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INVESTMENT FUNDS UPDATE

2013: Important Annual Requirements for Investment Advisers

Investment advisers registered with the Securities and Exchange Commission (the "SEC") have certain annual requirements under the Investment Advisers Act of 1940 (the "Advisers Act"), some of which also either apply to "exempt reporting advisers" or warrant consideration as best practices. This update reminds investment advisers about certain annual regulatory and compliance obligations, including a number of significant 2013 reporting or filing deadlines. In particular, in 2013 many advisers face the challenge of reporting for the first time on Form PF.

This update also reminds advisers registered or required to be registered as commodity pool operators ("CPOs") or commodity trading advisors ("CTAs") with the Commodity Futures Trading Commission (the "CFTC") of new requirements to report on the CFTC's Form CPO-PQR and/or CTA-PR, as well as National Futures Association ("NFA") reporting requirements.

This update does not purport to be a comprehensive summary of all of the compliance obligations to which advisers are subject; please contact your Sidley attorney to discuss these and other requirements under the Advisers Act, the Commodity Exchange Act and other regulations that may be applicable to investment advisers, CPOs and/or CTAs.

Amendments to Form ADV; Brochure Delivery to Clients

Annual Updating Amendment

Each registered adviser must file an annual updating amendment to its Form ADV. The annual amendment must be filed within 90 days of the adviser's fiscal year end; accordingly, an adviser with a December 31, 2012 fiscal year end must file its annual amendment by **March 31, 2013**.[1] Part 1A and Part 2A (the adviser's "brochure") are filed electronically with the SEC via the Investment Adviser Registration Depository ("IARD") and are publicly available. Part 2A is prepared in Adobe Portable Document Format ("PDF") and filed as an attachment to Part 1A. Part 2B, the brochure supplement, is not filed with the SEC (and hence is not publicly available) but must be preserved by the adviser and made available, if requested, to the SEC for examination.

IARD will not accept an annual Form ADV updating amendment without (i) an updated Part 2A brochure, (ii) a representation by the adviser that the brochure on file does not contain any materially inaccurate information or (iii) a representation that the adviser is not required to prepare a brochure because it is not required to deliver it to any clients.

Annual Delivery of Brochure to Clients

A registered adviser must deliver annually to each client for which delivery is required either:

[1] Information regarding filing fees is available on the SEC website at http://www.sec.gov/divisions/investment/iard/iardfee.shtml.

- its updated Part 2A brochure and a summary of material changes to the brochure, if any; or
- a summary of material changes, if any, accompanied by an offer to provide the updated brochure (which, if requested, must be mailed within seven days or delivered electronically in accordance with SEC guidelines).

The brochure is required to be delivered to "clients," which the SEC staff has acknowledged does not include fund investors; however, many fund advisers voluntarily deliver the brochure to fund investors. Annual delivery of an updated brochure supplement to existing clients is not required; an updated supplement must be delivered only when there is new disclosure of a disciplinary event or a material change to disciplinary information already disclosed.

Key Importance of Accurate and Complete Form ADV Disclosure

The SEC staff has stated that inaccurate, misleading or omitted Form ADV disclosure is the most frequently cited deficiency found in SEC adviser examinations. Moreover, Form ADV and Form PF are linked electronically, and disclosure in the two forms must be consistent.

Disclosure points of particular importance include, among others:

- An adviser must accurately calculate its regulatory assets under management ("RAUM"). RAUM must be calculated on a gross basis, without deduction of any outstanding indebtedness or other accrued but unpaid liabilities, according to specific instructions provided in Instruction 5.b. of Form ADV: Instructions for Part 1A (the "Part 1A Instructions").[2]
- An adviser to private funds (*i.e.*, funds that rely on the exclusion from the definition of investment company provided by Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940) must provide specific information regarding those funds on Form ADV. Accurate identification of the fund type(s) advised, according to specific definitions provided in Instruction 6 of the Part 1A Instructions, is of critical importance in determining an adviser's Form PF filing category (*see* "Form PF Reporting Requirements – Determining an Adviser's Filing Category" below).
- An adviser that has added a new private fund as a client since its last Form ADV annual updating (or other) amendment may need to amend Form ADV to add information regarding the new fund *before* information regarding the fund can be reported on Form PF. An adviser in this situation that has a March 1 (*i.e.*, quarterly) Form PF deadline may need to file its annual Form ADV amendment early (or file an other-than-annual amendment).[3]

Annual Form ADV Amendment for Exempt Reporting Advisers

Advisers relying on the "private fund adviser" exemption or the "venture capital fund adviser" exemption from SEC registration are "exempt reporting advisers" ("ERAs") required to file reports on Form ADV Part 1A with the SEC through the IARD. An ERA, like a registered adviser, must amend its Form ADV at least annually, within 90 days of its fiscal year end, and more frequently if required, as specified in General Instruction 4 to Form ADV. Hence, an ERA with a December 31, 2012 fiscal year end must file its annual updating amendment by **March 31, 2013**.

