



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

To: All Commodity Pool Operators
Attention: Chief Financial Officer
Subject: Annual Reporting for Commodity Pools
Date: February 17, 2006

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”) and public accountants with the preparation and filing of annual financial reports required under the Commodity Exchange Act (“Act”) and Commission regulations.¹ This letter highlights 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 that assist in the preparation of commodity pool annual financial statements.

The Division has issued similar letters in prior years, which are available in the [Compliance Information](#) section of the CFTC’s website, www.cftc.gov. These letters should be consulted with respect to commodity pool annual financial statements and reporting. Specifically relevant and still applicable information is not being reproduced here as it is available in such prior letters, including the applicability of U.S. generally accepted accounting principles or “GAAP”; American Institute of Certified Public Accountant’s (“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*; and AICPA SOP 95-2, *Financial Reporting by Nonpublic Investment Partnerships*, to both required audited and unaudited commodity pool annual financial reports.

In addition, CFTC interpretations and staff letters that provide written guidance concerning the Act and the Commission’s regulations from 1995 forward are available on the Commission’s website. In particular, CFTC [Interpretative Letter 94-3](#), *Special Allocations of Investment Partnership Equity*, addresses how a CPO should report a special allocation of partnership equity to the general partner of an investment partnership in the financial statements of a commodity pool.

¹ The Act is codified at 7 U.S.C. §1 et seq. (2004). The Commission’s regulations are found in Title 17 of the Code of Federal Regulations. Links to both the Act and regulations may be found on the Commission’s website, www.cftc.gov, in the Law & Regulation section.

I. Due Dates of Commodity Pool Financial Filings – Late Filings

CPOs and public accountants should be familiar with the Commission's regulations, particularly Regulations 4.22 and 4.7, in preparing and filing commodity pool annual financial statements. These regulations establish the due dates by which such commodity pool annual financial statements must be provided to participants and received by the National Futures Association ("NFA").

The Division has noted a significant increase in the number of commodity pool annual reports that are distributed to participants and filed with NFA after the due dates set forth in the Commission's regulations. In addition, CPOs do not always file requests for extensions of the filing due dates in accordance with Commission regulations.

The Commission and NFA are committed to obtaining compliance with the required due dates under the regulations. In 2005, the Commission's Division of Enforcement initiated reviews of certain CPOs with respect to existing late filings of commodity pool financial statements, and will continue to do so in 2006 if late filing is encountered. NFA also initiated examinations of CPOs that did not file pool annual reports in a timely manner, and referred certain CPOs to its Business Conduct Committee. The Commission also has strongly requested that NFA take appropriate steps in 2006, including referrals to its Business Conduct Committee, for CPOs that fail to comply with Commission regulations.

To avoid the potential adverse consequences of NFA disciplinary action or Commission enforcement action, CPOs must comply with Commission regulations. 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.**
- **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).**
- **CPOs of commodity pools that invest in other collective investment vehicles may obtain an "automatic" 60-day extension of the distribution and filing due date by submitting the information required by Regulation 4.22(f)(2) to NFA prior to the original due date.**

II. Amendments to Part 4

A. Pool Annual Financial Reports

The CFTC adopted amendments to the Part 4 regulations in February 2006 (available at www.cftc.gov, under Law & Regulation), which require CPOs to submit annual reports to NFA electronically in accordance with NFA's electronic filing system. The CFTC permitted NFA to implement a pilot program for the electronic filing of commodity pool annual reports in 2005.

Effective thirty days after publication in the *Federal Register*, these amendments require a CPO to file full annual reports electronically in the Portable Document Format (“PDF”) in addition to also submitting certain key financial statement balances from such annual reports into NFA’s database, which will be subject to edit and validation checks. Instead of filing a manually signed copy of the oath accompanying the report, the CPO must make the required oath on-line through electronic submission of the report, and separately must comply with a recordkeeping requirement to maintain copies of annual reports accompanied by manually signed oaths or affirmations.

In addition, the CPO is required to maintain records of supporting documentation showing how the key financial balances submitted electronically to NFA were compiled from the annual report. NFA has established the key balances, and instructions are available for what should be included in each as the submission form is completed. A CPO may enable its public accountant to enter the key balances and the PDF file of the annual report into NFA’s electronic filing system, but only an appropriately authorized representative of the CPO may actually affirm the report and submit the filing.

