

CFTC Issues No-action Relief from Certain CPO Reporting Obligations

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The CFTC issued a no-action letter granting relief from certain reporting requirements to commodity pool operators (CPOs) of registered funds that trade in commodity interests through wholly owned controlled foreign corporations (CFCs).

On September 5, 2013, the CFTC issued [No-action Letter 13-51](#) granting relief to commodity pool operators (CPOs) of funds registered under the Investment Company Act of 1940 (registered funds) that trade in commodity interests through wholly owned [controlled foreign corporations](#) (CFCs) from the following reporting requirements:

- CFTC Regulation 4.27(c), which requires registered CPOs to file a report with the National Futures Association (NFA) regarding the directed assets of each pool under the advisement of the registered CPO.
- CFTC Regulation 4.22(c), which requires registered CPOs of CFCs to file an annual financial report with the NFA.

Regulation 4.27(c)

The CFTC granted no-action relief to CPOs of registered funds that use a wholly owned CFC for the purposes of trading in commodity interests from the obligation under CFTC Regulation 4.27(c) to provide a report to the NFA provided that:

- The CPO provides a consolidated report for the registered fund that includes the data for its CFCs to the NFA as required under CFTC Regulation 4.27(c) for the next applicable reporting period following the compliance date.
- The CPO either:
 - currently consolidates the registered fund's wholly owned CFC financial statements with those of the parent registered fund's financial statements for financial reporting purposes; or
 - is in the process of converting from separate financial reporting to consolidated reporting for the registered fund and CFCs that it operates provided that the CPO operates at least one registered fund that currently consolidates its CFCs for financial reporting purposes and the CPO's other registered funds consolidate their CFCs for financial reporting purposes for the next applicable reporting period following the compliance date.

Regulation 4.22(c)

The CFTC also granted no-action relief to CPOs of registered funds that use wholly owned CFCs to trade in commodity interests from the obligation under CFTC Regulation 4.22(c) to distribute an annual report with respect to the CFC to the NFA provided that:

- The CPO prepares an annual report of the registered fund that contains consolidated audited financial statements for the registered fund that includes and separately indicates the holdings, gains and losses, and other financial statement amounts attributable to the CFC.

- The CPO submits the annual report of the registered fund to the NFA, instead of a separate annual report for the CFC, for the next fiscal year of the registered fund that ends after the compliance date, and, going forward, for all subsequent fiscal years as applicable.

Claiming No-action Relief

In order to claim this no-action relief, a CPO must file a notice of claim:

- Stating the name, main business address and main business telephone number of the CPO claiming the relief.
- Stating the capacity (for example, CPO) and the name of the CFC(s) for which the claim is being filed and the name of the parent registered fund matched with each CFC.
- Signed by the CPO.
- With the CFTC via e-mail at dsionoaction@cftc.gov with the subject line "CFC Letter 13-51."

The claim must be filed before the end of:

- The next applicable reporting period following the compliance date for Regulation 4.27(c). The compliance dates for Regulation 4.27(c) varies based on the size of the CPO.
- The next fiscal year of the registered fund that ends after the compliance date for Regulation 4.22(c). Annual financial statements must be filed with the NFA under Regulation 4.22(c) within 90 days after the end of the fiscal year.

The notice will be effective upon filing, assuming it is materially complete.

Related Resources

The CFTC also recently issued a number of other final CPO rules, including a rule designed to harmonize certain compliance obligations for entities that are subject to dual disclosure requirements because they are SEC registered investment companies (RICs) that are now also required to register with the CFTC as CPOs under Dodd-Frank rules. The CFTC also issued final rules on third-party recordkeeping for CPOs, and the SEC issued guidance for RICs that enter into derivatives. For more details, see [Legal Update, CFTC: Registered Investment Company CPOs Exempted from Dual Obligations](#)

For more information on CFTC CPO rules under Dodd-Frank, see [Practice Note, The Dodd-Frank Act: Expanded "Commodity Pool" Definition and CPO/CTA Rules](#).

PRODUCTS

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