An ERA relying on the private fund adviser exemption must calculate annually the private fund RAUM it manages and report the amount in its annual Form ADV amendment. If a U.S.-based ERA reports in its annual amendment that it has $150 million or more of private fund assets under management or has accepted a client that is not a private fund,

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[2] *Available at* http://www.sec.gov/about/forms/formadv-instructions.pdf.

[3] *See* Form PF: General Instructions, *available at* http://www.sec.gov/about/forms/formpf.pdf. A private fund must have an identification number for both Form ADV and Form PF reporting. The instructions state, "If you need to obtain a private fund identification number [obtained by filing Form ADV] and you are required to file a quarterly update of Form PF prior to your next annual update of Form ADV, then you must acquire the identification number by filing an other-than-annual amendment to your Form ADV …. [and] must complete and file all of Form ADV Section 7.B.1 for the new private fund."

the adviser is no longer eligible for the private fund adviser exemption.[4] A private fund adviser that has complied with all ERA reporting requirements but is no longer eligible for the private fund adviser exemption because its RAUM meets or exceeds $150 million may apply for registration with the SEC up to 90 days after filing the annual amendment and may continue advising private fund clients during this period. An adviser relying on this exemption, however, must be registered with the SEC (or, if pertinent, with one or more states) prior to accepting a non-private fund client. This transition period is not available to an adviser that otherwise would not qualify for the private fund adviser exemption (*e.g.*, an adviser that accepts a managed account). The transition period also is not available to advisers relying on the venture capital fund adviser exemption; such advisers must register under the Advisers Act *before* accepting a client that is not a venture capital fund.

Annual Compliance Program Review

Rule 206(4)-7 under the Advisers Act (the "Compliance Rule") requires an SEC-registered adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the adviser and its supervised persons. The Compliance Rule does not enumerate specific elements that must be included in the compliance policies and procedures. Rather, the SEC staff has indicated that it expects a registered adviser's policies and procedures to be based on an assessment of the regulatory and compliance risks present in the adviser's business that may cause violations of the Advisers Act (a "risk assessment") and a determination of controls needed to manage or mitigate these risks.

Periodic and Annual Review

The Compliance Rule also requires a registered adviser to review at least annually the adequacy of its policies and procedures and the effectiveness of their implementation. As a matter of "best practices," it is recommended that an adviser also conduct periodic reviews throughout the year. The SEC staff has stated that an adviser's compliance program should continue to evolve over time in conjunction with an ongoing risk assessment (and re-evaluation) process.

The annual review should include consideration of any developments during the year that might suggest a need to revise the adviser's compliance program, including, among other things:

- review of material compliance matters that arose;
- changes in the adviser's business activities or operations; and
- changes to applicable laws, rules or regulations.

The review process should incorporate reasonable "forensic" (*i.e.*, looking at trends over time) and "transactional" (*i.e.*, spot) tests to detect gaps in the compliance program or instances in which the adviser's policies and procedures may have been circumvented or are not operating effectively.

The adviser should document the annual review, as well as steps taken to revise or enhance the compliance program to reflect the results of the review.

Report to Management

As a best practice, an adviser's senior management, at least annually, should convene a special meeting to review the effectiveness of the adviser's compliance policies and procedures. A formal written report summarizing the conclusions of senior management should be filed in the adviser's compliance records, together with a memorandum

[4] An ERA based outside of the United States will lose the exemption if it advises (i) private fund assets of $150 million or more at a place of business in the United States or (ii)a U.S. client other than a private fund.

summarizing the responses, if any, made to perceived deficiencies or inadequacies, as well as evaluating the approach taken to any specific compliance problems that may have occurred during the year.

