

CFTC Issues Double No-Action for CFCs

December 01, 2013

The Commodity Futures Trading Commission responded favorably to an Investment Company Institute no-action request regarding the reporting obligations of commodity pool operators (CPOs) of SEC-registered funds (funds) and their wholly-owned and controlled foreign subsidiaries (CFCs) under Regulations 4.27 and 4.22. The relief, granted on September 5, 2013, is motivated by, and its "Compliance Date" is linked to that of, the CFTC's recent rule harmonizing its compliance regime with the SEC's. Absent this relief, CFTC Regulation 4.27(c) would require CPOs that trade commodities through CFCs to file separate quarterly reports for the CFCs on Form CPO-PQR with the National Futures Association. The relief generally removes the need to file such separate reports, if (a) consolidated reports for the fund are filed that include the relevant data for its CFSs and (b) the CPO either:

- consolidates the financial statements of the fund and its CFCs, or
- is working on converting to such consolidated financial statements (although this latter alternative is available only for an interim period and if certain other significant conditions are met).

The no-action relief also generally permits the omission of separate annual reports that Regulation 4.22(c) otherwise would require to be filed with respect to a CFC, if consolidated annual reports for the fund are filed that (a) contain consolidated audited statements of the fund and (b) separately note the holdings, gains, losses, and other financial statement information for the CFC. In order to rely on the September 5 letter, a CPO must file a claim via email with the CFTC, and the letter sets forth several requirements for such claims. Whether a fund will need the relief will depend on whether it uses any CFCs, notwithstanding the negative attitude of the Internal Revenue Service toward treating such subsidiaries' investment results as contributing to a fund's compliance with Sub-Chapter M of the Internal Revenue Code.

Related Practices

Securities Litigation and Enforcement

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