U.S. COMMODITY FUTURES TRADING COMMISSION
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Division of Swap Dealer
and
Intermediary Oversight

March 8, 2012

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

The Division of Swap Dealer and Intermediary Oversight ("DSIO" 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, and to provide information regarding recently adopted regulatory changes.[1] This letter highlights current regulatory changes affecting CPOs with respect to financial filings and provides reminders of regulatory 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.

I. Recent Regulatory Activity

The Commission adopted a final regulation requiring certain advisors to private funds that are dually registered with the CFTC and the Securities and Exchange Commission ("SEC") to report information to the SEC for use by the Financial Stability Oversight Council ("FSOC") in monitoring risks to the U.S. financial system.[2] The SEC adopted a similar rule applicable specifically to its registered investment advisers. The CFTC's and SECs' final regulations, which implement Sections 404 and 406 of the Dodd-Frank Act, require SEC-registered investment advisers and dually registered CFTC registrants with at least $150 million in private fund assets under management to periodically file a new reporting form (Form PF).

The regulations call for a two-stage phase-in period for compliance with Form PF filing

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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 76 FR 71128 (Nov. 16, 2011).

requirements. Most private fund advisers will be required to begin filing Form PF following the end of their first fiscal year or fiscal quarter, as applicable, to end on or after December 15, 2012. Certain large advisers having assets under management of at least $5 Billion[3] attributable to hedge funds, private equity funds or, in the case of an adviser managing a liquidity fund, combined assets under management attributable to liquidity funds and registered money market funds, must begin filing Form PF following the end of their first fiscal year or fiscal quarter, as applicable, to end on or after June 15, 2012.

In addition, the Commission has finalized regulations that will require a new data collection, consistent with that adopted in Form PF, that will apply to those registered CPOs and CTAs that are not also registered as investment advisers with the SEC.[4] In this regard, the Commission adopted two new forms, Form CPO-PQR and Form CTA-PR, to serve as the data collection instruments. Much like the compliance with Form PF, the regulation requires a two-state phase in period for compliance with Forms CPO-PQR and CTA-PR. Most CPOs and CTAs will be required to begin filing the forms following the end of the calendar quarter ending after December 15, 2012. Large CPOs and CTAs with assets under management exceeding $5 Billion must begin filing the appropriate form following the end of the first calendar quarter after September 15, 2012.

The Commission's amendments also, among other things, amend various provisions of the Commission's Part 4 regulations to rescind or modify certain exemptions and exclusions currently applicable to CPOs and CTAs. The final amendments:

- rescind the exemption from registration provided in § 4.13(a)(4) of the Commission's regulations;
- rescind the relief from the certification requirement for annual reports provided to operators of certain pools only offered to qualified eligible persons ("QEPs");
- modify the criteria for claiming relief under § 4.5 of the Commission's regulations; and
- require the annual filing of notices claiming exemptive relief.

Finally, new risk disclosure requirements for CPOs and CTAs regarding swap transactions were adopted as well. For the specific provisions of the final rule, please visit the Commission's website at www.cftc.gov.

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[3] The amount of assets under management for these purposes is calculated as of the last day of the fiscal quarter most recently completed prior to June 15, 2012.

[4] 76 FR 7976 (Feb. 11, 2011). The final rule has not yet been published in the Federal Register, but it is available at the Commission's website at www.cftc.gov.

II. Guidance for CPOs with Pool Funds Held at MF Global, Inc.

CPOs should keep their pool participants informed as to the events related to the liquidation of MF Global, Inc. ("'MF Global") and the effect of the liquidation on the pool's operations. In this regard NFA, in consultation with CFTC staff, provided guidance on disclosures that CPOs with pool funds held at MF Global must make to their participants. At a minimum, CPOs must provide their pool participants with a disclosure statement that includes the disclosures summarized in NFA Notice 1-11-18[5] and any additional disclosures that are necessary given their specific business operations.

The disclosures must be provided to current pool participants through a separate written communication. In addition, CPOs that have a current disclosure document and plan to solicit new participants must ensure that they have updated it to include these disclosures. In this regard, please remember that all amended disclosure documents must be submitted to NFA for review prior to use.

Further, with respect to the valuation of pool assets and redemptions, CPOs should consult with their CPAs to ensure these items are reported in accordance with generally accepted accounting principles, international financial reporting standards, or other applicable accounting standards, as appropriate.

III. Filing Deadlines and Procedures for Commodity Pool Annual Reports

Commission regulations establish the dates by which commodity pool annual reports must be provided to pool 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 annual reports with a year end of December 31, 2011 is March 30, 2012. Copies of the annual reports must be filed with the NFA. A CPO should not file copies of the annual reports with the Commission.

- **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 time to file an annual report must be submitted to NFA prior to the annual report due date and must include the information required by Regulation 4.22(f)(1). Any request for an extension of time that exceeds 90 days from the original due date must be submitted to the Commission, and a copy filed with**

[5] See http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=3905

NFA. The Commission generally does not grant extensions that would exceed 90 days from the original due date.