Other Annual Reminders

Training. The SEC staff has emphasized the importance of advisers educating their supervised persons concerning the general principles as well as the specific requirements of the adviser's compliance program. Pertinent training should take place on at least an annual basis and more frequently as convenient or necessary.

Annual Certification. An adviser's compliance policies and procedures should be documented in a compliance manual that is distributed to all supervised persons. All supervised persons should be required to execute and deliver at least annually a certificate stating that they have read (or reread) and understand the provisions in the compliance manual (including any revisions or updates), including the code of ethics and the adviser's policies and procedures designed to detect and prevent insider trading.

Annual Personal Securities Holdings Report. On an annual basis, an adviser must collect from each "access person" an annual personal securities holding report containing certain required information regarding securities holdings and securities accounts.

Annual Delivery of Privacy Notice. An adviser must provide clients and fund investors who are natural persons with a privacy notice disclosing the adviser's practices for maintaining privacy of non-public personal information, both at or before the establishment of the customer relationship and annually thereafter.

Exempt Reporting Advisers

An ERA, as an unregistered adviser, is not required to adopt a comprehensive compliance program pursuant to the Compliance Rule or to comply with certain other rules under the Advisers Act. Unregistered advisers, however, are still subject to the anti-fraud provisions of the Advisers Act. Hence, an ERA should adopt reasonable compliance policies, procedures and oversight to avoid even the appearance of a violation of the anti-fraud provisions and the ERA's fiduciary duty to clients. Like a registered adviser, an ERA should review at least annually the adequacy of its policies and procedures and make any needed revisions.

An ERA must provide clients and fund investors who are natural persons with a privacy notice on an initial and annual basis.

Preparing for the Possibility of an SEC Examination

The books and records of all registered advisers are subject to compliance examinations by the SEC staff, including the records of any private funds to which the adviser provides investment advice. ERAs also are subject to SEC examination, although the SEC has indicated that it does not expect to examine ERAs on a routine basis. Generally, an adviser being examined is required to provide access to the SEC to all books and records related to its advisory business, whether or not they are required to be kept.

The SEC staff generally conducts a risk-based exam strategy. The SEC staff has indicated that in most cases, the staff considers the quality of the adviser's compliance systems and its internal control environment when determining the scope of the examination and the areas to be reviewed. Depending on the nature of the examination, the staff often will contact an adviser in advance before commencing the examination and provide a list of records the staff intends to review during the examination. Lists will vary depending on the nature and focus of the examination.

The SEC announced in October 2012 its "Presence Exams" initiative to examine private fund advisers that registered after July 21, 2011. The examination program will take place over the next two years. The staff will select firms for

examination and conduct a focused inspection of the business and operations of advisers in one or more "higher-risk" areas, including marketing, portfolio management, conflicts of interest, safety of client assets and valuation.[5]

Certain proactive steps should be taken to prepare for the contingency of an examination. For example, an adviser should:

- obtain and review sample SEC document request lists to become acquainted with what the staff is likely to request;
- ensure that its disclosure documents, compliance policies and procedures and actual business and compliance practices are all consistent;
- review results from periodic and annual compliance reviews to make sure findings have been addressed;
- review previous SEC examination findings (if any) to make sure past deficiencies have been remedied; and
- consider conducting a mock audit.

Form PF Reporting Requirements

The SEC and the CFTC have instituted confidential information reporting requirements for most registered advisers to private funds, set forth in Form PF.[6] Advisers that are exempt from SEC registration, including ERAs, are not required to file Form PF.

Many private fund advisers will file their initial Form PFs in the next few months. Preparation of Form PF is very time consuming, requires significant resources and raises a number of complex issues. First-time filers already should have their preparations well underway.

Form PF is a joint form between the SEC and the CFTC with respect to Sections 1 and 2 of the form. Form PF is filed with the SEC via the new Private Fund Reporting Depository (PFRD) electronic filing system and is not publicly available. The current fee per filing is $150.

Given the volume and complexity of the work involved, many private fund advisers face a number of challenges in preparing Form PF, including:

- developing an internal project team (which may include the firm's accounting, operations, technology, finance, legal and compliance functions);
- deciding whether to engage third-party service providers (*e.g.*, technology vendors and/or consultants) to assist in the Form PF process and evaluating Form PF-related technology options, including whether to buy or build;
- coordinating with third parties such as consultants, prime brokers, administrators, auditors and counsel;
- developing and executing processes for reconciling and aggregating data from diverse sources;
- making decisions regarding (and documenting) assumptions and methodologies, due to the ambiguous or subjective nature of a number of Form PF instructions, definitions and questions; and
- allowing adequate time and resources for extensive error-checking of drafts and test filing, before producing the final file for submission.

