

# Client Update

## CFTC Responds to Frequently Asked Questions Regarding Forms CPO-PQR and CTA-PR

### NEW YORK

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Recently, the Commodity Futures Trading Commission (“CFTC”) Division of Swap Dealer and Intermediary Oversight (“DSIO”) issued responses to frequently asked questions regarding compliance with CFTC Form CPO-PQR and Form CTA-PR (the “FAQ”).<sup>1</sup>

The topics addressed by the FAQ include Form CPO-PQR filing requirements, reporting thresholds, and guidance on completing the schedules, as well as Form CTA-PR filing requirements and guidance. Notable issues, clarifications, and confirmations raised by the DSIO are detailed below.

### FORM CPO-PQR FILING REQUIREMENTS

#### Who Must File

All commodity pool operators (“CPOs”) that, during any given Reporting Period,<sup>2</sup> operate at least one pool for which they must be registered are required to complete and file a Form CPO-PQR. CPOs that are registered but do not operate a pool, or that operate only exempt pools, during the Reporting Period do not need to file a Form CPO-PQR for that Reporting Period.

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<sup>1</sup> Available at : <http://www.cftc.gov/PressRoom/PressReleases/pr7273-15>

<sup>2</sup> Reporting Periods are defined as (i) a calendar quarter for CPOs with at least \$1 billion in aggregated pool assets under management (“Large CPOs”), or (ii) a calendar year for (a) CPOs with at least \$150 million in aggregated pool assets under management (“Mid-Sized CPOs”) or (b) CPOs with less than \$150 million in aggregated pool assets under management (“Small CPOs”), in each case measured as of the close of business on any day during such Reporting Period.

### **Non-Public Information**

The DSIO confirms, as per the CFTC's Final Rules adopting Form CPO-PQR,<sup>3</sup> that responses to the following sections are designated non-public information and will not be released under the Freedom of Information Act ("FOIA"): (i) Schedule A, Questions 2(b), 3(g), 3(h), 9, 10(b), 10(c), 10(d), 11, and 12; (ii) Schedule B, and (iii) Schedule C. NFA Form PQR filings are not subject to FOIA requests.

### **Pools Operated by Two or More CPOs**

Where two or more CPOs operate a pool as "Co-CPOs," each will be required to at least partially complete a Form CPO-PQR. Specifically, the Co-CPO with the highest aggregated pool assets under management across all pools operated by the Co-CPOs ("AUM") must complete the entire Form CPO-PQR for the relevant pools, and the other Co-CPOs need only complete Part 1 of Schedule A of Form CPO-PQR, which requests high-level information about the CPO and its assets under management.

### **CPOs That Are Also Registered Investment Advisors**

Where a Co-CPO is an investment advisor ("Investment Advisor") registered with the Securities and Exchange Commission ("SEC"), the non-Investment Advisor with the highest AUM must complete the entire Form CPO-PQR, even if a Form PF was filed for that pool by the Investment Advisor Co-CPO.

CPOs that are also Investment Advisors that file a Form PF with the SEC are only required to file Schedule A of Form CPO-PQR, but are not excused from filing the National Futures Association's ("NFA") Form PQR, which requests high-level information about the CPO and a schedule of investments.

Large CPOs that are also Investment Advisors that file a Form PF with the SEC need only file Schedule A of Form CPO-PQR on an annual basis rather than a quarterly basis, but must still comply with NFA Form PQR.

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<sup>3</sup> Available at: 77 FR 11252 at 11271 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

## FORM CPO-PQR REPORTING THRESHOLDS AND QUESTIONS

### Reporting Instruction #3: Aggregate Information Concerning Certain Types of Pools.

For purposes of determining whether a CPO meets the reporting thresholds for Schedule B and/or C of Form CPO-PQR, a CPO should include all Parallel Managed Accounts<sup>4</sup> when calculating whether it meets a reporting threshold. DSIO notes that unlike Form PF, Form CPO-PQR does not limit Parallel Managed Accounts to “Dependent Parallel Managed Accounts.”<sup>5</sup>

For Form CPO-PQR reporting purposes, investments in Parallel Managed Accounts should be aggregated with the pool with the largest AUM to which the Parallel Managed Accounts relate. (A CPO that is reporting on a pool which is part of a Master-Feeder Arrangement<sup>6</sup> should report on such pool in accordance with the fund-of-funds requirements contained in Instruction #4 to Form CPO-PQR.)

