

February 22, 2017

CPOs of Registered Investment Companies Granted Limited Relief from CFTC Liquidation Audit Requirements

The U.S. Commodity Futures Trading Commission (the “CFTC”) Division of Swap Dealer and Intermediary Oversight (the “Division”) recently issued [Letter 17-04](#) (the “Letter”), which grants relief from certain financial disclosure obligations to a registered commodity pool operator (“CPO”) of an investment company registered under the Investment Company Act of 1940 (“RIC”). Specifically, where not all series of a RIC are liquidating, the Letter exempts the CPO of a liquidating series from the investor waiver provisions of CFTC Rule 4.22(c)(7), such that the CPO may provide to investors and the National Futures Association (“NFA”) unaudited liquidation financial statements in accordance with CFTC Rule 4.22(c)(7).

Attorneys
[Deborah A. Monson](#)
[Jeremy A. Liabo](#)
[Elizabeth Martin](#)

Upon the liquidation of a commodity pool, CFTC Rule 4.22(c)(7) requires a CPO to provide to investors and the NFA audited liquidation financial statements. Pursuant to CFTC Rule 4.22(c)(7)(iii), liquidation financial statements are not required to be audited if the CPO obtains from each investor in the commodity pool a written waiver of its right to receive audited liquidation financial statements.

Notably, CFTC Rule 4.22(c)(7) was not included in the “substituted compliance” regime that was [finalized by the CFTC](#) in August 2013 that allows CPOs of RICs to comply with many CFTC disclosure, reporting and recordkeeping requirements by complying with comparable requirements of the Securities and Exchange Commission (the “SEC”). However, where there is a liquidation of the entire entity that constitutes the RIC, or all of the series of the RIC, the CFTC will accept SEC Form 8-F as substituted compliance with the CFTC’s liquidation financial statements requirement. Until Letter 17-04 was issued, because of the difficulty of obtaining written waivers from investors, a CPO had to prepare audited financial statements of a liquidating series under CFTC rules even though it was not required to do so under SEC rules.

In issuing the Letter, the Division only granted relief from the investor waiver requirement of CFTC Rule 4.22(c)(7)(iii). Consequently, the CPO of a liquidating series of a RIC must provide unaudited liquidation financial statements directly to investors or through the relevant financial intermediaries that sell the pool’s shares and to the NFA within 90 calendar days of the permanent cessation of trading.

Please contact [Deborah Monson](#), [Jeremy Liabo](#), [Elizabeth Martin](#) or the Ropes & Gray attorney who usually advises you with any questions you may have or if you would like additional information.