YOU ASKED THEY ANSWERED: THE CFTC PUBLISHES UPDATED FAQ FOR FORM CPO-PQR

Date: 8 June 2021

U.S. Asset Management and Investment Funds Alert

INTRODUCTION

On 26 May 2021, the Commodity Futures Trading Commission's (CFTC or the Commission) Market Participants Division (MPD) published updated responses to frequently asked questions regarding Form CPO-PQR and CFTC Regulation 4.27 (the 2021 FAQ). The purpose of the 2021 FAQ is to provide guidance to commodity pool operators (CPOs) filing the recently revised Form CPO-PQR.[1]

FORM CPO-PQR AND CFTC REGULATION 4.27

Form CPO-PQR is a filing designed to collect data from registered CPOs[2] about each of their operated commodity pools. CFTC Regulation 4.27 requires that CPOs file Form CPO-PQR with the National Futures Association (NFA).[3] The Commission began requiring CPOs to file Form CPO-PQR in 2012.[4]

On 6 October 2020, the Commission adopted a final rule that amended CFTC Regulation 4.27 and Form CPO-PQR (the 2020 Final Rule).[5] Specifically, the 2020 Final Rule eliminated previously-existing Schedules B and C of Form CPO-PQR, except for the Pool Schedule of Investments; amended the information requirements of Schedule A of Form CPO-PQR; required all reporting CPOs to submit Form CPO-PQR every quarter; allowed CPOs to substitute compliance with the NFA's Form PQR; and eliminated the option to substitute compliance through Joint Form PF.[6]

KEY CLARIFICATIONS FROM FAQS

The 2021 FAQ answers several questions specific to the changes made by the 2020 Final Rule. Further, the 2021 FAQ updates previous, outdated responses provided in an FAQ released by the CFTC Division of Swap Dealer and Intermediary Oversight on 5 November 2015. We discuss certain notable clarifications or guidance below.

The 2021 FAQ clarifies that if one or more of a CPO's pools cease operations on or before the end of a Reporting Period (the date upon which Form CPO-PQR filing requirements become determinable or “attach”), the reporting CPO should exclude the ceased pool from its Form CPO-PQR filing because the pool would no longer have “directed assets…under the advisement of the CPO,” as required by 17 CFR 4.27(c)(1).[7] However, other compliance obligations, such as the final Annual Report, may still apply.

According to the 2021 FAQ, pools that invest in other pools, including those that are exempt under 17 CFR 4.13(a)(3), as well as pools excluded from the CPO definition under 17 CFR 4.5, must still be itemized and

©2005-2026 K&L Gates LLP. All Rights Reserved.

included in the Pool Schedule of Investments.[8] Further, a reporting CPO is required to include pools operated pursuant to CFTC Advisory 18-96[9] or an exemption under 17 CFR 4.7 in its Form CPO-PQR.[10]

The 2021 FAQ states that the Commission's preferred approach for reporting the rates of return of a pool with more than one share class without a limitation of liability among the classes is reporting the monthly rates of return on an aggregate basis across all share classes based on the net asset value of the pool.[11]

Lastly, the 2021 FAQ states that dually-registered investment advisers and CPOs (IA-CPOs) are no longer permitted to file the SEC's Form PF in lieu of the CFTC's Form CPO-PQR.

PRACTICAL CONSIDERATIONS

- Since IA-CPOs are no longer permitted to file the Securities and Exchange Commission's (the SEC) Form PF in lieu of Form CPO-PQR, some market participants, will need to amend their compliance and operational procedures, which may result in an additional compliance burden every quarter.
- Form CPO-PQR applies to registered CPOs. Nevertheless, data pertaining to exempt commodity pools is also required to be reported under some circumstances.
- In addition to the 2021 FAQ, NFA Members should carefully review the instructions and guidance contained in the NFA FAQs prior to filing Form PQR.[12] As a reminder, NFA Members must file Form PQR with the NFA.

CONCLUSION

K&L Gates' global futures and derivatives team will continue to monitor these developments as well as future developments related to the CFTC and the global derivatives regulatory agenda. Please feel free to contact us if you have any questions regarding the 2021 FAQ.

FOOTNOTES

[1] The 2021 FAQ can be found here.

[2] The Commodity Exchange Act defines a CPO, in essence, 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. *See* 7 U.S.C. § 1a(11)(A)(i).

[3] 17 CFR § 4.27(c)(1).

[4] See Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (Feb. 24, 2012).

[5] *See* Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 71772 (Nov. 10, 2020).

©2005-2026 K&L Gates LLP. All Rights Reserved.

[6] *See id.*

[7] *See* the response to Question 1 in the 2021 FAQ.

[8] *See* the response to Question 4 in the 2021 FAQ.

[9] CFTC Advisory 18-96 provides certain CPOs who operate offshore commodity pools relief from certain disclosure, reporting and recordkeeping requirements as well as the location of books and records requirement, provided that certain conditions are met.

[10] *See* the response to Question 5 in the 2021 FAQ.

[11] *See* the response to Question 14 in the 2021 FAQ.

[12] *See* NFA FAQs for CPO Form PQR available here.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.