

CFTC's Market Participants Division Issues Updated Responses to Form CPO-PQR FAQs What's New in the New FAQs?

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I. Introduction and Executive Summary

On May 26, 2021, the Market Participants Division (“**MPD**”) of the Commodity Futures Trading Commission (“**CFTC**”) published updated responses to frequently asked questions (“**revised FAQs**”) about Form CPO-PQR and Rule 4.27, the related filing rule, which replace and supersede the FAQs about Form CPO-PQR and Rule 4.27 published in 2015 (“**original FAQs**”).¹ The revised FAQs reflect amendments to Form CPO-PQR and Rule 4.27 adopted in October 2020, which substantially reduced and simplified Form CPO-PQR filing requirements (the “**2020 Amendments**”) by, among other things, removing all of the original FAQs pertaining to portions of Form CPO-PQR that were deleted by the 2020 Amendments.²

The revised FAQs are intended to provide guidance to commodity pool operators (“**CPOs**”) with respect to their filing obligations under amended Form CPO-PQR and Rule 4.27. While they include staff recommendations, the revised FAQs are not intended to create new regulations or compliance requirements or amend existing ones, and they reflect MPD staff views and positions only, not those of the Commission or any other CFTC office or division.

Highlights of What's New

While most of the guidance in the revised FAQs reflects changes adopted in the 2020 Amendments and other CFTC rulemakings that post-date the original FAQs, and thus is neither

¹ Press Release No. 8390-21, CFTC, CFTC's Market Participants Division Publishes Updated Responses to FAQs Regarding Commission Regulation 4.27 and CFTC Form CPO-PQR (May 26, 2021), <https://www.cftc.gov/PressRoom/PressReleases/8390-21>; *see also* Press Release No. 7273-15, CFTC, CFTC Staff Publishes Responses to Frequently Asked Questions Regarding Commission Forms CPO-PQR and CTA-PR (Nov. 5, 2015), <https://www.cftc.gov/PressRoom/PressReleases/7273-15>.

² *See* Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 71,772 (Nov. 10, 2020), <https://www.federalregister.gov/d/2020-22874> (“**Adopting Release**”). Among other things, the 2020 Amendments eliminated large portions of the former Form, including all of Schedule B other than the Portfolio Schedule of Investments, all of Schedule C, and parts of Schedule A, as well as the differential filing requirements based on CPO size thresholds and related form instructions. As a result, the revised FAQs are significantly shorter than the original FAQs. For a more in-depth discussion of the 2020 Amendments, *see* our earlier Client Alert, Stradley Ronon Client Alert, The CFTC's New and Improved Form CPO-PQR: Navigating the Revised Form and Filing Landscape (Dec. 14, 2020), <https://www.stradley.com/-/media/files/publications/2020/12/imgclientalertdecember142020footnotes.pdf>

new nor surprising, the responses make a number of points worth considering, including some helpful clarifications (relative to the Form and Instructions), as well as adjustments to guidance provided previously. As discussed further in Part II of this Client Alert, the revised FAQs, among other things:

- Confirm the general principles that (1) the Form CPO-PQR filing requirements apply only to CPOs that operate pools for which they are required to be registered (“**Pools**,” sometimes referred to as “**listed Pools**”), and not to pools for which the CPO is exempt from registration or excluded from the definition of CPO (“**exempt or excluded pools**”), and (2) for registered CPOs that operate both listed Pools and exempt or excluded pools, only listed Pools must be reported on Form CPO-PQR;³
- Incorporate the impact of new Rule 3.10(c)(5), adopted subsequent to the 2020 Amendments, which creates an express pool-by-pool exemption for offshore pools meeting certain criteria, pursuant to which such pools are treated as exempt pools for Form CPO-PQR reporting purposes;⁴
- Address the treatment of Pools that have ceased operations or are newly formed during the relevant **Reporting Period** (which is now each calendar quarter for all reporting CPOs);⁵
- Provide additional guidance or clarity relative to certain Form Instructions, such as for Co-CPOs, funds of funds, master-feeder arrangements, consolidation of subsidiaries, and use of alternative accounting standards;
- State that, going forward, reporting aggregate monthly performance for funds with multiple share classes or series that do not limit cross liability is the preferred approach, instead of only permissible, as provided in the original FAQs;
- Provide guidance as to the date on which Form CPO-PQR filing requirements are determined (generally the **Reporting Date**, which is the last day of the relevant Reporting Period); and
- Address certain matters specific to reporting and other requirements imposed by the National Futures Association (“**NFA**”).

What’s Missing

Practitioners familiar with the original FAQs and their history may also notice that certain matters are not addressed or referred to in the revised FAQs. These include:

³ For a discussion of the term “listed Pools” see Interpretive Note (2) under “Guidance on General Filing Requirements - Who Must File Form CPO-PQR - General Principle.”

⁴ See Exemption from Registration for Certain Foreign Intermediaries, 85 Fed. Reg. 78,718 (Dec. 7, 2020), <https://www.federalregister.gov/d/2020-23810>.

⁵ See Form CPO-PQR, Definitions, *Reporting Period* (Reporting Period means any of the individual calendar quarters (ending March 31, June 30, Sept. 30, and Dec. 31) for all CPOs).

- Form CTA-PR FAQs issued in 2015 together with the original Form CPO-PQR FAQs, and for which some of the revised FAQs and post-2015 rule amendments may be relevant;
- Supplemental guidance with respect to the original FAQs that the staff issued in 2016, in response to industry requests, some of which remains relevant to the current Form and the revised FAQs (specifically with respect to reporting of monthly performance and spot currency)(“**2016 Supplement**”);⁶ and
- The status of Form CPO-PQR filings under the Freedom of Information Act (“**FOIA**”), which was addressed in one of the original FAQs (original FAQ 46) that was removed in the revised FAQs.

Explaining the New, the Old, and the Absent

The goal of this Client Alert is to convey the gist of the guidance embedded in the revised FAQs by topic and to focus on what is new. To that end, for each topic we provide a summary of the guidance (which may combine responses from a number of different FAQs); the source of the guidance (the specific FAQ(s) and, if applicable, CFTC rules and Form Instructions from which the guidance is derived); a comment indicating whether the guidance is new or amended relative to the original FAQs or the current Form and rules; and, for some topics, one or more interpretive notes identifying matters that may merit further consideration, including practical implications relating to the guidance. Finally, we include in a separate section a brief discussion of matters not addressed in the revised FAQs.

Converting the FAQs to content-based summaries has, for some topics, involved interpretation and extrapolation from the specific responses provided in the FAQs and, in some cases, revealed possible ambiguities or inconsistencies. In these instances, we identify the issues in the interpretive notes, and suggest that the facts relating to a particular CPO’s filing obligations may be best addressed by reaching out to either the CFTC or NFA staff.

II. Guidance Provided in the Revised FAQs

The revised FAQs are divided into two sections, covering (1) filing requirements and (2) questions about specific Form items, respectively.

