

# To Our Clients and Friends

# Memorandum

October 15, 2020

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## *CFTC Adopts Amendments to Rule 4.27 and Form CPO-PQR*

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On October 6, 2020, the Commodity Futures Trading Commission (the “Commission” or the “CFTC”) voted unanimously to adopt a number of amendments to CFTC Rule 4.27 and Form CPO-PQR which are intended to facilitate better oversight of commodity pool operators (“CPOs”) and their pools by leveraging alternative data sources while simultaneously reducing regulatory reporting burdens for most CPOs required to file Form CPO-PQR by revising and streamlining existing Form CPO-PQR.<sup>1</sup> Consistent with the Commission’s earlier proposal,<sup>2</sup> the final rule (1) eliminates existing Schedules B and C of Form CPO-PQR, except for the Pool Schedule of Investments (“PSOI”) (question 6 on existing Schedule B); (2) amends the information requirements and instructions in existing Schedule A to (a) request legal entity identifiers<sup>3</sup> (“LEIs”) for CPOs and their pools and (b) eliminate questions regarding the pool’s auditors and marketers; (3) requires all reporting CPOs to submit on a quarterly basis all information included in the revised Form CPO-PQR; (4) allows CPOs to file National Futures Association (“NFA”) Form PQR in lieu of the revised CFTC Form CPO-PQR, provided that NFA amends Form PQR to include LEIs; and (5) eliminates substituted compliance with Form CPO-PQR filing requirements via the CFTC’s and the Securities and Exchange Commission’s (“SEC”) Joint Form PF. In addition to updating the instructions to the revised Form CPO-PQR, the Commission has directed the staff to publish an updated “Frequently Asked Questions” document to assist CPOs required to complete and file the revised Form CPO-PQR.

The final rule is the first of several steps in the Commission’s ongoing reassessment of Form CPO-PQR and will become effective 30 days following the date of publication in the *Federal Register*. The Commission will not require CPOs to file reports on the revised Form CPO-PQR for the calendar quarter ending December 31, 2020. Instead, all reporting CPOs will be required to report on the revised Form CPO-PQR with respect to their pools for the calendar quarter ending March 31, 2021 by May 30, 2021 (60 days following quarter-end).

### Summary

In summary, the final rule makes the following amendments and adjustments to CFTC Rule 4.27 and existing Form CPO-PQR:

1. Elimination of Most Pool-Specific Reporting Requirements in Existing Schedules B and C. With the exception of the PSOI currently reported under question 6 of existing Schedule B, the final

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<sup>1</sup> See Final Rule (Voting Draft), *Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR*, (October 6, 2020), <https://www.cftc.gov/media/4966/votingdraft100620/download>.

<sup>2</sup> See Proposed Rule, *Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR*, 85 Fed. Reg. 26,378 (May 4, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-08496.pdf>.

<sup>3</sup> LEIs are 20-character, alpha-numeric codes designed to uniquely identify legal entities, which include commodity pools participating in swap transactions.

rule eliminates in their entirety the pool-specific questions in Schedules B and C along with all references to the thresholds associated therewith. The existing PSOI remains unchanged, but the Commission has directed the staff to undertake a review to determine whether any future revisions are warranted.

2. Reporting of CPO and Pool LEIs and Elimination of Pool Auditor and Marketer Reporting in Existing Schedule A. The final rule updates Schedule A to include a new question requiring CPOs to report their own LEI and the LEI of each pool they operate, to the extent that they have LEIs. Notably, the final rule does not establish any new regulatory obligations with respect to obtaining, maintaining or renewing LEIs. In addition, revised Form CPO-PQR eliminates from Schedule A questions that require CPOs to report pool auditor and marketer data available to the Commission through other means, such as annual pool audited financial statements filed under CFTC Rule 4.22, registration records for associated persons, and pool disclosure documents. Other basic identifying information currently collected in Schedule A is retained.
3. Quarterly Filing Frequency for All Reporting CPOs. The final rule requires all CPOs, regardless of assets under management, to file revised Form CPO-PQR on a quarterly basis.
4. Permitting Substituted Compliance via NFA Form PQR. The final rule permits CPOs to file NFA Form PQR in lieu of revised Form CPO-PQR, subject to NFA amending its existing Form PQR to include questions requesting LEI data, which the Commission understands NFA is planning to do.
5. Eliminating Substituted Compliance via Joint Form PF. The final rule amends Rule 4.27(d) to eliminate the ability of dually registered CPOs to file Joint Form PF in lieu of Schedules B and C, including with respect to commodity pools that are not private funds. This does not change Joint Form PF's status as the Commission's form, nor does it change the requirement that dually registered CPOs and investment advisers continue to file Joint Form PF with the SEC.

## Conclusion

In general, most CPO filers of existing Form CPO-PQR should benefit from increased efficiencies resulting from the elimination of most pool-specific questions contained in Schedules B and C of existing Form CPO-PQR and the ability of CPOs to file an updated version of NFA Form PQR in lieu of the revised Form CPO-PQR.

We will continue to monitor and report on developments in this area.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. If you have any questions about the contents of this memorandum, please call your regular Fried Frank contact or an attorney listed below:

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