



Commodity Futures Trading Commission

Office of Public Affairs
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May 26, 2021

CFTC's Market Participants Division Publishes Updated Responses to Frequently Asked Questions (FAQs) Regarding Commission Regulation 4.27 and CFTC Form CPO-PQR

In October 2020, the Commodity Futures Trading Commission (“Commission” or “CFTC”) adopted a Final Rule amending its Form CPO-PQR, a filing designed to collect data from registered commodity pool operators (“CPOs”) about each of their operated commodity pools (“Pool(s)”), as well as the provision requiring it, Commission Regulation 4.27 (“17 CFR 4.27”).¹

These FAQs, originally published in 2015, are intended to provide guidance to affected CPOs filing a recently revised Form CPO-PQR for their operated Pools. Although the FAQ responses may include staff recommendations about 17 CFR 4.27 or completing Form CPO-PQR, this publication is not intended to create new regulations or compliance requirements. Nor is it intended to amend existing ones. Moreover, the responses to these FAQs only reflect the views and positions of the Market Participants Division’s (“MPD”) staff, and not necessarily those of the Commission or any other office or division. Although MPD staff has not identified additional FAQs since 2015, each FAQ response below has been revised to reflect the recent amendments to 17 CFR 4.27 and Form CPO-PQR adopted by the Commission last year, and this document now supersedes the 2015 version.²

I. FAQs on General Filing Requirements

1. Who is required to complete and file Form CPO PQR?

17 CFR 4.27(c)(1) requires that all registered CPOs operating, during a Reporting Period,³ at least one Pool, complete and file Form CPO-PQR for that Reporting Period with the CFTC, “with respect to the directed assets of each pool under the advisement of a [CPO].”⁴

If one or more of a CPO’s Pools cease operations on or before the end of a Reporting Period (the date upon which Form CPO-PQR filing requirements become determinable or “attach”), the reporting CPO should exclude the ceased Pool from its Form CPO-PQR filing because the Pool would no longer have “directed assets... under the advisement of the CPO,” as required by 17 CFR 4.27(c)(1). However, other compliance obligations are

¹ Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 71772 (Nov. 10, 2020) (CPO-PQR Final Rule). All Commission regulations can be found in 17 CFR Ch. I, including 17 CFR 4.27.

² MPD staff removed from this document all original 2015 FAQs pertaining to portions of Form CPO-PQR deleted by the CPO-PQR Final Rule.

³ A Reporting Period, as further discussed below, is now defined as an “individual calendar quarter” with respect to all CPOs filing Form CPO-PQR. See Form CPO-PQR, Defined Terms, “Reporting Period,” and Reporting Instructions, no. 1.

⁴ 17 CFR 4.27(c)(1).

required by provisions in 17 CFR Part 4, like a final Annual Report, and may apply depending on the facts and circumstances.

A registered CPO that either did not operate a Pool at all, or operated only Pools for which the CPO is not required to be registered, is also generally not required to complete and file Form CPO-PQR for such Reporting Period. For example, a registered CPO that operates only Pools pursuant to the registration exemption contained in 17 CFR 4.13(a)(3), or pursuant to an exclusion from the CPO definition in 17 CFR 4.5, during the Reporting Period would not be required to complete and file Form CPO-PQR.⁵ Additionally, a registered CPO who has formed and listed a Pool, but not yet commenced operations, would be required to complete and file Part 1 of Form CPO-PQR (“Information about the CPO”), whereas Part 2 (“Information About the Pools Operated by the CPO”) would be required in future filings once trading begins.

Finally, a registered CPO that did not operate any Pools during the Reporting Period, or that operated only offshore Pools qualifying for relief under 17 CFR 3.10(c)(5)(i), also would generally not be required to complete and file Form CPO-PQR. Such offshore Pools, if they are listed by registered CPOs notwithstanding that the Pools qualify for relief, may still generate calls from the National Futures Association (“NFA”) on behalf of the Commission seeking Form CPO-PQR compliance.

2. If a Pool is operated by two or more CPOs during a Reporting Period, is each CPO required to file Form CPO PQR for that Pool?

Yes. All CPOs that operate at least one Pool for which they must be registered must complete and file Form CPO-PQR. If two or more CPOs operate a Pool during a Reporting Period (“Co-CPOs”), each Co-CPO is required to file Part 1 (“Information About the CPO”) of Form CPO-PQR. With respect to Part 2 (“Information About the Pools Operated by the CPO”), the jointly operated Pool need only be reported by one of the Co-CPOs, typically by the Co-CPO with the most knowledge of and access to the jointly operated Pool’s information and trading activities; such Co-CPO should be the reporting CPO of the co-operated Pool consistently going forward.

