



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: January 31, 2007

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 their 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.²

The Division has issued similar letters in prior years, which are available at the Commission's website.³ 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. An illustration of the investments schedule and additional fund of funds disclosures can be found in Attachment B to the Division's letter dated [January 25, 2005](#).

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. The Commission's internet website, www.cftc.gov, provides links to both the Act and Commission regulations.

² A CPO that did not operate any pools, or did not operate one or more of the pools listed with NFA, must file a notice with NFA by January 30, 2007. Further information has been provided by NFA in [Notice to Members 1-07-03](#), available at NFA's website, www.nfa.futures.org.

³ Prior letters from 1998 forward are available at the Commission's website in the [Compliance](#) section, under Law and Regulation.

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, 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 or any other special class of participant of an investment partnership in the financial statements of a commodity pool.

To avoid the potential adverse consequences of NFA disciplinary action or Commission enforcement action, CPOs must comply with Commission regulations. In 2005 and 2006, the Commission's Division of Enforcement initiated reviews of certain CPOs with respect to existing late filings of commodity pool financial statements. NFA, at the behest of the Commission, 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.

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

CPOs and public accountants should be familiar with the Commission's regulations, particularly Regulations 4.7 and 4.22, 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").

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 Pool reports as of December 31, 2006 is April 2, 2007 (March 31, 2007, the 90th calendar day, is a Saturday).
- **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.**
- **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" 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. In subsequent years, the requisite representations required by Regulation 4.22(f)(2) may be made in a statement attached to and filed at the same time as the annual report.

Some CPOs have filed incomplete, or “draft”, unaudited financial statements for pools exempt under Regulation 4.7 to meet the due dates for such 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 GAAP to be considered timely filed.

II. Other Filings by CPOs

Replacement of accountant – A CPO must file a written notification, in accordance with Regulation 1.16(g), with NFA whenever there is a change in the public accountant auditing a commodity pool. A notice also should be filed with NFA if a pool changes its filing status to a Regulation 4.7 pool, which allows the CPO to file unaudited financial statements.

Election of fiscal year – Regulation 4.22(g)(2) provides that all commodity pools are deemed to have a fiscal year-end as of December 31, unless the CPO provides written notice of a different fiscal year-end to the pool’s participants and NFA within 90 calendar days of the date of formation. A request for a change to a commodity pool’s fiscal year-end must be filed in accordance with Regulation 4.22(g)(3).

Pools filing for an exemption under Regulation 4.13 – A CPO that files a notice of exemption for a commodity pool under Regulation 4.13 is not required to file an annual report for the exempt commodity pool with NFA commencing with the year that the claim for exemption was filed. For example, a 2006 annual report is not required if a notice of a claim for exemption is filed before January 1, 2007. However, a 2006 annual report is required if the claim for exemption is filed after December 31, 2006.

III. Compliance with U.S. GAAP

Audited and unaudited financial statements, as well as periodic account statements, must be presented and computed in accordance with U.S. GAAP. The U.S. GAAP requirement also applies to pools operated pursuant to an exemption under Regulation 4.13. CPOs and public accountants should be familiar with the requirements for commodity pool financial statements that have been issued by the AICPA.

Past Division letters to CPOs have noted deficiencies with respect to footnote disclosures that are required under GAAP. 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 Structures. 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 believes that CPOs should report amounts of income and fees paid to operators of 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 commodity pool. Accordingly, 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 that operate offshore pools by allowing such pools to prepare and to present pool financial statements in accordance with International Financial Reporting Standards, or 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;⁴ 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 should contact Ronald Carletta, Branch Chief, or Al Goll, Auditor, at the phone numbers or addresses listed in Attachment A, for further information.

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

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 that includes 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 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. Accounting Developments

A. Financial Accounting Standards Board Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity* – CPOs are reminded of the continuing impact of Financial Accounting Standard ("FAS") 150 on 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.

B. Alternative Investments, Audit 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 (i.e., 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.

C. AICPA Technical Guidance – AICPA recently issued technical guidance regarding accounting treatment of offering costs incurred by investment partnerships. This guidance:

- provides that investment partnerships that continually offer interests should amortize offering costs over a 12 month 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*.

D. FAS 157, Fair Value Measurements – Although FAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years, earlier application is encouraged, provided that the reporting entity has not yet issued financial statements for that fiscal year, including any financial statements for an interim period within that fiscal year. This Statement:

- defines fair value;
- establishes a framework for measuring fair value in GAAP;
- expands disclosures about fair value measurements;
- applies under other accounting pronouncements that require or permit fair value measurements, the FASB having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute; and
- does not require any new fair value measurements. (However, for some entities, the application of this Statement will change current practice.)

The changes to current practice resulting from the application of this Statement relate to the definition of fair value, the methods used to measure fair value, and the expanded disclosures about fair value measurements.

VII. Requests for Confidential Treatment of Commodity Pool Annual Reports

CPOs may request in writing that the Commission afford confidential treatment under the Freedom of Information Act (“FOIA”) to commodity pool annual reports filed with NFA.

Commission Regulation 145.9 contains detailed requirements for submitting a request for confidential treatment of information filed with the Commission, including commodity pool annual reports that are received by NFA on behalf of the Commission. In addition, the NFA has issued guidance to CPOs on how to file a request for confidential treatment of their pool annual reports. This guidance, [Requests for Confidential Treatment of Commodity Pool Financial Statements](#), is available on the NFA website.

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, reading "Thomas J. Smith". The signature is written in a cursive style with a vertical line to its right.

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	Melissa B. Hendrickson Phone: 312-596-0661 Fax: 312-596-0712 E-Mail: mhendrickson@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 200 West Madison, 16th Floor Chicago, IL 60606 Web site: http://www.nfa.futures.org	Erin Mattes, Manager, Compliance Department Phone: 312-781-2236 Fax: 312-220-9003 E-Mail: emattes@nfa.futures.org Denise Bent, Manager, Compliance Department Phone: 312-781-1483 Fax: 312-220-9003 E-Mail: dbent@nfa.futures.org
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