CPOs and their public accountants with annual reports due in March 2006 for the year ended December 31, 2005, should read the amendments, available at www.cftc.gov, and consult with NFA in advance to ensure they will be able to comply and use EasyFile. To use EasyFile, CPOs must go to NFA’s website, www.nfa.futures.org. Under the Compliance Heading on NFA’s Home Page, click the Electronic Filings drop-down menu and select EasyFile (Pool filers).

Annual reports to pool participants may continue to be provided as they have been previously, either through hard-copy distribution via postal mail or electronically, with the pool participants’ consent. Prior to an initial transmission of any account statement or annual report to a pool participant by means of electronic media, a CPO must disclose to the participant that it intends to distribute these documents electronically, absent objection from the participant no later than 10 business days following receipt of the disclosure.

B. Other Filings

The Part 4 amendments clarify that a CPO must file a written notification with NFA whenever there is a change in the public accountant auditing a commodity pool. The amendments also provide that required notifications for changes to a commodity pool’s fiscal year-end may be filed solely with NFA.

In addition, the amendments clarify regulations in response to questions received by the Division concerning the representations required in an accountant’s letter supporting an extension request under Regulation 4.22(f)(1). The former reference to “segregation” has been clarified as referring to the prohibition on commingling of funds of a commodity pool with the assets of any other person. Also, as discussed in Section III, an amendment was made to specifically state that GAAP should be the basis of the presentation and computation of required information in account statements.

CPOs and their public accountants should be aware of these amendments and contact NFA or the Commission with any questions.

III. Compliance with U.S. GAAP

The requirement that financial statements be presented and computed in accordance with GAAP is applicable both to pools that are required to distribute audited financial statements to pool participants, as well as to certain pools that, while required to distribute financial statements to pool participants, are permitted by Commission Rule 4.7 to elect to distribute unaudited financial statements. In addition, the recently adopted amendments to Part 4 (See Section II) clarify that the information contained in account statements provided to all participants also must be presented and computed in accordance with GAAP. CPOs and public accountants should be familiar with the requirements for commodity pool financial statements that have been issued by the AICPA. Deficiencies, with respect to required GAAP disclosures in particular, previously have been noted in the Division's prior letters to pool operators.

GAAP requires that all significant accounting policies followed by an enterprise be disclosed in the notes to its financial statements (Accounting Principles Board Opinion 22). For commodity pools, one of the most significant, if not the most significant, accounting policies concerns the valuation of investments. Accordingly, CPOs are reminded that such policies are disclosures required by GAAP. Disclosures should quantify values arrived at by the valuation methods specified in the AICPA Audit and Accounting Guide, *Audits of Investment Companies*, paragraphs 2.28 through 2.40.

Master/Feeder. Paragraph 7.07 of the AICPA Audit and Accounting Guide, *Audits of Investment Companies*, permits nonpublic feeder pools either to follow the disclosure and reporting provisions of SOP 95-2, as amended by SOPs 01-1 and 03-4, or to present a complete set of master financial statements with each feeder financial statement.

Fund of Funds. The Division has long believed that CPOs should report amounts of income and fees for nonregistered investment partnerships in which they invested significant portions of their capital as such information is deemed material for participants to fully comprehend the investment strategy of the CPO. CPOs are strongly encouraged to disclose amounts of income and fees associated with investments in nonregistered investment partnerships that exceed five percent of the pool's net assets. The five percent threshold is consistent with the reporting thresholds set forth in SOP 95-2 and SOP 03-4 for nonregistered investment partnerships.

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

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

Division staff has, on a case-by-case basis, provided limited relief to CPOs of offshore pools allowing such pools to prepare and to present pool financial statements in accordance with International, United Kingdom or Irish accounting standards in lieu of U.S. GAAP.

In each case, the Division's relief was conditioned upon the offshore pools following certain key elements of U.S. GAAP standards, including: 1) determining fair values of investments as required using the valuation methods specified in the AICPA Audit and Accounting Guide, *Audits of Investment Companies*; 2) reporting of both realized and unrealized gains and losses through the statement of operations; 3) preparing a condensed schedule of investments;² and 4) reporting special allocations of partnership equity in accordance with CFTC [Interpretative Letter 94-3](#).

CPOs that operate offshore pools that would like to request relief from the U.S. GAAP requirement must contact Ronald Carletta, Supervisory Auditor, or Al Goll, Auditor, at the phone numbers or addresses listed in Appendix A, for further information.