Similarly, if a Pool is operated by Co-CPOs, one of which also is an Investment Adviser (“IA”) registered with the Securities and Exchange Commission (“SEC”), both the non-IA CPO and the IA-CPO must file Part 1 of Form CPO-PQR. With respect to reporting that Pool on Part 2 in Form CPO-PQR, again, only one of the Co-CPOs should report on the jointly operated Pool. This is the case, even where the IA-CPO also separately files a Form PF including that Pool.

3. Available Substituted Compliance: Is a CPO that is registered as an Investment Adviser with the SEC and that files a Form PF with the SEC still permitted to file that Form PF with the CFTC in lieu of Form CPO PQR?

No. The Final Rule adopted by the Commission on October 6, 2020, included substantial revisions to Form CPO-PQR and amendments to 17 CFR 4.27.⁶ Pursuant to those amendments, dually registered IA-CPOs are no longer permitted to file the SEC’s Form PF in lieu of the CFTC’s Form CPO-PQR (and to the extent that Form PF is provided to the CFTC, it will be deemed to be filed with the Commission for enforcement purposes).⁷ Additionally, a CPO that is also a registered IA and that files Form PF is not excused from filing NFA Form PQR, as required by NFA membership rules.

⁵ See, e.g., 17 CFR 4.27(b)(2)(i).

⁶ CPO-PQR Final Rule.

⁷ See CPO-PQR Final Rule, 85 Fed. Reg. at 71783 and 71789, *amending* 17 CFR 4.27(d).

The Commission has, however, amended 17 CFR 4.27 to include substituted compliance with respect to NFA Form PQR, permitting its filing in lieu of the CFTC's revised Form CPO-PQR.⁸ Therefore, a dually registered IA-CPO may meet its filing obligations with both the SEC and the CFTC by completing and filing Form PF and NFA Form PQR, respectively, as required.

Form Filed for an Operated Pool	17 CFR 4.27(c) Compliance
CFTC Form CPO-PQR	Yes
NFA Form PQR	Yes
Form PF	No

4. If a reporting CPO also operates Pools for which it is exempt from registration under 17 CFR 4.13(a)(3), are such Pools required to be included in the CFTC's Form CPO PQR or in NFA Form PQR?

A reporting CPO generally is not required to include Pools exempt under 17 CFR 4.13(a)(3) on Form CPO-PQR. If a CPO operates a Pool that invests in other Pools, including those that are exempt under 17 CFR 4.13(a)(3), such other Pool investments should be itemized and included in the Pool Schedule of Investments in Question 11. The same would be true for Pools operated pursuant to an exclusion from the CPO definition under 17 CFR 4.5.

Similarly, NFA Form PQR also does not generally collect data from reporting CPOs on the operations and investments of exempt or excluded Pools, operated pursuant to 17 CFR 4.13 or 4.5. NFA does, however, require a CPO to report "total net assets under management of all the commodity pools operated by the CPO as of the reporting date," which does include excluded or exempt Pools.⁹

5. Is a registered CPO that operates offshore Pools pursuant to CFTC Advisory 18 96 required to file Form CPO PQR for those offshore Pools?

Yes. A reporting CPO must include in its Form CPO-PQR filings all Pools for which it maintains CPO registration, notwithstanding the election of any relief from compliance requirements with respect to the operation of such Pools. Therefore, a reporting CPO is required to include on Form CPO-PQR Pools operated pursuant to CFTC Advisory 18-96.¹⁰ Similarly, a reporting CPO is also required to include on Form CPO-PQR those Pools that are operated pursuant to an exemption under 17 CFR 4.7.

In contrast, Pools not requiring registration, such as those Pools operated pursuant to exemptions and/or exclusions in 17 CFR 3.10,¹¹ 4.5, or 4.13, are generally excluded from the Form CPO-PQR reporting requirement.

II. FAQs on Specific Form CPO-PQR Requirements

6. If a reporting CPO operates U.S. domiciled and foreign domiciled Pools, what accounting standard is it required to use in completing Form CPO PQR?

17 CFR 4.27(c)(4) generally requires reporting CPOs to use and consistently apply U.S. generally accepted accounting principles in completing their Form CPO-PQR filings. However, that provision also permits the use of certain alternative accounting standards, principles, or practices enumerated in 17 CFR 4.22(d)(2)(ii). If the reporting CPO meets the conditions in 17 CFR 4.22(d)(2)(ii) and has filed the required notice to employ alternative accounting standards in the Annual Report of an operated Pool pursuant to 17 CFR 4.22(d)(2)(iii), the

⁸ See CPO-PQR Final Rule, 85 Fed. Reg. at 71782-83, and 71789, *amending* 17 CFR 4.27(c)(2).