A. Guidance on General Filing Requirements

1. Who Must File Form CPO-PQR

a. General Principle

All registered CPOs operating, during a Reporting Period, at least one Pool, must complete and file Form CPO-PQR for that Reporting Period “with respect to the directed assets of each pool under the advisement of [the CPO].” A registered CPO that either did not operate a pool at all, or

⁶ See Exemptive Letter No. 16-22 (Feb. 25, 2016), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/16-22.pdf>.

operated only pools for which the CPO is not required to be registered (exempt or excluded pools), is not generally required to complete and file Form CPO-PQR for such Reporting Period.

Source. Revised FAQ 1 (paragraphs 1 and 3, citing Rule 4.27(c)(1) and 4.27(b)(2)(i), respectively).

Comment. This response is carried over from original FAQ 1.⁷

Interpretive Note (1). While this guidance in revised FAQ 1 is carried over from and consistent with the original FAQs, and therefore generally not new, it is helpful because it eliminates a potential source of ambiguity that might otherwise arise from (1) amendments to Rule 4.27 adopted in 2019 and (2) the definition of CPO in Form CPO-PQR. Rule 4.27 and the Form's definition of CPO both provide an express exception from Form CPO-PQR reporting requirements specifically with respect to Rule 4.13 pools and Rule 4.5 pools (as defined below), rather than for exempt or excluded pools generally.⁸

Interpretive Note (2). The revised FAQs introduce the concept of pools that the CPO has "listed" to refer to pools for which the CPO is required to be registered and that thus trigger reporting obligations. While the revised FAQs do not expressly explain the meaning of the term "listed," it appears that a listed Pool is a pool that is identified (listed) on the CPO's NFA Annual Questionnaire ("**Questionnaire**") as a Pool operated by the CPO for which the CPO is required to be registered (not an exempt or excluded pool).⁹

Interpretive Note (3). While this part of revised FAQ 1 refers to operations of the CPO *during* the Reporting Period, guidance later in the same FAQ indicates that the determination of when Form CPO-PQR reporting obligations attach is made as of the last day of the Reporting Period. *See* the discussion under "Date for Determining Form CPO-PQR Reporting Requirements."

⁷ Note that in many cases where guidance is indicated as carried over from one or more original FAQs, the revised FAQ may differ from the original FAQ in certain non-substantive respects, such as by reorganizing the response and/or including adjustments to reflect matters (such as reporting thresholds and Schedules) that were eliminated in the 2020 Amendments.

⁸ *See* Rule 4.27(b)(2), *as amended by* Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Registered Investment Companies, Business Development Companies, and Definition of Reporting Person, 84 Fed. Reg. 67,343 (Dec. 10, 2019), <https://www.federalregister.gov/d/2019-26161> ("**2019 Amendments Adopting Release**"). *See also* Form CPO-PQR, Defined Terms, *Commodity Pool Operator* or *CPO* ("The term 'commodity pool operator' or 'CPO' has the same meaning as 'commodity pool operator' defined in Section 1a(11) of the Commodity Exchange Act, except that, for purposes of this Form CPO-PQR, the term does not include a CPO that is registered, but operates only Pools for which it maintains an exclusion from the definition of the term 'commodity pool operator' in 17 CFR 4.5 and/or an exemption from CPO registration in 17 CFR 4.13.").

⁹ Note that while the Questionnaire is titled "Annual Questionnaire," the NFA encourages CPOs to update the Questionnaire on an on-going basis to reflect changes in the CPOs business operations. *See* NFA, Annual Questionnaire, <https://www.nfa.futures.org/electronic-filing-systems/annual-questionnaire.html> ("[i]t is encouraged that Members update questionnaires throughout the year with any changes in the Member's business operations").

b. Exempt or Excluded Pools

The universe of exempt or excluded pools that will not trigger a Form CPO-PQR reporting requirement expressly includes pools for which the CPO claims a registration exemption under Rule 4.13 (“**Rule 4.13 pools**”); pools for which the CPO claims an exclusion from the definition of CPO under Rule 4.5 (“**Rule 4.5 pools**”); and offshore pools for which an offshore CPO relies on Rule 3.10(c)(5) (“**Rule 3.10 offshore pools**”).¹⁰

Source. Revised FAQ 1 (par 3); revised FAQ 4 (par. 1); and revised FAQ 5 (par. 2).

Comment. This response is carried over from original FAQ 1, but adds references to Rule 3.10 offshore pools as exempt pools.

Interpretive Note (1). The express inclusion of Rule 3.10 offshore pools as exempt pools is a helpful clarification. Rule 3.10(c)(5), the express pool-by-pool exemption for offshore CPOs, post-dates both the 2019 amendments to Rule 4.27 and the adoption of revised Form CPO-PQR, and accordingly is not referred to in either the Form or the rule.

Interpretive Note (2). Revised FAQ 1 also states that if a Rule 3.10 offshore pool is listed as a Pool by the registered CPO on its Questionnaire, notwithstanding that the pool qualifies for exemption, the pool may still generate calls from NFA on behalf of the Commission seeking Form CPO-PQR compliance. This statement underscores the importance of updating the Questionnaire on a current basis, since the Pools listed on the Questionnaire will form the basis for NFA to determine the CPO’s Form CPO-PQR reporting requirements.

c. Pools that Ceased Operations During a Reporting Period

The revised FAQs indicate, but do not expressly state, that a CPO operating only one or more Pools that ceased operations during the Reporting Period, and that have been removed as listed Pools on or before the end of the Reporting Period, would not be required to file Form CPO-PQR for that Reporting Period.

Source. Revised FAQ 1.

Comment. There is no corresponding original FAQ relating to Pools that ceased operations during a Reporting Period.

Interpretive Note (1). This guidance is inferred from (a) revised FAQ 1, which states that if one or more of a CPO’s Pools ceased operations on or before the end of a Reporting Period, the 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 Rule 4.27(c)(1), together with (b) the general principle that pools that are not

¹⁰ Note that pools that a registered CPO operates pursuant to CFTC Rule 4.7 or CFTC Staff Advisory 18-96 are considered listed Pools, and are not exempt or excluded pools for this purpose. *See* discussion below under “Which Pools Must Be Included on Form CPO-PQR – Rule 4.7 and CFTC Staff Advisory 18-96 Pools.”

listed Pools do not trigger a filing obligation. *See* the discussion below under “Which Pools Must be Included on Form CPO-PQR – Pools that Ceased Operations during a Reporting Period.” However, because the revised FAQs do not expressly state that in this case the CPO also no longer has a Form CPO-PQR filing obligation for the Reporting Period, this is one instance where it may be advisable for the CPO to confirm its filing obligations with NFA.

