Revising Initial Expectations: CFTC Proposes Substantial Amendments to Form CPO-PQR and Related Requirements

April 16, 2020

KEY POINTS

- The CFTC is proposing to eliminate large sections of current Form CPO-PQR.
- Revised Form CPO-PQR would have a quarterly filing requirement for all CPOs (regardless of size) and would ask them to provide information regarding their LEIs and the LEIs of their operated pools.
- If adopted as final, the CFTC may allow CPOs to file NFA Form PQR in lieu of filing revised Form CPO-PQR to eliminate redundancy.
- Comments to the Proposal will be accepted by the CFTC through June 15, 2020.

The Commodity Futures Trading Commission (CFTC or Commission) proposed to materially simplify reporting obligations for commodity pool operators (CPOs) during the CFTC's first virtual open meeting on April 14 and potentially enable CPOs to satisfy common reporting obligations to the Commission and the National Futures Association (NFA) using a single form — NFA Form PQR.

After seven years of collecting information from its CPO registrants through Form CPO-PQR, the CFTC proposed to amend both the substance of Form CPO-PQR and its related requirements (the "Proposal").[1] In recommending elimination of large sections of current Form CPO-PQR that require CPOs to report detailed, pool-specific information, the CFTC conceded that its current data collection has been essentially ineffective in achieving its goal of helping the CFTC identify trends and risks across CPOs and their operated pools. The Commission also cited its current resource constraints, as well as its ability to gather more useful information from other data sources (e.g., data from swap data repositories and large trader reports), as additional reasons current Form CPO-PQR has not lived up to the agency's initial expectations at the time the reporting requirement and form were first adopted in early 2012.[2]

[1] *See* CFTC, Notice of Proposed Rulemaking: Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, Voting Draft (Approved on Apr. 14, 2020) available at https://www.cftc.gov/media/3736/votingdraft041420b.pdf/download (last visited Apr. 14, 2020).

[2] *See* CFTC, Final Rule: Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (Feb. 24, 2012); 17 CFR pt. 4 app. A; 14 CFR 4.27.

As noted by Chairman Heath Tarbert in his public remarks at the open meeting, the CFTC's proposed revisions to Form CPO-PQR are intended to support the Commission's oversight of CPOs and their operated pools while reducing reporting burdens for market participants. To that end, the revised Form CPO-PQR, if adopted as final, would:

- continue to collect the majority of basic information that is reported on Schedule A of the current form. Schedule A requests demographic information on CPOs and their operated pools, the service providers used by the pools and the CPOs, and the pools' monthly rates of return;
- eliminate the majority of detailed, pool-specific requests for information in Schedules B and C of the current form, which include information on pools at both individual and aggregate levels, as well as questions about investment strategy, counterparty credit exposure, asset liquidity and concentration of positions, clearing; relationships, risk metrics, financing and investor composition;
- maintain the requirement to report the pool schedule of investments that is currently in question 6 of Schedule B;[3]
- eliminate questions seeking information regarding the pool's auditors and marketers; and
- add a question requiring the reporting of legal entity identifiers (LEIs) for the CPO and its operated pools.[4]

As proposed, the revised Form CPO-PQR generally would align with the NFA's Form PQR, which the NFA implemented in 2010 under its Compliance Rule 2-46.

Currently, NFA elicits data from CPOs in its Form PQR in order to assess risks, identify trends and assign audit priorities in NFA's oversight of CPOs. According to the CFTC, NFA plans to amend its Form PQR to include questions regarding LEIs. If NFA's proposed amendments are finalized, the CFTC's revised Form CPO-PQR and NFA's revised Form PQR would be materially identical. If that were to occur, the Proposal notes that the CFTC would allow a CPO to file NFA Form PQR in lieu of filing revised Form CPO-PQR.

The CFTC's Proposal would require all CPOs to report data on revised Form CPO-PQR on a quarterly basis, regardless of the CPO's aggregated pool assets under management (AUM). Under the current requirement in CFTC Regulation 4.27, CPOs with at least US $1.5 billion AUM during a reporting period are required to file quarterly, while all other CPOs are able to file the form on an annual basis. Although the proposed reporting frequency of revised Form CPO-PQR would seemingly increase for mid-sized and smaller CPOs, the Proposal notes that NFA Form PQR currently requires all CPOs to file quarterly, regardless of size. Thus, the CFTC contends that a CPO would not have any greater compliance burden under the Proposal than it does today, since it could simply continue filing NFA Form PQR to satisfy the proposed quarterly filing requirement for Form CPO-PQR.

As a consequence of these proposed amendments to Form CPO-PQR, the CFTC also proposes to revise CFTC Regulation 4.27(d). Regulation 4.27(d) currently allows CPOs that are dually regulated by the CFTC and the Securities and Exchange Commission (SEC) and that are required to file Form PF under SEC Rules, to substitute that form in lieu of filing current Form CPO-PQR, in order to provide reporting with respect to any commodity pools that are not "private funds," as defined under SEC rules. In 2011, the CFTC and SEC jointly adopted Form PF in order to provide the Financial Stability Oversight Council with empirical data from which it could make a determination about the extent to which the activities of private funds or their advisers pose systemic risk.

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3 Question 6 of Schedule B requires CPOs to provide a fairly detailed breakdown of how each operated pool's investments are allocated by asset category (i.e., cash, equities, alternative investments, fixed income, derivatives, options and funds).

4 The CFTC is proposing to add the question regarding LEIs for two purposes. First, the CFTC contends that it would use LEI data in conjunction with SDR data in order to "illuminate the risk inherent in pools and pool families." Second, the CFTC notes that it would use LEI data to facilitate the aggregation of data from commodity pools under different levels of common control.

Since current Form CPO-PQR and its related requirements were closely modeled after the first two sections of Form PF and its related requirements, the proposed amendments to Form CPO PQR — which would closely align it with NFA Form PQR — would eliminate the election to file Form PF in CFTC Regulation 4.27(d) with respect to commodity pools that are not "private funds."

Comments to the Proposal will be accepted by the CFTC through June 15, 2020.

CONTACTS

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