⁹ See NFA Form PQR, Part 1, Question 2(b), Box 0030.

¹⁰ CFTC Staff Advisory 18-96, available at <https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm>.

¹¹ For recent amendments impacting CPOs and commodity pools utilizing relief in 17 CFR 3.10(c), see Exemption from Registration for Certain Foreign Intermediaries, 85 Fed. Reg. 78718 (Dec. 7, 2020).

reporting CPO is permitted to use the same elected alternative accounting standards in Form CPO-PQR filings with respect to that Pool.¹²

Staff no-action relief permitting the consolidation of Pool financial statements under certain conditions for CPO Annual Report and Form CPO-PQR purposes remains available to CPOs that qualify and wish to claim it.¹³

7. “CPO Assets Under Management. If a reporting CPO operates Pools pursuant to exemptions in both 17 CFR 4.7 and 17 CFR 4.13(a)(3), must the CPO count the Pools exempt under 17 CFR 4.13(a)(3) in calculating the CPO’s “Total Assets Under Management” in Question 2?

For purposes of determining the Pools for which a CPO must report in Form CPO-PQR, a reporting CPO may exclude those Pools for which CPO registration is not required (*i.e.*, Pools operated pursuant to an exclusion under 17 CFR 4.5 or a CPO registration exemption under 17 CFR 3.10 or 4.13(a)(3)). Under this particular scenario, the reporting CPO would only be required to include the Pools operated pursuant to 17 CFR 4.7 (and could exclude the Pools operated under 17 CFR 4.13(a)(3)). This is also true for the related “Total Net Assets Under Management” prompt that immediately follows in the Form.

8. “CPO Assets Under Management. May fund of fund assets be excluded from the calculations for “Total Assets Under Management” in question 2(a), and for “Net Assets Under Management” in question 2(b)?

Yes. The CPO-PQR Final Rule clarified the meaning and application of Form CPO-PQR’s “Instruction 4,” in response to comments received on this issue.¹⁴ Subject to certain exceptions, reporting CPOs may continue to disregard any Pool’s equity investments in other Pools in completing Form CPO-PQR, provided that a reporting CPO does so consistently.¹⁵ However, reporting CPOs must include any disregarded assets in their responses to Questions 8 (“Pool’s Statement of Changes Concerning Assets Under Management”) and 11 (“Pool Schedule of Investments”). A reporting CPO operating a Pool that invests substantially all of its assets in other Pools, for which it does not act as the CPO, must complete Form CPO-PQR for the CPO’s operated Pool and include all assets of that Pool when responding to all questions in Form CPO-PQR.

9. Where each series of a multi series Pool has its own set of financial statements, is it acceptable for the CPO to report each series as a separate Pool on Form CPO PQR?

In cases where the series of the limited liability partnership (or equivalent structure) have limitations on liability between the series, it is permissible for a CPO to report each series as a separate Pool on Form CPO-PQR, even though the CPO may prepare a single disclosure document for all of the series.

10. Is there a method for a CPO to document and submit assumptions regarding its responses to questions on Form CPO PQR?

No. Reporting CPOs are advised to maintain in their records documentation regarding any assumptions made in completing Form CPO-PQR for their operated Pools.

¹² See Form CPO-PQR, Defined Terms, “GAAP,” and Reporting Instructions, no. 8.

¹³ CFTC Staff Letter 13-51 (Sept. 5, 2013), available at <https://www.cftc.gov/csl/13-51/download/>; CFTC Staff Letter 14-112 (Sept. 8, 2014), available at <https://www.cftc.gov/csl/14-112/download/>.

¹⁴ CPO-PQR Final Rule, 85 Fed. Reg. at 71780-81.

¹⁵ See Form CPO-PQR, Reporting Instructions, no. 4.

11. “Pool Custodians. With respect to Pool custodians, is the reporting CPO required to list clearing FCMs and prime brokers or only those custodians that provide pure custody services? FCMs and prime brokers are already required to be listed by the CPO in Question 5.

If a clearing FCM or prime broker performs both clearing and custodial services, then the reporting CPO may list the FCM or prime broker under Question 5 as a broker of the Pool, and not include that FCM or prime broker as a Pool custodian in Question 7. The reporting CPO, however, must indicate under Question 5 that the listed broker also performs custodial services for the Pool.

Furthermore, a reporting CPO must provide all requested information regarding a Pool’s brokers and custodians, including the NFA ID of the broker/custodian, the start date of the relationship, and the address and phone number of the broker/custodian. Once the information has been reported in the Form, it will continue to be included automatically with each filing, until such time as the CPO ends or changes the reported relationships. Consistent with the remainder of the Form, reporting CPOs must list all brokers and custodians employed by the CPO with respect to Pool assets during the Reporting Period, regardless of the type of transaction involved.¹⁶

12. “Pool’s Monthly Rates of Return.” Is a reporting CPO required to enter the Pool’s rate of return information for the current quarter only, or for the full seven year period covered by the table?

