



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

January 21, 2010

To: All Commodity Pool Operators
Attention: Chief Financial Officer
Subject: Annual Reporting for Commodity Pools

The Division of Clearing and Intermediary Oversight (“DCIO” or “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) is issuing this letter to assist commodity pool operators (“CPOs”) with the preparation and filing of commodity pool annual financial reports required under the Commodity Exchange Act (“Act”) and Commission regulations.¹ This letter highlights current regulatory changes affecting CPOs with respect to financial filing and provides reminders of requirements in response to common deficiencies observed in prior years’ annual reports. CPOs, including those that operate in non-U.S. jurisdictions, are encouraged to provide this letter to their public accountants and others assisting in the preparation of commodity pool annual financial statements.

The Division has issued similar guidance letters in prior years, which are available at the Commission’s website.² Those letters should be consulted as they contain information relevant for many commodity pools including the following topics:

- American Institute of Certified Public Accountants’ (“AICPA”) Statement of Position (“SOP”) 03-04, *Reporting Financial Highlights and Schedule of Investments by Nonregistered Investment Partnerships: An Amendment to the Audit and Accounting Guide, Audits of Investment Companies* (Accounting Standards Codification (ACS) 946-210-50-4) ([2004 letter](#)); an illustration of the investments schedule can be found in Attachment B);
- A CPO’s reporting obligation when claiming relief under Regulation 4.13 for a pool previously operated without exemptive relief ([2006 letter](#));

¹ The Act is codified at 7 U.S.C. §1 et seq. The Commission’s regulations are found in Title 17 of the Code of Federal Regulations. The Commission’s internet website, www.cftc.gov, provides links to both the Act and Commission regulations.

² Prior letters from 1998 forward are available at the Commission’s website at <http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html>.

- A CPO's obligation to provide notice of replacement of accountant ([2006 letter](#));
- Notice regarding election of fiscal year other than calendar year ([2006 letter](#));
- Process for requesting confidential treatment of commodity pool annual reports ([2006 letter](#)); and
- AICPA SOP 95-2, *Financial Reporting by Nonpublic Investment Partnerships*, applicability to both required audited and unaudited commodity pool annual financial reports ([2004 letter](#)).

In addition, CFTC interpretations and other staff letters that provide written guidance concerning the Act and the Commission's regulations are available on the Commission's website. In particular, an illustrative example regarding Regulation 4.22(e)(2) is available in CFTC [Interpretative Letter 94-3](#), *Special Allocations of Investment Partnership Equity*.

I. Recent Regulatory Amendments

CPOs and public accountants should be familiar with the Commission's regulations, particularly Regulations 4.7 and 4.22, in preparing and filing commodity pool annual financial statements. The CFTC recently amended its regulations³ governing the periodic account statements that CPOs are required to provide to commodity pool participants and, effective for 2009, the annual financial reports that CPOs are required to provide to commodity pool participants and file with the National Futures Association ("NFA"). The amendments became effective December 9, 2009 and changes that affect annual reporting requirements will be applicable to commodity pool annual reports for fiscal years ending December 31, 2009 and later. The amendments:

- Specify detailed information that must be included in the periodic account statements and annual reports for certain commodity pools with more than one series or class of ownership interest;
- Clarify that the periodic account statements must disclose either the net asset value per outstanding participation unit in the pool, or the total value of a participant's interest or share in the pool;
- Extend the time period for filing and distributing annual reports of commodity pools that invest in other funds;
- Codify existing Commission staff interpretations regarding the proper accounting treatment and financial statement presentation of certain income and expense items in the periodic account statements and annual reports;
- Streamline the final reporting requirements for pools ceasing operation;
- Establish conditions for use of International Financial Reporting Standards ("IFRS") in lieu of U.S. Generally Accepted Accounting Principles ("U.S. GAAP") and a notice procedure for CPOs to claim such relief; and

³ See [74 FR 57585 \(November 9, 2009\)](#).

- Clarify and update several other requirements for periodic and annual reports prepared and distributed by CPOs.

These amendments are discussed further below.

II. Filing Procedures and Due Dates of Commodity Pool Financial Filings

Commission regulations establish the dates by which such commodity pool annual financial statements must be provided to participants and received by the NFA.