Interpretive Note (2). The guidance with respect to Pools that ceased operations during the Reporting Period appears to assume that the Pool has been removed as a listed Pool from the CPO’s Questionnaire. Removal of a Pool based on cessation of trading will require the CPO to identify the date on which trading ceased. This date, in turn, will be used by NFA to determine the timing of the CPO’s further reporting obligations, including, where applicable, a liquidation statement (which must be distributed to participants and filed no later than 90 days after the cessation of trading date).¹¹ *See also* NFA Form PQR FAQ – “If a pool liquidated prior to the quarter-end date, is there a filing requirement for the pool?”, discussed below under “Which Pools Must Be Included on Form CPO-PQR – Pools that Ceased Operations on or Before the End of the Reporting Period – NFA Form PQR FAQ.”

d. Listed Pools that Have Not Yet Commenced Operations as of the Reporting Date

A registered CPO that has formed and listed a Pool, but not yet commenced operations, would be required to complete and file Part 1 of Form CPO-PQR (“Information about the CPO”), but not Part 2 (“Information About the Pools Operated by the CPO”). Part 2 would be required in future filings once trading begins.

Source. Revised FAQ 1 (par. 3).

Comment. There is not a corresponding original FAQ.

Interpretive Note. This FAQ makes clear that once a Pool is listed, it triggers a reporting requirement on the part of the CPO, even though the CPO may not direct any assets in the Pool. This guidance is helpful in that it might not otherwise be clear from the other revised FAQs or the Instructions to Form CPO-PQR, by themselves.

2. Which Pools Must Be Included on Form CPO-PQR

a. General Principle

All pools for which the CPO is required to be registered as a CPO (the CPO’s listed Pools) must be reported on Form CPO-PQR.

Source. Revised FAQ 7; Rule 4.27(c)(1); Form CPO-PQR Instruction 1 and Introduction to Parts 1 and 2. *See also* revised FAQs 1 and 4.

Comment. This guidance is carried over from original FAQ 1.

¹¹ *See* CFTC Rule 4.22(c).

b. Exempt or Excluded Pools

Generally, where a CPO operates both listed Pools and exempt or excluded pools, and thus is required to file Form CPO-PQR for the listed Pools, the exempt or excluded pools, including Rule 4.13 pools, Rule 4.5 pools, and Rule 3.10 offshore pools, need not be included on the Form. *See* below for the treatment of pools that either ceased operations or were added during a Reporting Period.

Source. Revised FAQ 1 (par. 3); revised FAQ 4 (par. 1); revised FAQ 5 (par. 2).

Comment. This guidance is carried over from original FAQ 1, except for the reference to Rule 3.10 offshore pools, which is based on rule amendments that post-date publication of the original FAQs.

c. Rule 4.7 and CFTC Staff Advisory 18-96 Pools

A reporting CPO must include in its Form CPO-PQR filings all Pools for which it maintains CPO registration, notwithstanding the election of any relief from compliance requirements with respect to the operation of such Pools. Therefore, a reporting CPO is required to include on Form CPO-PQR Pools operated pursuant to Rule 4.7 or Staff Advisory 18-96.¹²

Source. Revised FAQ 5.

Comment. This guidance is carried over from original FAQs 12 and 19.

d. Pools that Ceased Operations on or Before the End of the Reporting Period

If one or more of a CPO's Pools ceased operations on or before the end of a Reporting Period (the date upon which Form CPO-PQR filing requirements become determinable or "attach"), the 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 Rule 4.27(c)(1). However, notwithstanding the omission of the discontinued pool from Form CPO-PQR, the CPO may still have other compliance obligations under Part 4, *e.g.*, a final annual report, depending on the facts and circumstances.

Source. Revised FAQ 1 (par. 2).

Comment. This is a new FAQ (there is no corresponding original FAQ relating to Pools that ceased operations during the Reporting Period). Accordingly, this FAQ provides a helpful clarification with respect to the treatment of such Pools for purposes of Form CPO-PQR.

NFA Form PQR FAQ. NFA has also issued a revised FAQ addressing Pools that have ceased trading during the Reporting Period, which provides additional helpful information.

¹² *See* CFTC Rule 4.7; CFTC Staff Advisory 18-96 (Apr. 11, 1996), <https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm>. Both Rule 4.7 and CFTC Staff Advisory 18-96 provide registered CPOs with exemptions from specific regulatory requirements, but do not provide a registration exemption or exemption from Form CPO-PQR reporting obligations.

Most importantly, the NFA FAQ indicates that the guidance with respect to Pools that ceased trading during a Reporting Period will apply **only** with respect to Pools that have been removed from the CPO's Questionnaire, and thus are no longer listed Pools. The NFA FAQ also reminds CPOs that removing a Pool that has permanently ceased trading from the Questionnaire will trigger the requirement to file a liquidation statement.¹³

e. Listed Pools that Have Not Yet Commenced Operations as of the Reporting Date

As noted above, a registered CPO that has formed and listed a Pool that has not yet commenced operations during the Reporting Period would be required to complete and file Part 1 of Form CPO-PQR ("Information About the CPO"), but need not report the Pool on Part 2 ("Information About the Pools Operated by the CPO") for that Reporting Period. Completion of Part 2 would be required in future filings once trading begins.

Source. Revised FAQ 1 (par. 3).

Comment. There is not a corresponding original FAQ.

Interpretive Note. See the discussion above under "Who Must File Form CPO-PQR – Listed Pools That Have Not Yet Commenced Operations as of the Reporting Date."

3. Date for Determining Form CPO-PQR Reporting Requirements

The determination of when Form CPO-PQR requirements "attach" is made as of the Reporting Date (the last day of the Reporting Period).

Source. Revised FAQ 1 (par. 2).

Comment. This guidance is new, and there is no corresponding statement in the original FAQs.

Interpretive Note. This statement is made in connection with the guidance relating to exclusion from Form CPO-PQR of Pools that ceased operations during the Reporting Period, and thus are not Pools operated by the CPO on the Reporting Date. While the statement, on its face, appears to be a general description of when Form CPO-PQR reporting obligations are determined, there is some lack of clarity on how widely the

¹³ The NFA FAQ provides as follows:

If a pool liquidated prior to the quarter-end date, is there a filing requirement for the pool?

There is no quarterly filing requirement for a pool that permanently ceased trading as of the quarter-end date. However, the CPO must update the CPO's Annual Questionnaire to reflect the date that the pool permanently ceased trading, and the CPO must file a liquidation statement with NFA through EasyFile for the pool within 90 days from the date of liquidation, unless the firm has received an extension. With limited exceptions, the liquidation statement must be certified.

NFA FAQs, CPO Form PQR, <https://www.nfa.futures.org/faqs/members/CPOFormPQR.html>.

guidance applies, in light of a number of Instructions on Form CPO-PQR that refer to operations “during the Reporting Period,” rather than on or as of the Reporting Date.¹⁴ It is our understanding that a CPO’s reporting requirements for all aspects of the Form attach on or as of the Reporting Date. However, in the case of specific fact scenarios that raise any ambiguity on this point, it may be advisable for the CPO to confirm its reporting obligations with either NFA or CFTC staff.