Pools in a Parallel Pool Structure<sup>7</sup> must be reported separately, and not aggregated; the aggregation of Parallel Pool Structures, Parallel Managed Accounts, and Master Feeder Arrangements that is described in Instruction #3 is only for the purpose of determining reporting thresholds.

DSIO clarifies that, as used in Form CPO-PQR the term (i) “Parallel Pool” should be read to mean “Parallel Pool Structure,” and (ii) “dependent parallel managed account” should be read to mean “parallel managed account.”

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<sup>4</sup> Parallel Managed Accounts are defined by Form CPO-PQR as any managed account or other pool of assets that the CPO operates and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same assets as the identified pool.

<sup>5</sup> Dependent Parallel Managed Accounts are defined by Form PF as, with respect to any private fund, any related parallel managed account other than a parallel managed account that individually (or together with other parallel managed accounts that pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions) has a gross asset value greater than the gross asset value of such private fund (or, if such private fund is a parallel fund, the gross asset value of the parallel fund structure of which it is a part).

<sup>6</sup> Master-Feeder Arrangements are defined by Form CPO-PQR as an arrangement in which one or more funds (or multiple classes or series of shares or interests) invest all or substantially all of their assets (or shares or interests) in a single fund.

<sup>7</sup> Defined by Form CPO-PQR as any structure in which one or more pools pursues substantially the same investment objective and strategy and invests side by side in substantially the same assets as another pool.

### Other Reporting Questions

All CPOs are required to use U.S. generally accepted accounting principles in completing Form CPO-PQR.

A CPO that operates pools that are exempt under CFTC Regulation 4.13(a)(3) (the “De Minimis Rule”) must exclude such exempt pools from the Form CPO-PQR Schedule A, B, and C reporting requirements and for purposes of asset threshold determinations. The same is true for pools operated pursuant to CFTC Regulation 4.5. Note, however, that all pools operated by a CPO must be included on the NFA Form PQR.

A registered CPO that operates offshore pools that are exempt pursuant to CFTC Advisory 18-96,<sup>8</sup> is required to file a Form CPO-PQR, as well as a quarterly NFA Form PQR, for such offshore pools.

### FORM CPO-PQR CPO COVER PAGE

When responding to Item 0155 (“What was your highest total aggregated pools AUM during the reporting period”), the DSIO notes that pools operated pursuant to CFTC Regulations 4.5 or the De Minimis Rule should not be included in determining the amount of such AUM. Similarly, to the extent that Parallel Pool Structures, Parallel Managed Accounts and Master Feeder Arrangements are operated pursuant to CFTC Regulation 4.5 or the De Minimis Rule, such structures, accounts or arrangements are not required to be aggregated for purposes of asset threshold determinations.

When responding to Question 10 (“Pool’s Statement of Changes Concerning AUM”), the DSIO advises that if there is a circumstance where Parallel Managed Accounts are aggregated with the larger of two pools for purposes of completing the schedules of changes in AUM, but the largest related pool changes during the current quarter, such change should be reported by aggregating the Parallel Managed Accounts with the new larger pool, and subtracting the Parallel Managed Accounts from the previously largest pool such that the small pool no longer reflects the aggregation of the Parallel Managed Accounts in the Beginning AUM (Box 360) and Beginning NAV (Box 370).

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<sup>8</sup> CFTC Advisory 18-96 provides relief for certain registered CPOs from disclosure, reporting and certain recordkeeping requirements in connection with the operation of offshore commodity pools. See <http://www.cftc.gov/tm/advisory18-96.htm>

## FORM CPO-PQR SCHEDULE A

Where each series of a multi-series pool has its own set of financial statements, and there is no cross liability (e.g., a limited liability partnership or equivalent structure), it is acceptable for the CPO to report each series as a separate pool on the Form CPO-PQR (even though the CPO may maintain only one disclosure document for all of the series).

If a CPO uses the services of a third-party commodity trading advisor (“CTA”) to manage any portion of the assets of one of its operated pools, and the CPO of the pool reports on the entirety of the assets of the advised pool, the CPO does not have to include the assets of that pool that are managed by the CTA as a Parallel Managed Account or a Parallel Pool Structure on Form CPO-PQR. The CTA, however, would report the portion of the pool assets it directs as a managed account on its Form CTA-PR in Box 0015 (“Total Assets Directed by the CTA”).

