

ALERTS

CFTC and NFA Update — Extensions of CPO and CTA Filing Deadlines (COVID-19) (Updated)

March 24, 2020

In response to the evolving COVID-19 pandemic, on March 20, 2020, the Commodity Futures Trading Commission released temporary no-action relief (“CFTC Extension”)[1] that extends filing deadlines for several standard reports required to be delivered to the NFA and/or pool participants by commodity pool operators that are facing significant compliance challenges due to various remote working arrangements and other “social distancing” disruptions. The CFTC has also indicated that it will consider bespoke relief on a case-by-case basis.

On March 23, 2020, the National Futures Association released its own filing relief (“NFA Relief”)[2] that tracks the CFTC Extension and offers additional relief for registered commodity trading advisors.

Who Does the Extension Affect?

The CFTC Extension, and its conditions, apply only to managers:

- That are NFA members operating pools that have NFA reporting obligations (such as those subject to Rule 4.7 relief); and
- “Where compliance is anticipated to be particularly challenging or impossible because of displacement of registrant personnel from their normal business sites ... in response to the COVID-19 pandemic.”

The March 23, 2020 NFA Relief applies to NFA members that are taking advantage of the CFTC Extension and separately provides an extension

of time to file NFA Form PR for registered commodity trading advisors. Neither the CFTC Extension nor the NFA Relief extend to obligations of commodity pools not subject to any NFA reporting requirements (such as CFTC Rule 4.13(a)(3) “de minimis” pools and excluded pools under CFTC Rule 4.5) or to CPOs that are not NFA members.

Which Filing Deadlines Are Being Extended?

The CFTC Extension and the NFA Relief permit NFA member CPOs and CTAs affected by the COVID-19 pandemic to furnish Form CPO-PQR, NFA Form PQR and Form PR, annual reports and periodic account statements on a delayed basis.

- *Form CPO-PQR/NFA Form PQR.* Small and mid-size filers must file their annual Form CPO-PQR by **May 15, 2020**. Large filers (who were already required to deliver their annual Form CPO-PQR) may file their Q1 2020 Form CPO-PQR by **July 15, 2020**. The NFA has extended the due date for the Dec. 31, 2019 NFA Form PQR to **May 15, 2020** and the due date for the March 31, 2020 NFA Form PQR to **July 15, 2020**.
- *NFA Form PR.* Registered CTAs must file their March 31, 2020 NFA Form PR by **June 30, 2020**.
- *Pool Annual Reports Under CFTC Rule 4.7(b)(3) and 4.22(c) and NFA Compliance Rule 2-13.* Annual reports originally due on or before April 30, 2020 may be delivered to the NFA and pool participants **no later than 45 days after the original due date**. CPOs will also be permitted to seek additional time to file (up to 180 days from fiscal year end) under the “hardship” provisions of Rule 4.22(f).
- *Pool Periodic Account Statements Under Commission Regulations 4.7(b)(2) or 4.22(b) and NFA Compliance Rule 2-13.* Monthly or quarterly account statements for reporting periods ending on or before April 30, 2020 may be delivered to pool participants **within 45 days after the end of the reporting period**.

What Conditions Apply?

CPOs relying on the Extension and the parallel annual report and periodic account statement provisions of the NFA Relief are required to:

- Establish and maintain a sufficient supervisory system reasonably designed to supervise the activities of personnel while working from alternative or remote locations during the COVID-19 pandemic; and
- Return to ordinary compliance with all CFTC rules covered by the relief as the COVID-19 pandemic abates.

All NFA member CPOs and CTAs — and particularly those relying on the CFTC Extension and the NFA Relief — should thoroughly document the activation and application of any relevant business continuity policy and special supervision procedures in response to the COVID-19 pandemic. Although the CFTC has not indicated that it will ask registrants to “prove” that they had a solid basis for relying on its Extension (or take action against those with an insubstantial justification), this matter could easily become an item of interest on future NFA exams; while the NFA Relief did not make its extension of time to file NFA Form PQR or NFA Form PR contingent on any explicit conditions, these documentation considerations continue to apply to these extensions as well. Note that a robust business continuity policy and supervision framework are already required under NFA rules, and members should be considering the adequacy of such policies throughout the course of the pandemic.

Other Particularized Relief May Be Available

In view of the diverse impacts of the COVID-19 pandemic, the CFTC’s Division of Swap Dealer and Intermediary Oversight will also consider additional or different forms of regulatory relief for registered CPOs on a case-by-case basis. Registrants with CFTC or NFA compliance concerns not covered by the CFTC Extension should confer with counsel about the advisability of seeking particularized CFTC relief.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] See No-Action Positions for Commodity Pool Operators in Response to the COVID-19 Pandemic (March 20, 2020), available here.

[2] Coronavirus (COVID-19) Update — Regulatory Relief for CPOs and CTAs (March 23, 2020), available [here](#).

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