4. Co-CPOs

If two or more CPOs operate a Pool during a Reporting Period (“**Co-CPOs**”), each Co-CPO is required to file Part 1 (“Information About the CPO”) of Form CPO-PQR. With respect to Part 2 (“Information About the Pools Operated by the CPO”), the jointly operated Pool need only be reported by one of the Co-CPOs, typically by the Co-CPO with the most knowledge of and access to the jointly operated Pool’s information and trading activities; such Co-CPO should be the reporting CPO of the co-operated Pool consistently going forward. The same guidance applies where a Co-CPO is an investment adviser (“**RIA**”) registered with the Securities and Exchange Commission (“**SEC**”), even where the RIA Co-CPO separately files a Form PF including that Pool.

Source. Revised FAQ 2; Form CPO-PQR Instruction 1.

Comment. This guidance is similar to original FAQ 2, although it differs in that original FAQ 2 required the Pool information to be reported by the CPO with the highest assets under management across Pools operated by the Co-CPOs. In addition, original FAQ 2 referred to substituted compliance by filing Form PF, the availability of which was eliminated by the 2020 Amendments.

Interpretive Note. This guidance is additive to the Co-CPO instructions on the Form, in that it indicates (1) which parts of the Form may be completed and filed by only one of the Co-CPOs (Part 1 but not Part 2) and (2) which of the Co-CPOs would typically be the Co-CPO that reports on both Part 1 and Part 2. The Form instruction relating to Co-CPOs, by contrast, states only that “if a Pool is operated by Co-CPOs and one of them is an

¹⁴ See, e.g., *Instruction 1 to Form CPO-PQR* (Compare “All CPOs are required to complete and file a Form CPO-PQR for each Reporting Period during which they satisfy the definition of CPO and operate at least one Pool” with “The information provided herein should be as of the Reporting Date, the last business day of the Reporting Period”). See also Introduction to Form CPO-PQR:

Introduction. Every CPO is required to complete and file this Form CPO-PQR (see definition of CPO). This Form CPO-PQR must be completed for every Reporting Period during which the CPO operated at least one Pool. Part 1 of this Form asks for information about the CPO. Part 2 asks for information about each individual Pool that the CPO operated during the Reporting Period. CPOs must complete and file a separate Part 2 for each Pool they operated any time during the Reporting Period.

Unless otherwise specified in a particular question, all information provided in this Form CPO-PQR should be accurate as of the Reporting Date.

Note that Part 2 (Information about the Pools operated by the CPO) starts with the following Reminder: The CPO must complete and file a separate Part 2 for each Pool that the CPO operated during the Reporting Period.

Investment Adviser, the non-Investment Adviser CPO must file the relevant section(s) even though a Form PF was filed for that Pool by the Investment Adviser-CPO.”¹⁵

5. No Substituted Compliance by Filing Form PF

A dually registered RIA/CPO is no longer permitted to file SEC Form PF in lieu of Form CPO-PQR. Filing Form PF also does not serve as substituted compliance for the requirement to file NFA Form PQR.

Source. Revised FAQ 3; Rule 4.27(d) (as revised by the 2020 Amendments).

Comment. The unavailability of substituted compliance by Filing Form PF in lieu of Form CPO-PQR reflects the change to Rule 4.27 adopted in the 2020 Amendments and, accordingly, there is no corresponding original FAQ. With respect to substituted compliance, this guidance does not provide new information, as it simply reflects the 2020 Amendments. The guidance with respect to NFA Form PQR is not a change, as Form PF was never accepted as substituted compliance for filing NFA Form PQR.

Interpretive Note. Revised FAQ 3 also states that “[t]o the extent that Form PF is provided to the CFTC, it will be deemed to be filed with the Commission for enforcement purposes.” While the language is somewhat different, it appears that this is intended to paraphrase Rule 4.27(d) (Investment advisers to private funds), which includes the following language:

Dually registered [CPOs and CTAs] that file Form PF with the [SEC] will be deemed to have filed Form PF with the Commission, for purposes of any enforcement action regarding any false or misleading statement of a material fact in Form PF.

6. Substituted Compliance by Filing NFA Form PQR

Rule 4.27, as amended, permits substituted compliance by filing NFA Form PQR in lieu of the CFTC’s revised Form CPO-PQR. Therefore, a dually registered RIA/CPO may meet its filing obligations with both the SEC and the CFTC by completing and filing Form PF and NFA Form PQR, respectively, as required.¹⁶

Source. Revised FAQ 3; Rule 4.27(c)(2) (as revised by the 2020 Amendments).

Comment. This guidance reflects a change to Rule 4.27 adopted in the 2020 Amendments, and thus there is no corresponding original FAQ. It is consistent with Instruction 2 on Form CPO-PQR, which provides:

¹⁵ See Form CPO-PQR, *Instruction 1*.

¹⁶ Effective June 11, 2021, NFA amended its Compliance Rule 2-46, which sets forth the filing requirements for NFA Form PQR, to be consistent with the timing for filing Form CPO-PQR adopted as part of the 2020 Amendments. In accordance with the 2020 Amendments, Form CPO-PQR must be filed quarterly, within 60 days of each calendar quarter end. Prior to the Rule 2-46 amendments, the deadline for filing form NFA Form PQR for the quarter ending Dec. 31 was within 90 days of the quarter end. As a result of the amendments, NFA Form PQR must be filed within 60 days of the quarter end for all quarters. See Notice to Members 1-21-21 (July 1, 2021).

To the extent that a CPO has timely filed the National Futures Association's NFA Form PQR, such filing shall be deemed to satisfy this Form CPO-PQR. See [Rule] 4.27(c)(2).

7. Listing of Underlying Exempt or Excluded Pools on the Pool Schedule of Investments ("PSOI") (Question 11 of Form CPO-PQR)

If a CPO operates a Pool that invests in other pools (underlying pools), including both listed Pools and exempt or excluded pools, the investing Pool should include and itemize the underlying pools in the investing Pool's PSOI.

Source. Revised FAQs 4, 8, and 15; *see also* Form CPO-PQR Instruction 4.

Comment. While there is no directly corresponding original FAQ, this guidance is consistent with original FAQ 38, which addressed specifically the treatment of an exempt master fund on the PSOI in Form CPO-PQR filed by the CPO of a feeder fund investing in the master fund.

B. Specific Form CPO-PQR Requirements

1. Alternative Accounting Standards Permitted for Foreign Domiciled Pools

Rule 4.27(c)(4), as amended in 2020, generally requires reporting CPOs to use and consistently apply U.S. generally accepted accounting principles in completing Form CPO-PQR. However, that provision also permits the use of "alternative accounting standards" for Form CPO-PQR reporting with respect to foreign domiciled funds, where the Pool meets the conditions of Rule 4.22(d)(2)(ii) for using alternative accounting standards for annual report purposes and has filed a notice with the NFA claiming that relief pursuant to Rule 4.22(d)(2)(iii).