In response to a question regarding selectively reporting investment strategy performance and risk, DSIO advises that if a pool has multiple classes that are each engaged in differing trading strategies, *and a participant in the pool cannot participate in each of the classes*, then the performance and risk should be reported for each of the participant classes. Otherwise (e.g., where a pool has multiple participant classes with differing investment strategies and all of the participants invest in the various strategies), the performance of the pool as a whole may be reported.

DSIO notes that there is currently no method for a CPO to submit the assumptions made in its Form CPO-PQR responses, and that CPOs are advised to maintain such documentation in their files.

If, as per Instruction #4, a CPO disregards a pool’s fund-of-funds assets when calculating responses to Schedule A, questions (2)(a) (“Total Assets Under Management”) and question 2(b) (“Net Assets Under Management”), the CPO must do so consistently through the filing with the exception of Schedule A, question 10 (“Pool’s Statement of Changes Concerning Assets Under Management”), in which case such equity investments must be included.

Regarding Schedule A, question 7 (“Pool Custodians”), the FAQ includes a question whether a CPO should list clearing FCMs and prime brokers, or only custodians that provide pure custody services. The DSIO responds that if a clearing FCM or prime broker performs both clearing and custodial services, then it is permissible to list the FCM or prime broker under question 5 of Schedule A as a broker of the pool and not to include the broker under question 7

as a pool custodian. The CPO, however, must indicate under question 5 of Schedule A that the broker also performs custodial services for the pool. Furthermore, a CPO must provide all requested information regarding a pool's brokers and custodians including the NFA ID of the broker/custodian, the start date of the relationship, and the address and phone number of the broker/custodian. Once the information has been reported in Schedule A, it will continue to be included in Schedule A until such time as the CPO ends or changes the relationships on the Form.

Regarding Schedule A, question 9 ("Pool Marketers"), the DSIO notes that the term "Pool Marketers" includes any entities that are soliciting on behalf of the pool (e.g., third-party solicitors and/or registered broker-dealers that act as placement or selling agents for the pool). However, such term does not include the CPO if the pool is self-marketed. In addition, the DSIO notes that a CPO responding to this question must include all of the underwriters involved in marketing the Pool, and that once the relationships have been reported by the CPO, the relationships will continue to be included until the relationships are ended by entering end dates.

Regarding Schedule A, question 11 ("Pool's Monthly Rates of Return"), the DSIO confirms that when completing the Form CPO-PQR for the first time, the CPO will be required to enter the pool's monthly rates of return for the last 7 years or the life of the pool if less than 7 years. Such information will be maintained in Schedule A from filing to filing and the CPO will not need to re-enter the information each time it updates the rates of return. The CPO will be required to quarterly enter the rates of return for the three months covering the Reporting Period; rates of return for pools filed in previous disclosure documents will also be carried over to the filing. Note that Form CPO-PQR requires the calculation and entry of monthly rates of return irrespective of when the pool customarily calculates its rates of return for other purposes.

#### **FORM CPO-PQR SCHEDULE B**

Regarding Schedule B, question 3(d) ("Pool Counterparty Credit Exposure"), the DSIO notes that the term "greatest net counterparty exposure" as used in question 3(d) is a measurement of the pool's counterparty exposure relative to the pool's investments in unregulated third parties. However, the term "greatest net counterparty exposure" does not include a feeder fund's investment in a master fund, even if that master fund is itself an otherwise unregulated entity. DSIO also indicates that a CPO must leave Boxes 6127 through 6143 blank for a pool if the pool does not have any counterparty exposure to unregulated entities.

Regarding Schedule B, question 6 (“Pool Schedule of Investments”), the DSIO confirms that the value reported for derivatives (other than options) should be the positive and/or negative open trade equity and the value reported for options should be the marked to market long or short option value.

For the above purposes, positive open trade equity means the amount of unrealized gains on open derivative positions and negative open trade equity means the amount of unrealized losses on open derivative positions. DSIO also notes that a warrant on a security should generally be treated as an option and reported in Box 6507 or 6508 of Schedule B and spot currency transactions should be reported as “Forex” under the “Alternative Investments” heading. Where investments could potentially be classified into more than one category or sub-category, the CPO must make a reasonable determination regarding the categorization of the pool’s investments and must be consistent across Reporting Periods.