Specifically, Commission regulations provide that:

- **Commodity pool annual reports must be distributed to pool participants and filed with NFA within 90 calendar days of the pool's fiscal year end.** The filing date for commodity pool reports as of December 31, 2009 is March 31, 2010. Copies of such reports should be filed with the NFA. A CPO should not file a copy of a commodity pool's annual report with the Commission.
- **Applications for an extension of the distribution and filing date must be submitted to NFA prior to the original due date and must include the information required by Regulation 4.22(f)(1).** Extension requests beyond 90 days should be addressed to the undersigned with copies to the NFA.
- **CPOs of commodity pools that invest in other collective investment vehicles may obtain an "automatic" 90-day extension of the distribution and filing due date by submitting the information specified by Regulation 4.22(f)(2) to NFA prior to the original due date.** In subsequent years, the CPO will be presumed to operate the pool as a fund of funds and continue to qualify for the automatic extension.⁴ However, the CPO is obligated to inform the NFA if those circumstances change and to begin filing within the standard 90-day time frame. In addition, this extension of time has been made available to Regulation 4.7 exempt pools, even if the report is not audited by an independent public accountant.
- **CPOs must submit annual reports to NFA electronically in accordance with NFA's [EasyFile electronic filing system](#) and procedures.**
- **An annual report may be distributed in hardcopy or electronically to pool participants. The CPO, however, must obtain a participant's prior consent to distribute an annual report in electronic format.**
- **Draft financial statements.** Some CPOs have filed incomplete, or "draft," unaudited financial statements for pools exempt under Regulation 4.7 to meet the due dates for such

⁴ The CPO is no longer required to confirm that the pool is continuing to operate as a fund of funds each year by restating certain representations in a statement filed at the same time as the pool's annual report.

filings. CPOs are reminded that although Regulation 4.7 provides exemption from certain requirements, reports filed and distributed to investors must include all required information and be in accordance with U.S. GAAP or, in some instances, IFRS to be considered timely filed.

III. Master/Feeder and Fund of Funds

Master/Feeder Structures. Paragraph 7.08 of the May 1, 2009 edition of the AICPA Audit and Accounting Guide, *Audits of Investment Companies*, notes that FASB ASC 946-205-45-6 permits nonpublic feeder pools either to follow the disclosure and reporting provisions of FASB ASC 946-210, or to present a complete set of master financial statements with each feeder financial statement.

Fund of Funds. Year end 2009 pool financial statements must disclose specific income and fee information for investee pools as specified in Regulation 4.22(c)(5). CPOs must disclose amounts of income and fees associated with investments in investment partnerships that exceed five percent of the commodity pool's net assets. Attachment B to this letter contains examples of these disclosures as well as other information for investee funds that is required to be included in the condensed schedule of investments.

If a commodity pool's annual financial statements are found deficient with respect to compliance with U.S. GAAP, the CPO may be required to revise the commodity pool's financial statements, distribute the revised statements to participants, and re-file the statements with NFA.

IV. Requests for Limited Relief from U.S. GAAP Compliance for Certain Offshore Commodity Pools

Regulation 4.22(d) has been amended, applicable to year end 2009 annual reports and all subsequent year end annual reports, to permit CPOs that operate commodity pools organized under the laws of a non-U.S. jurisdiction to prepare financial statements for such pools using IFRS, provided that:

- The use of accounting standards other than U.S. GAAP does not conflict with any representations made in the pool's offering memorandum or other operative document;
- The IFRS financial statements contain a condensed schedule of investments as required by U.S. GAAP (FASB ASC 946-210-50);
- The IFRS financial statements report special allocations of partnership equity in accordance with Commission Regulation 4.22(e)(2); and
- If IFRS would require that the pool consolidate its financial statements with another entity, such as a feeder fund consolidating with its master fund, all applicable disclosures required by U.S. GAAP for the feeder must be presented with the reporting pool's consolidated financial statements.

To claim the relief to use IFRS accounting standards, the CPO must file a notice with NFA within 90 days after the end of the pool's fiscal year. Furthermore, in accordance with the above regulation, amended Regulations 4.22(a) and 4.7(b)(2) permit a CPO to present a pool's

periodic account statements on the same basis as that of its annual report.

In addition, Division staff has, on a case-by-case basis, provided limited relief to CPOs that operate offshore pools by allowing such commodity pools to prepare and to present their financial statements in accordance with another comprehensive basis of accounting other than IFRS, such as United Kingdom or Irish accounting standards, instead of U.S. GAAP. In each case, the Division's relief was conditioned upon the offshore pool following the elements of U.S. GAAP now required to use IFRS.