Source. Revised FAQ 6; Rule 4.27(c)(4) (formerly Rule 4.27(c)(2)); Form CPO-PQR Instruction 8.

Comment. This guidance reflects a change from original FAQ 9, which, in accordance with the requirements in effect at the time, stated that all CPOs were required to use U.S. generally accepted accounting principles in completing Form CPO-PQR, both for U.S. and foreign domiciled Pools. Revised FAQ 6 reflects an amendment to Rule 4.27 adopted in 2016, which permits the use of alternative accounting standards as described in revised FAQ 6, and was re-designated as Rule 4.27(c)(4) in the 2020 Amendments.¹⁷

2. Consolidation of Trading Subsidiary/CFC Financial Statements

For Pools that invest in trading companies or controlled foreign corporations ("CFCs"), the CPO may report Pool financial information on a consolidated basis, in accordance with relief provided in previous no-action letters, where the Pool meets the conditions of the letters and the CPO has claimed the relief.

¹⁷ See Commodity Pool Operator Financial Reports, 81 Fed. Reg. 85,147 (Nov. 25, 2016), <https://www.federalregister.gov/d/2016-28388>.

Source. Revised FAQ 6; CFTC Staff Letter 13-51, (consolidation of CFCs); CFTC Staff Letter 14-122 (consolidation of trading subsidiaries).¹⁸

Comment. This guidance, while not reflected in the original FAQs, is not new or controversial, in that it reflects no-action relief previously provided.

Interpretive Note. The relief provided in Letter 13-51, relating to consolidation of CFCs, was subsequently amended to eliminate one condition of the relief that was contrary to standard industry practice.¹⁹ Accordingly, when reviewing the conditions of Letter 13-51, it is important to consult the subsequent letter as well.

3. CPO Total and Net Assets Under Management (Question 2 of Form CPO-PQR)

a. Pools Operated Pursuant to Rule 4.7 and/or Staff Advisory 18-96

For purposes of determining the Pools for which a CPO must report in Form CPO-PQR, a reporting CPO must include Pools operated pursuant to Rule 4.7 and/or Staff Advisory 18-96. Pools operated under these exemptions are not considered exempt or excluded pools for purposes of the CPO's filing obligations under Form CPO-PQR. This guidance applies both for "Total Assets Under Management" and "Total Net Assets Under Management" (Items 2(a) and 2(b) on Form CPO-PQR).

Source. Revised FAQs 5 and 7.

Comment. This guidance is carried over from original FAQ 19. It is also consistent with the guidance described above that such Pools should be included in the CPO's Form CPO-PQR filings generally.

¹⁸ CFTC Staff Letter 13-51 (Sept. 5, 2013), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/13-51.pdf> ("Letter 13-51"), as clarified by CFTC Staff Letter 17-69 (May 3, 2017), <https://www.cftc.gov/node/214881> ("Letter 17-69") (Clarification on Language in CFTC Staff Letter No. 13-51); CFTC Staff Letter 14-112 (Sept. 8, 2014), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/14-112.pdf>.

¹⁹ CFTC Staff Letter 17-69, *supra* note 18. The clarification relates to the so-called "separately indicates" condition of Letter 13-51. Letter 13-51, by its terms, states that the registered fund's financial statements in the annual report must "separately [indicate], the holdings, gains and losses, and other financial statement amounts attributable to the CFC." Letter 17-19 subsequently clarified that the audited consolidated annual report must be presented in accordance with generally accepted accounting principles, which require a consolidated schedule of investments that includes the holdings of both the registered fund and its CFC, but not separate indications of the CFC's financial statement amounts. Note that while, prior to the clarification in Letter 17-69, the AICPA Audit and Accounting Guide for Investment Companies (the "Audit Guide") had referred to the "separately indicates" language in Letter 13-51, the July 1, 2017 version of the Audit Guide reflects the 2017 clarification as follows: "In a May 3, 2017 letter to the Investment Company Institute, the CFTC clarified that a fund need not separately indicate the holdings, gains and losses, and other financial statement amounts attributable to the CFC." See Audit Guide, Chapter 7 at 7.239 (Illustrative Disclosure for a Registered Fund Issuing Consolidated Financial Statements and Relying on CFTC Letter No. 13-51).

b. Funds of Funds

(i) **Funds of funds investing substantially all assets in third-party Pools.** A reporting CPO operating a Pool that invests substantially all of its assets in other Pools, for which it does not act as the CPO (“**third-party Pools**”), must complete Form CPO-PQR for the CPO’s operated Pool and include all assets of that Pool when responding to all questions in Form CPO-PQR.

(ii) **Other funds of funds.** For funds of funds other than those described in (i) above, a reporting CPO may generally disregard any Pool’s equity investments in other Pools in completing Form CPO-PQR (including Total or Net Assets Under Management), provided that a reporting CPO does so consistently, with the exceptions noted below with respect to Form CPO-PQR Questions 8 and 11.

Source: Revised FAQ 8; Form CPO-PQR Instruction 4 (par. 2).

Comment. This guidance is carried over from original FAQ 25, except that the original FAQ did not address Pools that invest substantially all of their assets in third-party Pools. The guidance is also consistent with Instruction 4 to revised Form CPO-PQR, although Instruction 4 also clarifies that investing substantially all of the Pool’s assets in third-party Pools for this purpose means that the investing Pool’s other investments are limited to cash and cash equivalents and instruments acquired for the purposes of hedging currency exposure.²⁰

Interpretive note. The guidance provided in revised FAQ 8 is helpful in that it states the content of Instruction 4 somewhat more clearly than the Instruction itself. Note in particular the distinction between funds of funds generally (for which assets of underlying Pools may be disregarded for purposes other than Questions 8 and 11 (see below)) and funds of funds investing substantially all of their assets in third-party Pools.²¹

²⁰ *Instruction 4* provides as follows (the provision clarifying the meaning of substantial investments in third-party Pools is highlighted):

Investments in other Pools generally. For purposes of this Form CPO-PQR, you may disregard any Pool’s equity investments in other Pools. However, if you disregard these investments, you must do so consistently. For Question 9, even if you disregard these assets, you may report the performance of the entire Pool and are not required to recalculate performance to exclude these investments. Do not disregard any liabilities, even if incurred in connection with these investments.

Pools that invest substantially all of their assets in other Pools or funds. If you are the CPO for a Pool that: (i) invests substantially all of its assets in the equity of Pools for which you are not the CPO; and (ii) **aside from such Pool investments, holds only cash and cash equivalents and instruments acquired for the purpose of hedging currency exposure**, you must still complete this Form CPO-PQR for that Pool and include all assets of that Pool. Notwithstanding the foregoing, you must include disregarded assets in responding to Questions 8 and 11 in this Form CPO-PQR.

²¹ See *Instruction 4*, *supra* at note 20; see also *Instruction 5*, which provides as follows:

4. Funds of Funds – Question 8 (“Pool’s Statement of Changes Concerning Assets Under Management”) and Question 11 (“PSOI”).