- **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. 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 a certified public accountant.

- **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 filings. CPOs are reminded that although Regulation 4.7 provides exemption from certain requirements, including the requirement that financial statements be subject to an audit by a certified public accountant, annual reports filed with NFA and distributed to pool participants must include all required information and be in accordance with U.S. Generally Accepted Accounting Principles ("GAAP") or, in some instances, International Financial Reporting Standards ("IFRS") to be considered timely filed. Draft unaudited financial statements do not satisfy the filing requirements.

IV. Master/Feeder and Fund of Funds

Master/Feeder Structures. Financial Accounting Standards Board ("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 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. Illustrative disclosures are in Attachment B to this letter.

V. Accounting and Regulatory Resources

A. Accounting Resources

Accounting resources that may be useful tools for auditors and accountants of commodity entities are:

- The Financial Accounting Standards Board's *FASB Accounting Standards Codification* (the Codification) is the single source of authoritative nongovernmental U.S. GAAP.

- The AICPA Audit Practice Aid, *Audits of Futures Commission Merchants, Introducing Brokers, and Commodity Pools Second Edition* (product number 006639

- The AICPA 2011 Audit Risk Alert ("ARA") *Financial Institutions Industry Developments, Including Depository and Lending Institutions and Brokers and Dealers in Securities* contains sections on the commodities industry.

- Resources that may be helpful in understanding and applying reporting requirements for fund of funds commodity pools are:

    - ASC 275-10-50, *Risks and Uncertainties* (AICPA Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*, when auditing financial statements that contain complex fair value measurements);
    - ASC 820-10-35, *Fair Value Measurements and Disclosure: Investments in Certain Entities That Calculate Net Asset Value per Share (or Its Equivalent)* - (guidance that generally the net asset value reported by investee investment companies will continue to be an acceptable fair value indicator, with certain exceptions.)
    - In addition to the Schedule of Investment disclosures required by ASC 946-210-50, yearend fund of funds' 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. Illustrative disclosures are in Attachment B to this letter.

- Beginning at paragraph 8.23, the AICPA Audit and Accounting Guide, *Investment Companies* (May 1, 2011 edition) discusses organization and offering costs. The AICPA issued technical guidance regarding accounting treatment of offering costs incurred by investment partnerships.[6]

- FASB Codification Section 720-15-25-1 (AICPA SOP No. 98-5, *Reporting on the Costs of Start-up Activities*.) requires that organization costs must be charged to expense as incurred. However, if appropriately disclosed to investors and potential investors, net asset value 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.

B. Regulatory Resources

The Division has issued guidance letters similar to this letter in prior years, which are available at the Commission's website.[7] Those letters should be consulted as they contain information relevant for many commodity pools, including the following topics:

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[6] See paragraph 8.33 of the AICPA Audit and Accounting Guide, *Investment Companies* (May 1, 2011 edition).

7 Prior letters from 1998 forward are available at the Commission's website at http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html.

- Master/Feeder and Fund of Funds (2010 letter)
- Requests for limited relief from U.S. GAAP compliance for certain offshore commodity pools (2010 letter)
- Reports of liquidating pools (2010 letter)
- Reports of Series Funds Structured with a Limitation on Liability Among the Different Series (2009 letter)
- A CPO's reporting obligation when claiming relief under Regulation 4.13 for a pool previously operated without exemptive relief (2006 letter);
- A CPO's obligation to provide notice of replacement of accountant (2006 letter);
- Notice regarding election of a fiscal year other than the calendar year (2006 letter); and
- Process for requesting confidential treatment of commodity pool annual reports (2006 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.*

VI. DSIO and NFA Contact Information

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

Very truly yours,

Thomas J. Smith
Deputy Director and
Chief Accountant

ATTACHMENT A

CFTC DIVISION OF SWAP DEALER 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, *except* 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: lmarlow@cftc.gov	Illinois, Indiana, Michigan, Ohio, and Wisconsin
Southwestern Region		
4900 Main Street, Suite 500 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, 201X, 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, 201X. 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	Fees Incentive	Investment Objective	Redemptions Permitted♦
Airjo Fund Ltd.	5.1	$ 2,550,000	$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:	4.2	2,100,000	100,000	24,000	25,000	Other	Monthly-Annually
Total	20.1%	$10,050,000	$480,000	$103,000	$97,000		

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	Fees Incentive	Investment Objective	Redemptions Permitted♦
Airjo Fund Ltd.	5.1	$ 2,550,000	$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:	4.2	2,100,000	100,000	24,000	25,000	Other	Monthly-Annually
Subtotal	14.4	7,200,000	510,000	$75,000	$97,000		
Vital Fund NV	5.6	2,800,000	(30,000)	*	*	International equity	Semi-Annual
Total	20.1%	$10,050,000	$480,000				

* = 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.