If a CPO of a feeder fund places funds with a master fund and the operator of the master fund is exempt from filing a Form CPO-PQR, the CPO must report the investment in Box 6563 of Schedule B if the master fund is a fund listed with the NFA. If the master fund is not listed with the NFA, then the CPO must report the investment in the most appropriate fund classification in Boxes 6559 through 6570 of Schedule B.

DSIO recommends that each CPO and CTA keep internal notes and explanations about the assumptions on which it based its answers with respect to the Form. In particular, if a CPO determines that information reported on prior filings of Form CPO-PQR (and/or the NFA Form PQR) is incorrect based on CFTC and/or NFA guidance published after such filing was due, such CPO should keep internal notes and explanations about such assumptions to provide, upon request, during an examination.

### FORM CPO-PQR SCHEDULE C

Regarding Schedule C, Part 2, question 4(d) (“Large Pool Risk Metrics”), the DSIO advises that a CPO may respond based on the methodology it uses to stress test the pool for internal risk management purposes, provided such methodology is reasonable and documented.

In addition, the DSIO indicates that the definitions of long and short components in question 4(d) should be read such that (1) the long component represents the aggregate result of all positions whose valuation changes in the same direction as the market factor under a given stress scenario and (2) the

short component represents the aggregate result of all positions whose valuation changes in the opposite direction from the market factor under a given stress scenario.

### FORM CTA-PR FILING REQUIREMENTS

All CTAs registered or required to be registered are required to file a Form CTA-PR annually, within 45 days of the end of the December 31 reporting period, unless such CTA does not direct client commodity interest accounts.<sup>9</sup> In addition, the DSIO notes that under NFA Compliance Rule 2-46, NFA Member CTAs are required to file quarterly reports (NFA Form CTA-PR) within 45 days of the calendar quarter end. Failure to timely file a Form CTA-PR could subject a CTA to disciplinary action.

The DSIO confirms that a sub-advisor to an advisor, both of which are registered CTAs, each need to report separately on Form CTA-PR; the sub-advisor would report on the total assets it has been allocated to direct, and would be required to disclose any relationship it has with the pools for which it has been allocated funds.

Consistent with Form CPO-PQR, Question 2(c) and 2(d) of Form CTA-PR are designated nonpublic information and will not be released under FOIA; NFA Form CTA-PR filings are not subject to FOIA requests.

### FORM CTA-PR QUESTION 1

Regarding CTA-PR, question 1(d) ("Total Number of Trading Programs," Box 0013), the DSIO notes that the number entered in Box 0013 should include all trading programs that the CTA offers in advising managed accounts, including those programs that are devoted to advising pools that they operate as a CPO and pool assets the CTA directs as a managed account for a third-party CPO. A CTA can exclude trading programs for which the CTA is not required to be registered (e.g., where the CTA directs the assets of a pool that falls under the De Minimis Rule, and for which such CTA claims an exemption under CFTC Regulation 4.14(a)(8), the trading program utilized to direct such pool would not be included in Box 0013).

### FORM CTA-PR QUESTION 2

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<sup>9</sup> Such CTAs are exempt from filing Form CTA-PR under CFTC Staff Letter 15-47 (July 21, 2015).



The DSIO confirms that offshore pools that are not exempt or excluded pools should be treated as managed accounts when reporting on Form CTA-PR. If a CTA is registered, it is not considered to be exempt with respect to these pools.

Regarding question 2a (“Total Assets Directed by CTA,” Box 0015), the DSIO notes that the assets of any pools operated by a firm registered as a CPO should not be included in Box 0015. The CTA should also exclude any pool assets for exempt or excluded pools that it operates as an exempt CPO. However, pool assets should be included in Box 0015 for pools that the CTA does not operate as a CPO and for which the CPO must be registered (*i.e.*, CFTC Regulation 4.7, Advisory 18-96 and CFTD Regulation 4.12 exempt pools).

If the only pool assets that a CTA directs as a CTA are those of pools for which the CTA is also the CPO, the CTA should not report the pools’ assets in questions 2a or 2b, and the CTA should not list the pools’ names in question 2c. In addition, the CTA of a feeder fund should disregard that feeder fund’s investment in a master fund for purposes of reporting total assets directed by the CTA in question 2a.

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Please do not hesitate to contact us with any questions.