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[5] *See* Sidley Update, "SEC Launches 'Presence Exams' Initiative for Newly-Registered Investment Advisers" (October 16, 2012), *available at* http://www.sidley.com/SEC-Launches-Presence-Exams-Initiative-for-Newly-Registered-Investment-Advisers-10-16-2012/.

[6] *See* Sidley Update, "SEC and CFTC Adopt Form PF Confidential Information Reporting Requirements" (November 22, 2011), *available at* http://www.sidley.com/SEC-and-CFTC-Adopt-Form-PF-Confidential-Information-Reporting-Requirements-11-21-2011/.

Who Must File

SEC-registered investment advisers that (i) advise one or more private funds and (ii) collectively with related persons (other than related persons that are separately operated) had RAUM of $150 million or more attributable to private funds as of the end of the most recently completed fiscal year are required to file Form PF.[7]

CFTC-registered CPOs and CTAs dually registered with the SEC are required to file Form PF and submit information with respect to each advised commodity pool that also is a private fund. Because commodity pools are considered hedge funds for purposes of Form PF, the filing adviser must complete the sections of the form applicable to hedge funds for each commodity pool reported on Form PF. For a dual registrant, filing Form PF can serve to satisfy certain Form CPO-PQR reporting requirements. Dual registrants also have the option of using Form PF to satisfy certain reporting requirements with respect to commodity pools that are not private funds in lieu of completing certain sections of Form CPO-PQR.[8] It is important to note, however, that despite the purported goal of the SEC and the CFTC to minimize duplicative reporting, a number of dual registrants may find themselves having to do a significant amount of duplicative reporting due to mismatches in SEC, CFTC and NFA filing deadlines and reporting requirements. *See* "New Reporting Requirements for Certain Investment Advisers on Form CPO-PQR, Form CTA-PR and NFA Form PQR" below.

To avoid duplicative reporting, Form PF information regarding sub-advised funds should be reported by only one adviser. The adviser that completes information in Form ADV Schedule D Section 7.B.1 with respect to any private fund is also required to report that fund on Form PF. If, however, the adviser reporting the private fund on Form ADV is not required to file Form PF (*e.g.*, because it is an exempt reporting adviser), then another adviser, if any, to the fund, if required to file Form PF, must report the fund on Form PF.

Determining An Adviser's Filing Category

The scope of required Form PF disclosure, the frequency of reporting and filing deadlines differ based on the RAUM of the adviser attributable to different types of private funds (in particular, hedge funds, liquidity funds and private equity funds). Accurately determining an adviser's filing category is a critical first step. Specific definitions of fund types are provided in the Form ADV Part 1A Instructions and the Form PF: Glossary of Terms.

The RAUM thresholds applicable to different categories of Form PF filers are summarized in the chart below. Advisers meeting only the minimum $150 million private fund RAUM reporting threshold, as well as large private equity fund advisers, must file Form PF annually within 120 days of their fiscal year end. Large liquidity fund advisers and large hedge fund advisers must file quarterly, within 15 days (for large liquidity fund advisers) and 60 days (for large hedge fund advisers) of their fiscal quarter-end.

Any large liquidity fund adviser with at least $5 billion in liquidity fund and registered money market fund RAUM as of March 31, 2012 was required to make its initial Form PF filing by July 16, 2012, and other large liquidity fund advisers were required to make their initial Form PF filings by January 15, 2013.

Any large hedge fund adviser with at least $5 billion in hedge fund RAUM as of March 31, 2012 was required to make its initial Form PF filing by August 29, 2012. The initial quarterly filing deadline for other large hedge fund advisers generally will be **March 1, 2013**, while the initial filing deadline for the annual filers (including large private equity fund advisers) generally will be **April 30, 2013**.