Reporting CPOs must include any fund of fund assets disregarded in accordance with revised FAQ 8, described above, in their responses to (a) Question 8 (“Pool’s Statement of Changes Concerning Assets Under Management”) and (b) Question 11 (“Pool Schedule of Investments”).

Source. Revised FAQ 8; Form CPO-PQR Instructions 4.

Comment. The guidance with respect to Question 8 is carried over from original FAQ 25, which required a reporting CPO to include any disregarded fund of fund assets when responding to the previous Question 10, which has now been renumbered as Question 8 (“Pool’s Statement of Changes Concerning Assets Under Management”). However, revised FAQ 8 adds the express statement that a reporting CPO must also include any disregarded fund of fund assets in completing the PSOI, which is consistent with current Instruction 4, but was not specified in either original FAQ 25 or Instruction 4 prior to the 2020 Amendments.

5. Multi-Series Funds with Limited Liability Across Series.

In cases where the series of a limited liability partnership (or equivalent structure) have limitations on liability between the series, it is permissible for a CPO to report each series as a separate Pool on Form CPO-PQR, even though the CPO may prepare a single disclosure document for all of the series.

Source. Revised FAQ 9.

Comment. This guidance is carried over from original FAQ 20, without substantive change.

6. Documentation and Submission of Assumptions

There is no ability to document and submit assumptions on Form CPO-PQR. Reporting CPOs are advised to maintain in their records documentation regarding any assumptions made in completing Form CPO-PQR for their operated Pools.

Source. Revised FAQ 10.

Comment. This guidance is carried over from original FAQ 24, which provided the same answer for Schedule A of former Form CPO-PQR. Previously, Schedule B (which included the PSOI that has now been incorporated as Question 11 of the revised Form) and Schedule C each had a “Miscellaneous” item for documenting certain assumptions, but these items were removed with the elimination of those Schedules in the 2020 Amendments.

With respect to investments in entities that are not Pools or are exempt, these investments should be treated consistent with Instruction 4 above.

7. Pool Custodians (Question 7 of Form CPO-PQR) – Inclusion of Clearing FCMs and Prime Brokers Listed in Item 5 (Pool Brokers)

If a clearing futures commission merchant (“**FCM**”) or prime broker performs both clearing and custodial services, then the reporting CPO may list the FCM or prime broker under Question 5 as a broker of the Pool, and need not include that FCM or prime broker as a Pool custodian in Question 7. The reporting CPO, however, must indicate under Question 5 that the listed broker also performs custodial services for the Pool. Furthermore, a reporting 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 the Form, it will continue to be included automatically with each filing, until such time as the CPO ends or changes the reported relationships. Consistent with the remainder of the Form, reporting CPOs must list all brokers and custodians employed by the CPO with respect to Pool assets during the Reporting Period, regardless of the type of transaction involved.

Source. Revised FAQ 11.

Comment. This guidance is carried over from original FAQ 26, without substantive change, and is consistent with the questions on the Form. As background, Question 7 of the Form (Pool Custodians) requires information about custodians used by the CPO to hold some or all of the Pool’s Assets Under Management. Assets Under Management is a defined term meaning the amount of all assets that are under the control of the CPO.²² Question 5 of the Form (Pool Brokers) requires similar information about Brokers used by the CPO for the Pool. The term Broker is defined to mean “any entity that provides clearing, prime brokerage or similar services to the Pool.”²³ Question 5(iv) requires information about services performed by the Broker, including custodian services for some or all Pool assets.

8. Pool’s Monthly Rates of Return (Question 9 of Form CPO-PQR)

Question 9 of the Form requires the CPO to provide the Pool’s monthly rate of return for each month that the Pool has operated, calculated in accordance with CFTC Rule 4.25(a)(7)(F). The Form provides for entries of the monthly rate of return for each month (January through December), for each of the past seven years (currently 2015 through 2021), and also for an annual rate of return for each year. Question 9 is identical to Question 11 on former Schedule A of the Form.

²² See Form CPO-PQR, Defined Terms, *Assets Under Management* or *AUM*.

²³ See Form CPO-PQR, Defined Terms, *Broker*. See also Adopting Release at 71,781 (“The Commission has consistently understood the term ‘broker,’ in the context of Form CPO-PQR, to include more than just those service providers engaging in the commodity interest markets, and has not limited the definition of the term ‘broker,’ as used either in the current form or the Revised Form, in any manner” (citations omitted)).

The revised FAQs address three separate questions related to monthly rates of return.

a. Period Covered – All Seven Years vs. Most Recent Quarter

When completing Form CPO-PQR for the first time, a reporting CPO will be required to enter its Pool's monthly rates of return for the last seven years, or the life of the Pool, if less than seven years. The information will be maintained from filing to filing, and the reporting CPO will not need to re-enter the information each time it updates the rates of return.

Going forward, the reporting CPO will only be required to enter the Pool's rates of return for the three months covering the most current Reporting Period. If a reporting CPO has previously filed a disclosure document and entered rates of return for the Pool, those rates of return will also be carried over to the Form CPO-PQR filing.

Source. Revised FAQ 12.

Comment. This guidance is carried over from original FAQ 29, without substantive change.

b. Private Equity Funds that Calculate Rates of Return Only Quarterly – No Exception from Reporting Returns for Each Month

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. Accordingly, reporting CPOs must calculate and enter rates of return for their Pools on a monthly basis (for each month of the Reporting Period). There is no exception for private equity funds or other pools that do not otherwise calculate monthly rates of returns.

Source. Revised FAQ 13.

Comment. This guidance is carried over from original FAQ 30, without change.

Interpretive Note. The guidance provided in original FAQ 30 – that reporting of monthly returns is required even for funds that do not calculate monthly returns for investors or otherwise – met with resistance from industry participants when it was issued, based on a number of arguments. In the 2016 Supplement, the staff declined to change the response and reaffirmed the need for all reporting CPOs to report monthly rates of return on Form CPO-PQR.²⁴ However, the 2016 Supplement provided limited interpretive relief with

²⁴ The industry's concerns and the staff's response are summarized in the 2016 Supplement as follows:

The Associations also request that the Division reconsider FAQs 29, 30, and 31, each of which clarify that Form CPO-PQR requires a CPO to report monthly rates of return for a Pool. The Associations state that calculating monthly rates of return may not be consistent with the practices of all CPOs. The Associations cite as an example, private equity firms, which generally compute rates of return on a quarterly basis as they may hold illiquid assets and/or other hard to value assets which make monthly rate of return computations challenging. In order to maintain consistent filing and data reporting requirements, monthly rates of return for all Forms CPO-PQR is required. Monthly rate of return information is of particular importance to both the Commission and the National Futures Association in the performance of their respective examination and

respect to calculating monthly returns in the case of illiquid and hard to value portfolio holdings:

With respect to certain illiquid and other hard-to-value assets, the Division believes that the rates of return reported on the Form for the intra-quarter months is satisfied if the CPO reports estimates of the monthly rates of return, so long as such rates of return are based on reasonable methodologies. That is, such methodologies would result in estimated rates of return that are reasonably consistent with rates of return that would be calculated if all assets and positions are revalued at current market values.⁴

⁴The Division stresses however, that even a reasonable estimate is not a substitute for the quarterly valuation and rate of return as customarily reported. Further, a reasonable estimate cannot be used for assets with readily available pricing data.