CPOs seeking to prepare and present their offshore pools' financial statements on the basis of another comprehensive basis of accounting other than IFRS may request relief from the U.S. GAAP requirement by submitting their requests, enumerating compliance with each of the elements specified in Regulation 4.22(d)(2), to the undersigned at the address shown on this letterhead. If you have any further questions, contact Ronald Carletta, Branch Chief, or Al Goll, Auditor, at the phone numbers or addresses listed in Attachment A.

V. CPOs Claiming Exemption under Regulation 4.13

Regulation 4.13 provides an exemption from registration for CPOs of certain commodity pools. Prior to a recent amendment, Regulation 4.13(c)(2) did not require a CPO of an exempt pool to provide an annual report to each pool participant, but did require that if the CPO provided an annual report to participants, the report must be presented in accordance with U.S. GAAP. The Commission has amended Regulation 4.13(c) to delete the requirement that annual reports for pools for which the CPO has claimed exemption from registration under Regulation 4.13 must be presented and computed in accordance with U.S. GAAP. CPOs of pools operating under Regulation 4.13 will no longer need to request relief in order to use financial standards other than U.S. GAAP.

VI. Reports of Liquidating Pools

Commission Regulation 4.22(c) has been amended to clarify and streamline procedures for CPOs filing final annual reports for pools that have ceased operations. The amendments provide for the filing and distribution of a final annual report within 90 days of a pool's permanent cessation of trading. Alternatively, the CPO of a liquidating pool may provide the following information within 90 days of the permanent cessation of trading in lieu of an otherwise required final annual report:

- Statements of Operations and Changes in Net Assets for the relevant period as contained in the regulation; and,
- An explanation of the winding down of the pool's operations and written disclosure that all interests in, and assets of, the pool have been redeemed, distributed, or transferred on behalf of participants; or
- In the event that all interests in, and assets of, the pool have not been distributed, redeemed, or transferred to participants by the time the final report is issued, the CPO must disclose the value of assets remaining to be distributed and an approximate timeframe for when the CPO expects distribution to occur. If the CPO is unable to

complete distribution within the estimated timeframe, the CPO must update the above detailed information to both NFA and participants in writing.

If the CPO is not be able to liquidate the pool's assets within time to prepare, file, and distribute the final annual report as prescribed by the regulation, the amendments to Commission Regulation 4.22(c) require the CPO to provide written notice to each participant and NFA, disclosing the following:

- The value of assets remaining to be liquidated, the timeframe within which liquidation is expected to occur, any impediments to liquidation and any fees or expenses that will be charged to the pool prior to final distribution;
- Which financial reports the CPO will continue to provide to participants from the time of the cessation of trading until the final annual report is distributed, and the frequency of such reports, pursuant to the pool's constitutive documents; and
- The timing of the final annual report.

Additionally, the amendments provide that a CPO who is availing itself of the alternative filing in lieu of a final annual report may file unaudited information provided that the CPO obtains waivers from all participants and certifies the same to NFA when the final report is filed.

Nothing in the amendments to Commission Regulation 4.22(c) is intended to relieve CPOs of their obligations to continue to comply with the periodic and annual reporting requirements under the Commissions regulations.

This relief also is applicable for pools that have claimed an exemption under Regulations 4.7 or 4.12.

VII. Reports of Series Funds Structured with a Limitation on Liability Among the Different Series

Commission Regulation 4.22(a) has been amended to permit series funds structured with a limitation on liability among the different series to prepare and distribute to participants periodic account statements that contain information limited to the series in which the participant holds an interest. The CPO of such a series fund would not have to provide consolidated information for all series.

Additionally, Commission Regulation 4.22(c) has been amended to permit series funds structured with a limitation on liability among the different series to prepare, file, and distribute an Annual Report that contains financial reports with information limited to the series in question. The CPO of such a series fund would not have to provide consolidated information for all series.

VIII. Accounting Developments

A. FASB Accounting Standards Codification

On July 1, 2009 the Financial Accounting Standards Board (FASB) launched the *FASB Accounting Standards Codification*TM (the “Codification”) as the single source of authoritative nongovernmental U.S. GAAP. The Codification is effective for interim and annual periods ending after September 15, 2009. All existing accounting standards documents are superseded as described in FASB Statement No. 168, *The FASB Accounting Standards Codification*TM and *the Hierarchy of Generally Accepted Accounting Principles*. All other accounting literature not included in the Codification is nonauthoritative.