Advisers are required to follow certain aggregation instructions for purposes of determining whether or not they meet the *de minimis* $150 million private fund asset threshold for reporting on Form PF as well as the pertinent large private fund adviser thresholds. Aggregation also is required for large hedge fund advisers to determine whether any hedge

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[7] An adviser may choose whether to file a consolidated Form PF for itself and its related persons; this option allows related persons that share reporting and risk management systems to report jointly while permitting related persons that operate separately to report separately.
[8] Regardless of any reporting on Form PF, however, all registered CPOs and CTAs are required to file at least Schedule A of Form CPO-PQR and Form CTA-PR, as applicable, and comply with the requirements of the NFA's Form PQR.

fund is a "qualifying hedge fund" subject to additional reporting requirements. The aggregation instructions (and, conversely, certain netting instructions for fund of funds advisers and others whose funds invest in other private funds) may raise challenging interpretive issues for many advisers. The SEC staff has provided some assistance with respect to these issues and other Form PF questions, both directly in response to private inquiries and in FAQs posted on the SEC's web site.[9]

Frequency of Reporting and Filing Deadlines

The reporting frequency and upcoming filing deadlines for different categories of Form PF reporting advisers are summarized below. The filing deadlines shown in the table are for advisers with a December 31 fiscal year-end.

	Large Hedge Fund Adviser	Large Liquidity Fund Adviser	Large Private Equity Fund Adviser	Smaller Private Fund Adviser
RAUM Threshold	$1.5 billion or more attributable to hedge funds as of the end of any month during the preceding fiscal quarter	$1.0 billion or more in combined liquidity fund and registered money market fund assets as of the end of any month during the preceding fiscal quarter	$2.0 billion or more attributable to private equity fund assets as of the end of the most recent fiscal year	$150 million or more (but less than the applicable "large" adviser threshold) attributable to private funds as of the end of the most recent fiscal year
Reporting Frequency	Quarterly	Quarterly	Annually	Annually
Reporting Deadline	60 days from end of fiscal quarter	15 days from end of fiscal quarter	120 days from fiscal year end	120 days from fiscal year end
Applicable Form PF Sections	Sections 1 and 2	Sections 1 and 3	Sections 1 and 4	Section 1
Upcoming Filing Deadline	**March 1, 2013**	**April 15, 2013**	**April 30, 2013**	**April 30, 2013**

New Reporting Requirements for Certain Investment Advisers on Form CPO-PQR, Form CTA-PR and/or NFA Form PQR

Certain investment advisers historically were registered as CPOs and/or CTAs with the CFTC with respect to certain commodity pools they advised; however, many advisers relied upon available exemptions from CFTC registration. As a result of extensive rule changes issued by the CFTC in 2012, many additional advisers to privately offered funds and registered investment companies are now required to register as CPOs and/or CTAs and become members of the NFA. The registration deadline for many CPOs and CTAs was December 31, 2012, with an effective registration date of January 1, 2013.

The CFTC in 2012 also adopted a new data collection and risk reporting rule requiring CFTC-registered CPOs and CTAs (now including many hedge fund managers) to report certain information on Forms CPO-PQR and CTA-PR, respectively.[10] The forms must be filed electronically using NFA's EasyFile System.

CPOs and Form CPO-PQR; Frequency of Reporting; Filing Deadlines

The scope of required disclosure, the frequency of reporting and filing deadlines differ based on the CPO's aggregated gross pool assets under management ("Gross AUM"). Hence, as in the case of Form PF, accurately determining a

[9] *See* Form PF Frequently Asked Questions, *available at* http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml.
[10] *See* Sidley Update, "CFTC Adopts Final Rules Amending CPO/CTA Registration and Compliance Obligations" (February 14, 2012), *available at* http://www.sidley.com/CFTC-Adopts-Final-Rules-Amending-CPOCTA-Registration-and-Compliance-Obligations-02-14-2012/.

CPO's filing category is a critical first step. The Gross AUM thresholds applicable to different categories are summarized in the chart below. Large CPOs file quarterly, while mid-sized and smaller CPOs are annual filers.

As in the case of Form PF, Form CPO-PQR filers are required to follow certain aggregation instructions for purposes of determining the applicable filing category. A CPO may exclude any pool assets invested in other unaffiliated pools but must do so consistently for purposes of both the reporting thresholds and responding to most questions. Any fund of funds (defined for Form CPO-PQR to include only pools invested in unaffiliated pools and certain other assets, unlike Form PF which allows fund of funds treatment for funds invested in affiliated funds) is required to be reported only in Schedule A and otherwise should be disregarded.