The revised FAQs do not mention the clarification of original FAQ 30 that was provided by the 2016 Supplement. However, inasmuch as revised FAQ 13 provides the same guidance as the original FAQ, and the 2016 Supplement has not been withdrawn, it seems reasonable to view the 2016 Supplement clarification as having continuing relevance for this purpose.

c. Multiple Share Classes or Series with No Limitation of Liability Among Classes – Aggregate Reporting

For a Pool with more than one share class, but without a limitation of liability among the classes or series, a reporting CPO may calculate the Pool's rate of return on an aggregate basis across all share classes/series based on the net asset value of the Pool, and this is the preferred approach going forward. In the absence of limitations on liability among the Pool's various share classes/series, the overall performance of the Pool is the aggregation of the performance of all classes. The monthly rates of return for series funds with no limitations of liability among the funds' various series should also be calculated and reported on an aggregated basis.

Source. Revised FAQ 14.

Comment. The revised FAQ amends the answer from original FAQ 31, which stated that aggregation across all share classes/series with no limitation on liability was merely permissible, rather than preferred.²⁵

Interpretive Note (1). The question has arisen whether “preferred” in this FAQ means “required.” Based on the revised FAQ’s express language, we understand that reporting aggregate performance, while preferred, is not required.

oversight of CPOs. Accordingly, the Division reaffirms that CPOs are required to report monthly rates of return on the Form.

²⁵ See Revised FAQs at note 17 (“The 2015 FAQs noted merely the ‘permissibility’ of aggregating across share classes with no limitations on liability to calculate monthly rates of return”).

Interpretive Note (2). The help text for this item on NFA Form PQR has been amended from time to time. We understand that the help text is intended to be consistent with the revised FAQ in that aggregate performance is “preferred” but not required.

9. Pool Schedule of Investments (Question 11 on Form CPO-PQR; formerly Question 6 on Schedule B)

a. Reporting of Master Fund Investments – Exempt or Excluded Pool vs. Listed Pool Status of Master Fund; Ability to Report as Hedge Funds

For a reporting CPO that operates a feeder fund as a registered CPO, the classification of the feeder fund’s investment in the master fund on the feeder fund’s PSOI may differ as between master funds that are exempt or excluded pools and those that are listed Pools.

Where the master fund is an exempt or excluded pool, investments in the Master Fund are reported in the “Funds” section of the PSOI, in the most appropriate category based on the opinion of the reporting CPO, used consistently in subsequent CPO-PQR filings.

Where, by contrast, the master fund is a listed Pool (operated by a registered CPO), the CPO of the feeder fund could report its investment under the “NFA Listed Fund” heading. Reporting CPOs should make their best effort to select the most appropriate fund classification for those investments, and importantly, to classify them consistently from one Reporting Period to the next.

Source. Revised FAQ 15.

Comment. This guidance is carried over from original FAQ 38, with one noticeable change: while original FAQ 38 stated that if the master fund is a listed Pool, the CPO of the feeder fund “must” report the investment under the NFA Listed Fund heading, revised FAQ 15 states that the feeder fund CPO “could” report the investment in the NFA Listed Fund category, but generally should make its best efforts to select the most appropriate fund classification and do so consistently.

Interpretive Note. The question posed in both revised FAQ 15 and original FAQ 38 is whether the feeder fund CPO “could” (revised FAQ 15) or “must” (original FAQ 38) report the investment in the master fund as a hedge fund. Neither FAQ answers this specific question directly. However, given the change noted above with respect to reporting of master funds that are listed Pools, it appears that revised FAQ 15 provides more flexibility to report investments in both listed and exempt/excluded master funds as hedge funds, if the feeder fund CPO believes this is the most appropriate category and does so consistently.

b. Warrants Treated as Options

A warrant on a security is generally treated as an option and therefore is reported in the “Options” section of the PSOI. As with all other reported investments, investments in the Options subcategories must be itemized, if they equal or exceed 5% of the Pool’s Net Asset Valuation.

Source. Revised FAQ 16.

Comment. The guidance with respect to treating warrants as options is carried over from original FAQ 39. The express reminder about itemization of investments in Options that meet the 5% threshold has been added.

c. Investments Classifiable in More Than One Asset Category or Sub-Category

In completing Form CPO-PQR, reporting CPOs must make reasonable determinations regarding the categorization of their Pools' investments in the PSOI. Additionally, reporting CPOs must be consistent across Reporting Periods on how they categorize their Pools' investments on the PSOI.

Source. Revised FAQ 17.

Comment. This guidance is carried over without substantive change from original FAQ 40.

d. Derivatives (Other Than Options) Valued at Positive and/or Negative Open Trade Equity

The value reported for derivatives (other than options) is the positive and/or negative open trade equity. Positive open trade equity means the amount of unrealized gains on open derivative positions. Negative open trade equity means the amount of unrealized losses on open derivative positions.

Source. Revised FAQ 18.

Comment. This guidance is carried over from original FAQ 41, without change.

e. Spot Currency Reported on PSOI as “Forex” Under “Alternatives Investments”

Spot currency transactions are reported as “Forex” under the “Alternative Investments” heading. They are not reported as “cash at bank/broker.”

Source. Revised FAQ 19.

Comment. This guidance is carried over from original FAQ 42, without change.

Interpretive Note. The revised FAQ, which is identical to original FAQ 42, includes the following introductory sentence: “Spot currency transactions are considered the purchase or sale of a foreign currency for delivery within two days.”

When the original FAQs were issued in 2015, this statement, which appeared to define the term spot currency, gave rise to some confusion, because the CFTC had previously defined the term “spot currency,” more broadly to include “security conversion transactions.”²⁶ In

²⁶ See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48,208, 48,257 (Aug. 13, 2012), <https://www.federalregister.gov/d/2012-18003>. The Commission will consider the following to be a “Securities Conversion Transaction” (and therefore a spot FX transaction): “An agreement, contract or transaction for the purchase or sale of an amount of foreign currency equal to the price of a foreign security with respect to which (i)

response to a request for clarification on this point, the 2016 Supplement stated that this FAQ was not intended to provide a definition of spot currency, but rather to address the treatment of spot currency, however it may be properly defined, on the PSOI. As explained in the 2016 Supplement:

The Associations request that the Division reconsider its response with respect to spot currency transactions, as used in FAQ 42. The purpose of FAQ 42 was to clarify where spot currency positions should be reported on the Form, and not to define the term. The Division confirms that [] any reference to spot currency transactions contained in FAQ 42 is not limiting, but is instead only used for demonstrative purposes regarding where such transactions must be reported in the Form. Accordingly, FAQ 42 does not limit otherwise applicable definitions of spot currency transaction available to CPOs or other market participants.

