



## Investment Management ADVISORY ■

**MARCH 23, 2020**

### CFTC Issues No-Action Letter Offering Regulatory Relief for CPOs

On March 20, 2020, in response to the challenges presented by the coronavirus pandemic, the Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight (DSIO) issued a [no-action letter](#) offering temporary relief to commodity pool operators (CPOs) from certain obligations under the Commodity Exchange Act and CFTC regulations.

#### **Filing Form CPO-PQR Under Regulation 4.27**

Generally, CFTC Regulation 4.27 requires a registered CPO to file an annual report with the National Futures Association (NFA) (or quarterly reports, for large CPOs – those with at least \$1.5 billion in aggregated pool assets under management (AUM)) on Form CPO-PQR for the directed assets of each pool under the advisement of the CPO.

Pursuant to the no-action letter, the DSIO will not recommend an enforcement action against small or mid-sized CPOs (CPOs with less than \$1.5 billion in aggregated pool AUM) that fail to timely file a report on Form CPO-PQR, as long as they file their reports by May 15, 2020. Further, the DSIO will not recommend enforcement against large CPOs that fail to timely file a quarterly report on Form CPO-PQR for Q1 2020, as long as they file by July 15, 2020.

#### **Pool Annual Reports Under Commission Regulations 4.7(b)(4)<sup>1</sup> and 4.22(c)**

CFTC Regulation 4.7(b)(4) requires a registered CPO to distribute an annual report to pool participants within 90 calendar days of the applicable exempt pool's fiscal year-end. CFTC Regulation 4.22(c) requires a registered CPO to distribute an annual report to pool participants within 90 days of the applicable pool's fiscal year-end.

Pursuant to the no-action letter, the DSIO will not recommend an enforcement action against a CPO that fails to timely file a pool annual report that is due on or before April 30, 2020, provided that the annual certified financial statements for the CPO's operated commodity pools are filed with the NFA and distributed to pool participants no later than 45 days after the due date for the reports. A CPO may request an additional extension of up to 180 days from the end of a pool's fiscal year, pursuant to CFTC Regulation 4.22(f).

<sup>1</sup> The no-action letter erroneously references CFTC Regulation 4.7(b)(3). The correct reference for the annual reporting requirement is CFTC Regulation 4.7(b)(4).

## Pool Periodic Account Statements Under Commission Regulation 4.7(b)(3)<sup>2</sup> or 4.22(b)

CFTC Regulation 4.7(b)(3) requires a registered CPO to distribute a quarterly report to all pool participants within 30 calendar days of the applicable exempt pool's fiscal year-end, provided that the quarterly report is not required to be filed if a CPO's annual report is distributed to the pool participants within 45 days of the exempt pool's fiscal year-end. CFTC Regulation 4.22(b) requires a registered CPO to distribute a monthly report (for a pool with net assets exceeding \$500,000) or quarterly report (for a pool with net assets of \$500,000 or less) to all pool participants within 30 calendar days after the last date of the applicable reporting period, provided that the monthly or quarterly report is not required to be filed if a CPO's annual report is distributed to the pool participants within 45 days of the pool's fiscal year-end.

Pursuant to the no-action letter, the DSIO will not recommend an enforcement action against a CPO that fails to timely file a monthly or quarterly report for periods ending on or before April 30, 2020, provided that the statements are distributed to the pool participants within 45 days of the end of the reporting period for all reporting periods.

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<sup>2</sup> The no-action letter erroneously references CFTC Regulation 4.7(b)(2). The correct reference for the periodic reporting requirement is CFTC Regulation 4.7(b)(3).

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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Matthew J. Barringer  
212.210.9599  
[matthew.barringer@alston.com](mailto:matthew.barringer@alston.com)

Blake E. Estes  
212.210.9415  
[blake.estes@alston.com](mailto:blake.estes@alston.com)

Michael D. Saarinen  
212-210-9441  
[michael.saarinen@alston.com](mailto:michael.saarinen@alston.com)

David J. Baum  
202.239.3346  
[david.baum@alston.com](mailto:david.baum@alston.com)

Timothy C. Foley  
202.239.3741  
[timothy.foley@alston.com](mailto:timothy.foley@alston.com)

Timothy P. Selby  
212.210.9494  
[tim.selby@alston.com](mailto:tim.selby@alston.com)

Amie Benedetto  
404.881.4830  
[amie.benedetto@alston.com](mailto:amie.benedetto@alston.com)

Kristin P. Hinson  
704.444.1332  
[kris.hinson@alston.com](mailto:kris.hinson@alston.com)

Mitra Surrell  
202.239.3685  
[mitra.surrell@alston.com](mailto:mitra.surrell@alston.com)

Colony C. Canady  
404.881.7825  
[colony.canady@alston.com](mailto:colony.canady@alston.com)

Joel P. Jung  
212.210.9564  
[joel.jung@alston.com](mailto:joel.jung@alston.com)

Helena Wong  
212.210.9464  
[helena.wong@alston.com](mailto:helena.wong@alston.com)

Martin H. Dozier  
404.881.4932  
[martin.dozier@alston.com](mailto:martin.dozier@alston.com)

Allison A. Muth  
212.210.9521  
[allison.muth@alston.com](mailto:allison.muth@alston.com)

# ALSTON & BIRD

[WWW.ALSTON.COM](http://WWW.ALSTON.COM)

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500  
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
LONDON: 5th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225  
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100  
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260  
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001  
SILICON VALLEY: 950 Page Mill Road ■ Palo Alto, California, USA 94304-1012 ■ 650.838.2000 ■ Fax: 650.838.2001  
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333