The Codification reorganizes the thousands of U.S. GAAP pronouncements into roughly 90 accounting topics and displays all topics using a consistent structure. It also includes relevant Securities and Exchange Commission (SEC) guidance that follows the same topical structure in separate sections in the Codification

B. Disclosures About Derivative Instruments

ASC 815-10(FASB Statement No. 161, *Disclosures about Derivative Instruments and Hedging Activities, an amendment of FASB Statement No. 133* is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The Statement amends and expands the disclosure requirements of FAS-133 (ASC 815) with the objective of providing users of financial statements with an enhanced understanding of the purpose and nature of an entity’s derivatives activity, the accounting treatment applied to derivative instruments, and the effect of derivative instrument activity on an entity’s reported performance and cash flows.

C. AICPA Commodities Audit Practice Aid

The revised and updated AICPA Audit Practice Aid, *Audits of Futures Commission Merchants, Introducing Brokers, and Commodity Pools (Second Edition*; product number 006639) was published this past summer and is a useful tool for auditors and accountants of commodity entities. It can be purchased at the AICPA website: <http://www.AICPA2biz.com>.

D. AICPA Audit Risk Alert

The AICPA 2009 Audit Risk Alert (“ARA”) *Financial Institutions* contains sections on the commodities industry. The practice of issuing a separate risk alert for the securities industry in which commodities was covered has been discontinued. The ARA can be purchased at the AICPA website: <http://www.AICPA2biz.com>.

E. FASB ASC Topic 820 (Formerly FAS 157, Fair Value Measurements)

Resources that may be helpful in understanding and applying FASB ASC Topic 820 are:

- *Measurements of Fair Value in Illiquid (or Less Liquid) Markets*, issued by the AICPA Center for Audit Quality available at http://www.aicpa.org/caq/download/caqalert2007_51_10032007.pdf;
- AICPA Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*, when auditing financial statements that contain complex fair value measurements;
- FASB Staff Position No. 157-3 “*Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*”;
- Proposed FSP FASB 157-g, *Estimating the Fair Value of Investments in Investment Companies That Have Calculated Net Asset Value per Share in Accordance with the AICPA Audit and Accounting Guide, Investment Companies* (for now the net asset value reported by investee investment companies will continue to be an acceptable fair value indicator, with certain exceptions.)
- AICPA publications, including Technical Practice Aid (TPA) on Liquidity Restrictions, Investment Companies TPAs, etc. – please refer to <http://www.aicpa.org/Professional+Resources/Accounting+and+Auditing/Accounting+Standards> for more information.

F. Alternative Investments, Audit and Accounting Considerations

The AICPA Practice Aid, *Alternative Investments Audit Considerations: A Practice Aid for Auditors*, should be of interest to management of investor entities including, but not limited to, other investment companies (e.g., funds-of-funds). It provides guidance to assist auditors in addressing the existence and valuation assertions associated with alternative investments due to the lack of a readily determinable fair value and the limited investment information generally provided by investee fund managers.

The Accounting Standards Executive Committee of the AICPA issued a Draft Issues Paper, *FASB Statement No. 157 Valuation Considerations for Interests in Alternative Investments*, which includes guidance on how to value investments in investment companies that have prohibited withdrawals by investors.

G. AICPA Technical Guidance

AICPA issued technical guidance regarding accounting treatment of offering costs incurred by investment partnerships.⁵ This guidance:

- Provides that investment partnerships that continually offer interests should defer

⁵ See paragraph 8.27 of the AICPA Audit and Accounting Guide, *Investment Companies* (May 1, 2009 edition).

offering costs incurred prior to commencement of operations and then amortize them over the period that it continually offers interests up to a maximum of 12-months period generally on a straight line basis; and

- Defines the phrase “continually offer interests.”

Registrants are reminded that organization costs are not affected by this guidance and must be charged to expense as incurred as required by AICPA SOP No. 98-5, *Reporting on the Costs of Start-up Activities*. However, if appropriately disclosed to investors and potential investors, NAV used to compute investment entrance and exit values, may be adjusted to amortize such costs differently, but generally not to exceed a period of 60 months.

IX. DCIO and NFA Contact Information

If a CPO or a public accountant has any questions on the foregoing, please feel free to contact the DCIO staff or NFA staff listed in Attachment A to this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas J. Smith". The signature is fluid and cursive, with a large initial "T" and "S".