The revised FAQs do not refer to the clarification of original FAQ 42 provided in the 2016 Supplement with respect to the definition of “spot currency.” However, inasmuch as the guidance in revised FAQ 19 is the same as the original FAQ, and the 2016 Supplement has not been withdrawn and remains consistent with the CFTC’s definition of “spot currency” generally, it seems reasonable to conclude that the clarification provided in the 2016 Supplement with respect to the definition of “spot currency” remains applicable for purposes of applying the guidance provided by revised FAQ 19.

f. Value Reported for Options

The value reported for options is the marked to market long or short option value, not the delta-adjusted notional value.

Source. Revised FAQ 20.

Comment. This guidance is carried over from original FAQ 43, without change.

III. Matters Not Addressed in the Revised FAQs

A. FAQs Relating to Form CTA-PR

The revised FAQs are presented on a standalone, Form CPO-PQR only, basis, while the original FAQs presented FAQs relating to Form CPO-PQR together with FAQs relating to Form CTA-PR. The revised FAQs do not address the status of the Form CTA-PR FAQs, or indicate whether certain adjustments in the revised FAQs that would have relevance for the Form CTA-PR FAQs, such as the amendments to Rule 3.10 and Rule 4.27, would be carried over to the Form CTA-PR FAQs. However, it is our understanding that the existing FAQs for Form CTA-PR remain in place, although they do not yet reflect the impact of subsequent rulemakings, and thus may require some adjustment in their application based on those changes.

the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant securities settlement deadline and (ii) actual delivery of the foreign security and foreign currency occurs by such deadline.” *Id.*

B. Treatment of Form CPO-PQR under FOIA

Original FAQ 46, which was removed in the revised FAQs, provided as follows:

46. Is the information submitted on Form CPO-PQR exempt from release under the Freedom of Information Act (FOIA)?

The CFTC's Final Rules adopting Form CPO-PQR specify sections of the Form that are designated non-public and will not be released under FOIA:

Schedule A: Question 2, subpart (b); Question 3, subparts (g) and (h); Question 9; Question 10, subparts (b), (c), and (d); Question 11; and Question 12.

Schedule B: All.

Schedule C: All.

Many of these sections designated as non-public are still required items on Form CPO-PQR, specifically items formerly designated as Question 2, subpart (b); Question 3, subparts (g) and (h); Question 10, subparts (b), (c), and (d); Question 11 and Question 12, as well as the PSOI (formerly Part 6 of Schedule B).

While original FAQ 46 was not carried over by the revised FAQs, there is no indication that this was intended to signal a change in FOIA status of the relevant sections of Form CPO-PQR.

C. Reporting of Trading Halts Imposed During the Reporting Period (Question 10 on Form CPO-PQR)

Question 10(a) on the current Form asks whether the Pool has imposed a halt or any other material limitation on redemptions during the Reporting Period. Original FAQ 35, which was removed in the revised FAQs, clarified that the same question on the prior Form (Question 12(e) on Schedule A) referred specifically to limitations imposed during the reporting period, as opposed to limitations that were in effect prior to the Reporting Period and remained in effect during the Reporting Period. Original FAQ 35 noted that such pre-existing limitations would be disclosed under former Question 12(d)(v).²⁷

Question 12(d)(v), along with a number of other items in former Question 12, was eliminated from the Form in the 2020 Amendments.²⁸ Accordingly, the part of original FAQ 35

²⁷ Original FAQ 35, which was removed in the revised FAQs, provided as follows:

35. Schedule A, question 12(e) – “Pool Subscriptions and Redemptions.” Does the imposition of redemption halts differentiate between Pools that have always had a lock-up period or that are locked for the full-term of the Pool, and Pools that occasionally impose lockups?

No. Question 12(e) relates to whether the limitations on redemptions were imposed during the Reporting Period. Question 12(d)(v) asks about any gates or lockups that were imposed at any time during the life of the Pool, including at the time the Pool was offered, and that remain effective as of the Reporting Date.

²⁸ Other items eliminated from Question 12 in the 2020 Amendments include (i) total Pool subscriptions and redemptions during the Report Period, (ii) the Pool's high water mark, (iii) number of participants and weighted

referring to Question 12(d)(v) would no longer be relevant. However, to the extent that an interpretive issue arises under Question 10(a), the prior guidance with respect to the same language in former Question 12(e), which confirmed the literal meaning of the language, could still serve as a useful reference. That guidance is also consistent with the help text on NFA Form PQR, which states that “A halt on redemptions should not be confused with a pool's lock-up period, which is a pre-determined and disclosed period of time after making a deposit that funds cannot be withdrawn.”

IV. Looking Ahead

The revised FAQs reflect a positive and helpful accomplishment on the part of MPD staff in furthering the goals of the 2020 Amendments, which in themselves were a welcome development toward a more streamlined and effective CPO reporting regime. In particular, the revised FAQs provide a number of useful clarifications and eliminate prior guidance that is no longer relevant, with a view to adding certainty and efficiency to the reporting process. Where ambiguities remain, our experience is that both MPD and NFA staff have been open and willing to discuss and resolve areas of potential uncertainty.

As indicated in the Adopting Release, the Commission and its staff are engaged in continuing efforts to improve the Commission's data collection capabilities and responsibilities with respect to CPOs, the pools they operate, and the markets in which they participate. As part of this undertaking, the Commission has instructed its staff to continue its review of Form CPO-PQR, and especially the PSOI, as an effective and useful data collection method.²⁹ Accordingly, depending on the Commission's ongoing priorities, the 2020 Amendments and the revised FAQs may signal the beginning, rather than the end, of reform in this area.

For more information, contact:



Ruth S. Epstein
Partner
202.292.4522
repstein@stradley.com



John M. Baker
Counsel
202.419.8413
jbaker@stradley.com



Stephen LaChine
Associate
202.419.8429
slachine@stradley.com

average of percentage of participants below the Pool's high water mark; and (iv) an explanation and reasons for limitations imposed during the Reporting Period. The original FAQs included a number of other FAQs relating to these eliminated items, which were accordingly eliminated in the revised FAQs.

²⁹ See Adopting Release at 71,776 (the Commission staff was instructed to (a) compare the current PSOI with the 2010 PSOI; (b) develop recommendations or a proposed rulemaking for the Commission's further review to effectuate the staff's findings; (c) continue to explore the use of data available from existing sources of transaction and position data (from exchanges and swap data repositories) compared to the information received from Revised Form CPO-PQR, as it relates to robust oversight of CPOs and commodity pools; and (d) continue engaging with their counterparts at the SEC regarding potential modifications to Form PF (the joint SEC and CFTC form for private fund managers) to inform consideration of further revisions to Revised Form CPO-PQR).