

CPO ALERT: CFTC ADOPTS AMENDMENTS TO REGULATIONS GOVERNING PERIODIC AND ANNUAL FINANCIAL REPORTS

The Commodity Futures Trading Commission has adopted amendments to its rules governing periodic account statements and annual reports provided by commodity pool operators. The amendments revise certain sections of CFTC Rules 4.7, 4.13 and 4.22 and are effective December 9, 2009. The amendments related to annual reports will be applicable for fiscal years ending on or after December 31, 2009.

Non-unitized 4.7 Pools. Periodic account statements for non-unitized pools operated pursuant to CFTC Rule 4.7 will be required to include the total value of a participant's interest in the pool. The CFTC wishes to ensure that investors receive sufficient information to determine the value of their investments from the information in the account statement. An individual investor's account value in a non-unitized pool is not apparent in an account statement that presents only the performance of the pool as a whole. Individualized information is currently required in annual reports for non-unitized 4.7 funds. Account statements and annual reports for unitized pools are currently required to include net asset value per unit.

Multiple Series Pools. Generally, periodic account statements and annual reports for pools with multiple series or classes of ownership interest must present the performance of the particular series or class being reported as well as the fund as a whole. If, however, the pool is structured to insulate each series from the liabilities of the pool's other series, the separate series need not be consolidated.

Fund of Funds Annual Reports. The number of days that a commodity pool operator ("CPO") has to distribute and file an annual report for a fund of funds has been increased to 180 days. Amended Rule 4.22(f)(2) will permit a CPO to claim an automatic extension of 90 days, rather than 60 days, to distribute the pool's annual report to investors and file it with NFA. In addition, CPOs of 4.7 funds of funds whose annual reports are not audited will be permitted to avail themselves of the extended annual report due date.

Liquidating Pools. The final financial report for a liquidating pool must be provided to investors (and filed with NFA) within 90 days of the cessation of trading, and, in the event a final distribution of funds has not been completed within that 90-day period, the CPO must also provide notice and information to NFA and pool participants concerning the ultimate distribution of pool assets. In addition, the final financial report need not be audited if the CPO obtains the consent of all investors and files a certification to that effect with NFA.

Profit Allocations. Incentive or profit share allocations to a pool's general partner or special limited partner are required to be separately itemized in the pool's statements of income and partner's equity pursuant to CFTC Interpretative Letter No. 94-3. The substantive provisions of that interpretative letter are now included in CFTC Rule 4.22(e)(2).

IFRS. CPOs operating pools organized under foreign jurisdictions will be permitted to prepare financial statements for such pools in accordance with International Financial Reporting Standards in lieu of U.S. Generally Accepted Accounting Principles. CPOs wishing to employ IFRS will be required to file a notice containing certain representations with NFA within 90 days of the pool's fiscal year end.

4.13 Funds. Annual reports distributed for 4.13(a)(3) and 4.13(a)(4) pools will no longer be required to be prepared in accordance with U.S. GAAP.

Miscellaneous Changes. The amendments include various other changes including updated references to certain financial schedules to correspond to current U.S. GAAP.

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