As noted above, advisers that are dually registered with the SEC and the CFTC can satisfy certain Form CPO-PQR filing requirements by filing Form PF.[11] For example, a large CPO that is a quarterly Form PF filer can file Form PF Sections 1 and/or 2 in lieu of Form CPO-PQR Schedules B and C. Each of these requirements is due within 60 days of quarter end. Similarly, a mid-sized CPO that is an annual Form PF filer can file Form PF Sections 1.b and 1.c in lieu of Form CPO-PQR Schedule B. Such dual registrants are only required to submit Schedule A of Form CPO-PQR; however, they also will be subject to quarterly NFA reporting requirements (*see* "NFA Reporting Requirements and Pending Amendments" below). Note, however, that whereas a mid-sized CPO must meet its Form CPO-PQR reporting obligation within 90 days of calendar year end, the filing deadline for an annual Form PF filer is 120 days from fiscal year end. Hence, a mid-sized CPO that wishes to meet a portion of its CFTC reporting requirements through Form PF may need to file its Form PF within 90 days (rather than 120 days) of its year end.

With respect to co-CPOs, the CPO with the greater Gross AUM is required to report for the pool. If a pool is operated by co-CPOs and one of the CPOs is also a dual registrant that files Form PF Sections 1 and/or 2 (and thus is only required to file Form CPO-PQR Schedule A), the non-investment adviser CPO must nevertheless file the applicable sections of Form CPO-PQR.

Any large CPO with Gross AUM of $5 billion or more attributable to pools as of the last fiscal quarter-end before September 15, 2012 (*i.e.*, June 30, 2012 in most cases) that was registered during the third quarter of 2012 was required to make its initial Form CPO-PQR filing by November 29, 2012. The initial quarterly filing deadline for other large CPOs generally will be **March 1, 2013** for those that were registered as of December 31, 2012 or earlier and May 30, 2013 for those whose registration was effective as of January 1, 2013. The initial filing deadline for the annual filers generally will be **March 31, 2013** or **March 31, 2014**, as applicable.

The reporting frequency and upcoming filing deadlines for different categories of reporting CPOs are summarized in the chart on page 9.

[11] Form PF filing deadlines are based on adviser fiscal year (or quarter), while Form CPO-PQR/Form CTA-PR filing deadlines are based on the calendar year (or quarter). Note that dual registrants with a fiscal year that differs from the calendar year may have difficulty using Form PF to satisfy their Form CPO-PQR filing obligations.

	Large CPO	Mid-Sized CPO	Smaller CPO
Gross AUM Threshold	$1.5 billion or more attributable to aggregated pools as of the close of business on any day during the most recent calendar quarter (*i.e.* the reporting period)	$150 million or more (but less than the applicable "large" CPO threshold) attributable to aggregated pools as of the close of business on any day during the most recent calendar year (*i.e.* the reporting period)	Less than $150 million attributable to aggregated pools as of the close of business on each day during the most recent calendar year (*i.e.* the reporting period)
Reporting Frequency	Quarterly	Annually	Annually
Reporting Deadline	60 days from end of calendar quarter	90 days from end of calendar year	90 days from end of calendar year
Applicable CPO-PQR Schedules	Schedules A, B and C (dual registrants that file Sections 1 and 2 of Form PF only need to file Schedule A)	Schedules A and B (dual registrants that file Sections 1 and/or 2 of Form PF only need to file Schedule A)	Schedule A
Upcoming Filing Deadline	**March 1, 2013**	**March 31, 2013**	**March 31, 2013**
Initial Filing Deadline for CPOs Whose Registrations Became Effective as of January 1, 2013	**May 30, 2013**	**March 31, 2014**	**March 31, 2014**

Form CTA-PR

Each registered CTA is required to file Form CTA-PR within 45 days of its calendar year end, beginning with its first calendar year ending after December 15, 2012. Entities registered as both CPOs and CTAs will be required to complete Form CTA-PR in addition to filing the applicable schedules of Form CPO-PQR (and Form PF, if applicable).

The initial filing deadline for CTAs whose registrations became effective as of January 1, 2013 will be February 14, 2014.

NFA Reporting Requirements and Pending Amendments

In March 2010, the NFA adopted NFA Compliance Rule 2-46 requiring registered CPOs to report certain information (including a schedule of investments) to the NFA on a quarterly basis on NFA's Form PQR. With the adoption of the CFTC's new reporting requirements, CPOs now are required to report much of this same information on Schedule A and portions of Schedule B of Form CPO-PQR.