Thomas J. Smith
Deputy Director and
Chief Accountant

**ATTACHMENT A
CFTC DIVISION OF CLEARING AND INTERMEDIARY OVERSIGHT CONTACT
INFORMATION**

Regional Office Locations	Contacts	Location of CPO's Principal Office
Eastern Region		
140 Broadway, 19th Floor New York, NY 10005-1146	Ronald A. Carletta Phone: (646)-746-9726 E-Mail: rcarletta@cftc.gov Al Goll Phone: (646)-746-9723 E-Mail: agoll@cftc.gov Fax: (646)-746-9937	All states east of the Mississippi River, <i>except</i> Illinois, Indiana, Michigan, Ohio, and Wisconsin. Any location outside of the United States
Central Region		
525 West Monroe Street Suite 1100 Chicago, IL 60661	Lisa M. Marlow Phone: 312-596-0566 Fax: 312-596-0712 E-Mail: lmrallow@cftc.gov	Illinois, Indiana, Michigan, Ohio, and Wisconsin
Southwestern Region		
Two Emanuel Cleaver II Boulevard, Suite 300 Kansas City, MO 64112	Kurt Harms Phone: 816-960-7711 Fax: 816-960-7750 E-Mail: kharms@cftc.gov	All states west of the Mississippi River

National Futures Association Contact Information	
National Futures Association 300 South Riverside Plaza, Suite 1800 Chicago, IL 60606	Tracy Hunt, Senior Manager, Compliance Phone: 312-781-1284 Fax: 312-559-3453 E-Mail: thunt@nfa.futures.org

ATTACHMENT B

ILLUSTRATION – Fund of Funds Additional Disclosures

Note X. Investments

As of December 31, 2009, ABC Fund invested in other funds, none of which were related parties.

The following table summarizes ABC Fund's investments in other funds as of December 31, 2009. Funds in which ABC Fund invested more than 5% of its net assets are individually identified, while smaller investments in three other funds are aggregated. The management agreements of the investee funds provide for compensation to the managers in the form of fees ranging from 1% to 3% annually of net assets and performance incentive fees ranging from 5% to 25% of net profits earned.

Investment	% of ABC's Net Assets	Fair Value	Income (Loss)	Fees Mgmt	Incentive	Investment Objective	Redemptions Permitted*
Airjo Fund Ltd.	5.0	\$ 2,500,000	\$200,000	\$ 25,000	\$ 30,000	Emerging market	Quarterly
Carron Int'l Fund	5.2	2,600,000	210,000	26,000	42,000	Sector investment	Monthly
Vital Fund NV	5.6	2,800,000	(30,000)	28,000	0	International equity	Semi-Annual
Other funds:	<u>4.2</u>	<u>2,100,000</u>	<u>100,000</u>	<u>24,000</u>	<u>25,000</u>	Other	Monthly-Annually
Total	<u>20.0%</u>	<u>\$10,000,000</u>	<u>\$480,000</u>	<u>\$103,000</u>	<u>\$97,000</u>		

An alternative illustrative table, for *unusual cases*, where the fee information cannot be obtained is shown below:

Investment	% of ABC's Net Assets	Fair Value	Income (Loss)	Fees Mgmt	Incentive	Investment Objective	Redemptions Permitted♦
Airjo Fund Ltd.	5.0	\$ 2,500,000	\$200,000	\$ 25,000	\$ 30,000	Emerging market	Quarterly
Carron Int'l Fund	5.2	2,600,000	210,000	26,000	42,000	Sector investment	Monthly
Other funds:	<u>4.2</u>	<u>2,100,000</u>	<u>100,000</u>	<u>24,000</u>	<u>25,000</u>	Other	Monthly-Annually
Subtotal	14.4	7,200,000	510,000	<u>\$75,000</u>	<u>\$97,000</u>		
Vital Fund NV	5.6	<u>2,800,000</u>	<u>(30,000)</u>	*	*	International equity	Semi-Annual
Total	<u>20.0%</u>	<u>\$10,000,000</u>	<u>\$480,000</u>				

* = The fund operator is not able to obtain the specific fee amounts for this fund and does not know what those amounts are. However, management fees are computed based on 1% per year of net asset balances at the beginning of each month; incentive fees are computed based on 20% per year of net income.

♦ Note any funds in which redemptions have been suspended.