When completing Form CPO-PQR for the first time, a reporting CPO will be required to enter its Pool’s monthly rates of return for the last 7 years, or the life of the Pool, if less than 7 years. The information will be maintained from filing to filing, and reporting CPOs will not need to re-enter the information each time it updates the rates of return. Going forward, reporting CPOs will only be required to enter the Pool’s rates of return for the three months covering the Reporting Period. If a reporting CPO has previously filed a disclosure document and entered rates of return for the Pool, those rates of return will also be carried over to the Form CPO-PQR filing.

13. “Pool’s Monthly Rates of Return.” If a reporting CPO operates a private equity fund for which it calculates rates of return only on a quarterly basis, what does it report under months 1 and 2 for the quarter?

Form CPO-PQR requires the calculation and entry of monthly rates of return irrespective of when the Pool customarily calculates its rates of return for other purposes. Accordingly, reporting CPOs must calculate and enter rates of return for their Pools on a monthly basis.

14. “Pool’s Monthly Rates of Return.” With respect to reporting the rates of return of a Pool with more than one share class without a limitation of liability among the classes, may a reporting CPO provide monthly rates of return of the Pool on an aggregate basis across all share classes based on the net asset value of the Pool?

Yes, this is the preferred approach going forward.¹⁷ In the absence of limitations on liability among the Pool’s various share classes, the overall performance of the Pool is the aggregation of the performance of all classes. The monthly rates of return for series funds with no limitations on liability among the funds’ various series should also be calculated and reported on an aggregate basis.

¹⁶ Form CPO-PQR, Defined Terms, “broker”; see also CPO-PQR Final Rule, 85 Fed. Reg. at 71781-82.

¹⁷ The 2015 FAQs noted merely the “permissibility” of aggregating across share classes with no limitations on liability to calculate monthly rates of return. See 2015 CPO-PQR FAQs, p. 8.

15. “Pool Schedule of Investments.” Where does a CPO of a Feeder Fund report an investment in a Master Fund, where the CPO of the Master Fund is exempt from filing Form CPO-PQR with the CFTC? Could the CPO of the Feeder Fund report the funds placed with the Master Fund as an investment in a “hedge fund”?

In this scenario, where the Master Fund is operated as an exempt or excluded Pool, those investments are reported in the “Funds” section of the Pool Schedule of Investments, in the most appropriate category based on the opinion of the reporting CPO. The reporting CPO should consistently use such classification on subsequent Form CPO-PQR filings. If the Master Fund were operated by a registered CPO, and thus, listed with NFA, the CPO of the Feeder Fund could report its investment under the “NFA Listed Fund” heading. Generally, MPD staff advises that reporting CPOs make their best effort to select the most appropriate fund classification for those investments, and importantly, to classify these investments consistently from one Reporting Period to the next.

16. “Pool Schedule of Investments.” Are warrants on securities considered equities, options, or derivatives?

A warrant on a security is generally treated as an option, and therefore, reported in the “Options” section of the Pool Schedule of Investments in Question 11. As with all other reported investments, investments in the Options subcategories must be itemized, if they equal or exceed 5% of the Pool’s Net Asset Valuation.

17. “Pool Schedule of Investments.” How does a reporting CPO categorize investment instruments that could potentially be classified into more than one category or sub category?

In completing Form CPO-PQR, reporting CPOs must make reasonable determinations regarding the categorization of their Pools’ investments. Additionally, reporting CPOs must be consistent across Reporting Periods on how they categorize their Pools’ investments on the Pool Schedule of Investments in Question 11.

18. “Pool Schedule of Investments.” Are derivatives (other than options) valued at the notional value of the derivatives, or based on the unrealized gains/losses of the derivatives?

The value reported for derivatives (other than options) is the positive and/or negative open trade equity. Positive open trade equity means the amount of unrealized gains on open derivative positions. Negative open trade equity means the amount of unrealized losses on open derivative positions.

19. “Pool Schedule of Investments.” Are spot currency positions reported as “cash at bank/broker,” or as “Forex” under the “Alternative Investments” heading?

Spot currency transactions are considered the purchase or sale of a foreign currency for delivery within two days. Such transactions are reported as “Forex” under the “Alternative Investments” heading.

20. “Pool Schedule of Investments.” Is the value reported for options the market value or the delta adjusted notional value?

The value reported for options is the marked to market long or short option value.