On June 5, 2012, the NFA asked the CFTC to approve revisions to Compliance Rule 2-46 in order to reconcile NFA and CFTC deadlines, simplify CPO and CTA filing requirements and avoid duplicate filings of the same information.[12] As of the date of this Sidley Update, the NFA has not formally adopted the proposed revisions but has treated the proposal as if adopted, at least with respect to NFA Form PQR. That is, the NFA's Form PQR now consists of CFTC Form CPO-PQR Schedule A and item 6 of Schedule B, and, for the third quarter of 2012, the NFA extended its filing deadline from within 45 days of quarter-end to within 60 days of quarter-end. The proposed revisions provide that:

- NFA Form PQR will consist of Form CPO-PQR Schedule A ("Schedule A") and a schedule of investments.

[12] Letter from Thomas W. Sexton, Senior Vice President and General Counsel, National Futures Association to David A. Stawick, Office of the Secretariat, Commodity Futures Trading Commission (June 5, 2012), *available at* https://www.nfa.futures.org/news/.%5CPDF%5CCFTC%5CCR2-46_ReportingRequirements_CPOs_CTAs_0531.pdf.

- Under current Rule 2-46, the schedule of investments requires information on any investment that exceeds 10% of the pool's net asset value at the end of the reporting period. The proposed revisions would change the reporting threshold to 5% to keep the reporting requirement consistent with the CFTC requirement in Form CPO-PQR Schedule B ("Schedule B"). Schedule B item 6 comprises a schedule of investments.
- Each CPO that is an NFA member must file NFA Form PQR on a quarterly basis within 60 days of the quarters ending in March, June and September and a year-end report within 90 days of the calendar year end.
- Small CPOs will be required to file Schedule A and a schedule of investments (*i.e.*, Schedule B item 6) with the NFA within 60 days of the quarter-end for the quarters ending in March, June and September and within 90 days of the calendar year end.
- Mid-size CPOs will be required to file Schedule A and a schedule of investments (*i.e.*, Schedule B item 6) with the NFA within 60 days of the quarter-end for the quarters ending in March, June and September and a year-end report consisting of Schedule A and Schedule B within 90 days of the calendar year end.
- Large CPOs that file the required Form CPO-PQR schedules on a quarterly basis will satisfy their NFA Form PQR filing requirements through filing Form CPO-PQR.[13]
- CPOs that file Form PF with the SEC in lieu of certain portions of Form CPO-PQR will be required to file Schedule A and a schedule of investments with the NFA on a quarterly basis within 60 days of the quarter end, except for the December 31 quarter, when the filing will be due within 90 days.[14]
- CTAs will be required to file NFA Form PR on a quarterly basis within 45 days of the quarter end. NFA Form PR will consist of CFTC Form CTA-PR, plus certain additional information relating to relationships, assets under management for each trading program and monthly performance during the quarter for each trading program. On January 22, 2013, the NFA stated that it expects that the first filing will be due for the quarter ending March 31, 2013 (and that it will provide notice to members when its proposed rule amendment, adding the quarterly filing requirement, has been approved).[15]

CPOs and CTAs would file these forms through NFA's Easy File system. The NFA has noted that the process will be virtually identical whether the firm is completing the applicable Schedules for only the NFA or both the NFA and the CFTC. Firms will need to complete only one set of forms, since the NFA and the CFTC can each access the applicable information.[16]

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work.

[13] As noted above, all registered CPOs must file Form CPO-PQR Schedule A. Quarterly Form CPO-PQR filers also file Schedule B, which contains a schedule of investments.
[14] While Form PF may fulfill certain CFTC filing requirements, it does not fulfill the NFA quarterly filing requirements.
[15] National Futures Association Notice to Members I-13-02 (January 22, 2013), *available at* https://www.nfa.futures.org/NFA-regulation/regulationNotice.asp?ArticleID=4179.
[16] The Form CPO-PQR Filing System Overview (on the NFA website), *available at* http://tempwww.futures.org/NFA-electronic-filings/PQR-Help.pdf:, notes that "NFA's previous PQR filing has been incorporated into CFTC Form CPO-PQR and, therefore, there are not separate filings for NFA and the CFTC."

The Investment Funds Practice of Sidley Austin LLP

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