V. Initial Annual Reports and Final Annual Reports

A CPO that commences operation of a commodity pool is required to prepare an annual report for the pool within 90 days of the pool's fiscal year-end, even if the pool did not operate for a full 12-month period. A pool is deemed to commence operations upon the initiation of investment activities on behalf of participants, and not solely upon the receipt of participants' contributions.

The Commission may grant a CPO an exemption from the requirement to prepare an audited annual report as of the pool's initial year-end date in cases where a pool commences operations within three months of the end of its fiscal year. The exemption generally is conditioned upon the CPO filing with NFA and distributing to pool participants year-end unaudited pool financial statements that are prepared in accordance with U.S. GAAP and otherwise complying with Commission regulations. The exemption is further conditioned upon the CPO filing an audited annual report as of the date of the pool's second year-end and must include an income statement covering the period from the commencement of operations of the pool through the date of the pool's second year-end date. For the full requirements for such an exemption, please contact Kevin Walek, Assistant Director, at kwalek@cftc.gov, or (202) 418-5463.

Commission Regulation 4.22(c) requires a CPO to file with NFA and to distribute to pool participants a final annual report whenever a pool ceases trading. This requirement also is applicable for pools that have claimed an exemption under Regulations 4.7 or 4.12. The final report should be in the same format and include the same information as an annual financial report, even if the final report is not for a full 12-month period. If the final distribution of pool assets has not been made as of the balance sheet date, a subsequent event note to the financial

² As required by AICPA SOP 95-2, subsequently amended by SOP 01-1 and SOP 03-4.

statements should disclose the date on which all pool assets were subsequently, or are expected to be, distributed to the participants. A CPO should clearly state when it intends a report to be a final report. A legend on the cover of the report is an effective way to do so.

The final report is due within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after the assets are distributed to pool participants.

VI. FAS 150 Implementation

FASB Staff Position No. FAS 150-3 deferred certain classification, measurement and disclosure provisions of FASB Statement of Financial Accounting Standards No. 150 ("FAS 150").³ For non-public entities not registered with the Securities and Exchange Commission with financial instruments that are mandatorily redeemable on fixed dates for amounts that either are fixed or are determined by reference to an external index, the classification and disclosure requirements are required for fiscal periods beginning after December 15, 2004. Accordingly, commodity pools must apply the requirements of FAS 150 for 2005 financial statements.

CPOs and their CPAs should be aware of the applicability of FAS 150 under GAAP to obligations to redeem interests in commodity pools as year-end financial statements are being prepared and notifications of redemptions are received by CPOs. If redemption of an equity interest is at the holder's option and the holder has elected to redeem its interest, under FAS 150 such interests would be mandatorily redeemable and should be reclassified from equity to liability. The threshold amounts for GAAP disclosures, including the summary schedule of investments and the financial highlights, also may be affected as such a reclassification would result in a lower net asset value.

VII. Reminder Regarding Availability of Annual Report Information under the Freedom of Information Act ("FOIA")

Finally, CPOs are reminded that annual reports required by the Commission to be filed with NFA are subject to requests under FOIA, as NFA acts as the Commission's delegate with respect to receiving and reviewing such reports. CPOs are further reminded that they may petition the Commission to provide confidential treatment of reports by filing a request with the Commission's Secretariat pursuant to the procedure set forth in Commission Regulation 145.9. No confidential treatment will be provided when a FOIA request for a filing is made, unless a proper request for confidential treatment has been received and granted by the Commission.

³ FASB Staff Position No. FAS 150-3, "Effective Date, Disclosures, and Transition for Mandatorily Redeemable Financial Instruments of Certain Nonpublic Entities and Certain Mandatorily Redeemable Noncontrolling Interests under FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*".

VIII. 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 that reads "Thomas J. Smith". The signature is written in a cursive style with a large, prominent initial "T".

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 Fax: (646)-746-9937	Ronald A. Carletta Phone: (646)-746-9726 E-Mail: rcarletta@cftc.gov Al Goll Phone: (646)-746-9723 E-Mail: agoll@cftc.gov	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	Melissa B. Hendrickson Phone: 312-596-0661 Fax: 312-596-0712 E-Mail: mhendrickson@cftc.gov	Illinois, Indiana, Michigan, Ohio, and Wisconsin
Southwest 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

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