPOs, instead of just those identified as Mid-Sized and Large CPOs, to submit a pool schedule of investments in Revised Form CPO-PQR on a quarterly basis.

C. NFA Form PQR

The CFTC stated that it understands that NFA has plans to include questions regarding LEIs in NFA Form PQR.^[29] If Revised Form CPO-PQR is adopted as proposed, and NFA's amendments to include LEIs are also finalized, the CFTC would permit a CPO to file NFA Form PQR in lieu of Revised Form CPO-PQR.^[30]

Conversely, the CFTC is proposing to revise Regulation 4.27(d) to eliminate dually registered CPOs' ability to file Form PF in lieu of filing current Form CPO-PQR.^[31] The CFTC believes that this provision would be redundant in light of the proposed provision to accept NFA Form PQR and would frustrate an intended purpose of the Proposal, which is to allow the CFTC to enhance its use of its own internal data streams to effectuate an efficient and effective oversight program of CPOs and their operated pools, given that Revised Form CPO-PQR would no longer be closely aligned in content or filing frequency with Form PF.^[32]

Comments on the Proposal are due on June 15, 2020.

Public comments can be submitted and viewed on the CFTC website.^[33] More information about the Proposal may be found in the CFTC Fact Sheet^[34] and the CFTC press release.^[35]

^[22] For the full text of the Proposal, see Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 26378 (May 4, 2020) (hereinafter Form CPO-PQR Amendments).

^[23] 7 U.S.C. 1a(11).

^[24] 7 U.S.C. 6m(1).

^[4] 7 U.S.C. 6n(3)(A).

^[5] See 17 C.F.R. § 4.27; *see also* Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (Feb. 24, 2012).

^[6] A Large CPO is a CPO that had at least \$1.5 billion in assets under management (AUM) as of the close of business on any day during the reporting period. Instructions for Using the Form CPO-PQR Template are *available* [here](#)

^[7] A Mid-Sized CPO is a CPO that had at least \$150 million, but less than \$1.5 billion, in AUM as of the close of business on any day during the reporting period. *Id.*

^[8] A Small CPO is a CPO that had less than \$150 million in AUM during the entire reporting period. *Id.*

^[9] *Id.*

^[10] 17 CFR § 4.27(d).

^[11] NFA Rule 2-46 (2010).

^[12] *See id.*

^[13] *See id.*

^[14] Form CPO-PQR Amendments, 85 Fed. Reg. at 26378.

^[15] Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 Fed. Reg. 7976, 7981 (Feb. 11, 2011) (hereinafter Original CPO Proposal).

^[16] *See* Form CPO-PQR Amendments, 85 Fed. Reg. at 26381.

^[17] *See* Original CPO Proposal, 76 Fed. Reg. at 7978.

^[18] Form CPO-PQR Amendments, 85 Fed. Reg. at 26381.

^[19] *Id.* at 26382.

^[20] *Id.*

^[21] *Id.* at 26381.

^[22] *Id.* at 26378.

^[23] *Id.* at 26383.

^[24] *Id.*

^[25] *Id.*

^[26] *Id.*

^[27] *Id.*

^[28] *Id.*

^[29] *Id.*

^[30] *Id.*

^[31] *Id.*

^[32] *Id.* However, dually registered CPOs and commodity trading advisors will continue to be required to file Form PF with the SEC.

^[33] Comments may be viewed and submitted online [here](#)

^[34] Available [here](#)

^[35] Available [here](#)

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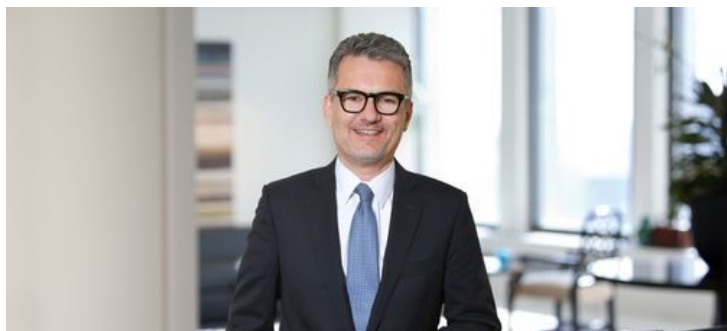
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