

## SIDLEY UPDATE

# CFTC and NFA Provide Pandemic-Related Relief to Commodity Pool Operators and Commodity Trading Advisors

March 25, 2020

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On March 20, 2020, the Commodity Futures Trading Commission (CFTC) released its third wave of COVID-19 pandemic-related relief, issuing a no-action letter (the No-Action Letter) that extends the deadlines for CFTC-registered commodity pool operators (CPOs) to (1) file Form CPO-PQR; (2) file and deliver pool annual reports; and (3) distribute periodic account statements.<sup>1</sup> On March 23, NFA sent a notice<sup>2</sup> to its members providing relief to member CPOs and commodity trading advisors (CTAs).

These actions follow a series of COVID-19 pandemic-related no-action letters and notices issued by the CFTC and NFA, respectively, over the past few weeks and are part of their respective attempts to provide practical, targeted relief to market participants in light of the evolving COVID-19 situation.<sup>3</sup>

The CFTC and NFA's CPO and CTA relief is summarized below. The tables that follow these summaries provide additional details on the CFTC and NFA COVID-19-related actions to date.

## CFTC Relief to CPOs

The No-Action Letter issued by the CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) on March 20 provides the following three forms of relief to CFTC-registered CPOs. Notably, reliance on this relief does not require a CPO to file any notice.

1. *Filing Deadline for Form CPO-PQR.*

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<sup>1</sup> CFTC No-Action Letter, CFTCLTR No. 20-11 (March 20, 2020), <https://www.cftc.gov/csl/20-11/download>.

<sup>2</sup> NFA, Coronavirus (COVID-19) Update—Regulatory Relief for CPOs and CTAs, No. I-20-15 (Mar. 23, 2020), <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5218>.

<sup>3</sup> The prior CFTC and NFA COVID-19-related actions are addressed in a previous Sidley Update available at <https://www.sidley.com/en/insights/newsupdates/2020/03/us-commodity-futures-trading-commission-provides-pandemic-related-relief-to-commodity-pool-operators>.

- a) Pursuant to CFTC Regulation 4.27, small and mid-sized CPOs<sup>4</sup> are required to file annual reports on Form CPO-PQR within 90 days of year end. The No-Action Letter extends this deadline until May 15, 2020.
  - b) Pursuant to CFTC Regulation 4.27, large CPOs<sup>5</sup> are required to file quarterly reports on Form CPO-PQR within 60 days of each quarter end. The No-Action Letter extends the deadline for the first quarter of 2020 (the quarter ended March 31, 2020) until July 15, 2020. The No-Action Letter does not extend the deadline for the second quarter (the quarter ended June 30, 2020), which remains August 30, 2020—only 45 days after the extended deadline for quarterly reports for the first quarter.
2. *Filing Deadline for Pool Annual Report.* Most registered CPOs are required to file and deliver to pool participants pool annual reports pursuant to CFTC Regulations 4.7(b)(3) or 4.22(c) within 90 days of the end of a pool's fiscal year. The No-Action Letter provides an additional 45 days to file and provide these annual reports for any annual report due on or before April 30, 2020. This 45-day extension does not preclude a CPO from seeking additional time to file and provide annual statements pursuant to CFTC Regulation 4.22(c), up to a maximum of 180 days from the end of a pool's fiscal year. The 45-day extension under the No-Action Letter does not further extend this 180-day period available under CFTC Regulation 4.22(c).
  3. *Periodic Account Statements.* In addition to pool annual reports, most registered CPOs must also distribute either quarterly or monthly account statements within 30 days of the end of the applicable period pursuant to CFTC Regulation 4.7(b)(2) or 4.22(b)(3).<sup>6</sup> The No-Action Letter provides relief from this 30-day deadline for any periodic account statement with respect to a reporting period ending on or before April 30, 2020, provided that account statements are distributed to participants within 45 days of the end of the applicable period.

In the No-Action Letter, DSIO stated its expectation that CPOs relying on the relief establish and maintain a supervisory system reasonably designed to supervise the activities of personnel while acting from an alternative or remote location during the COVID-19 pandemic. The No-Action Letter also sets forth DSIO's expectation that as COVID-19-related risks decrease, registrants will comply with all regulatory obligations from which DSIO has provided relief.

### **NFA Relief to CPOs and CTAs**

Notice I-20-15 issued by NFA on March 23 provides relief to NFA member CPOs and CTA from NFA Compliance Rules 2-46 and 2-13 and works in conjunction with the relief provided by DSIO under the No-Action Letter.

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<sup>4</sup> A "small CPO" is defined as a CPO with less than \$150 million in assets under management (AUM) and a "mid-sized CPO" is defined as a CPO with greater than \$150 million in AUM but less than \$1.5 billion in AUM.

<sup>5</sup> A "large CPO" is defined as a CPO with greater than \$1.5 billion in AUM.

<sup>6</sup> CPOs of pools with net asset values less than \$500,000 and exempt pools under CFTC Regulation 4.7 are required to distribute quarterly statements, while all other pools are required to distribute monthly statements.

### NFA Compliance Rule 2-46

Under NFA Compliance Rule 2-46, each CPO member is required to file NFA Form PQR for each pool it operates on a quarterly basis within 60 days of the quarters ending in March, June and September and within 90 days of the quarter ending in December. For the quarter ended December 31, 2019, NFA is extending the due date from March 30, 2020 until May 15, 2020, and for the quarter ending March 31, 2020, NFA is extending the due date from May 30, 2020 until July 15, 2020.

NFA Compliance Rule 2-46 also requires each CTA member to file NFA Form PR on a quarterly basis within 45 days of each quarter end. For the quarter ending March 31, 2020, NFA is extending the due date from May 15, 2020 until June 30, 2020.

### NFA Compliance Rule 2-13

Under NFA Compliance Rule 2-13, CPO members are required to file pool annual reports with NFA and provide a copy to pool participants in accordance with the CFTC requirements described above. Notice I-20-15 provides that CPO members that adhere to the revised deadlines under the No-Action Letter will be deemed to be in compliance with NFA's requirements under NFA Compliance Rule 2-13.

CPO members are also required under NFA Compliance Rule 2-13 to distribute periodic pool account statements in accordance with the CFTC requirements described above. Notice I-20-15 provides that CPO members that adhere to the revised deadlines under the No-Action Letter will be deemed in compliance with NFA's requirements of NFA Compliance Rule 2-13.

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The tables that follow summarize the CFTC and NFA COVID-19 actions to date.

**CFTC No-Action Letters**

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
<b>1. Recordkeeping Relief</b>			
20-02	<p>Relief from any requirement to time-stamp records pursuant to CFTC Regulation 1.35 if the personnel responsible for making such records are required to be absent from their normal business sites.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• A record of the date and time (to the nearest minute) must otherwise be created and maintained pursuant to CFTC Regulation 1.35.</li> <li>• Member must comply with all applicable rules of any designated contract market (DCM) and/or swap execution facility (SEF) on which it has trading privileges.</li> </ul>	Members of a DCM or SEF that are not registered with the CFTC	June 30, 2020
20-03 20-04 20-05 20-06	<p>Relief from any requirement to time-stamp records if a written business continuity plan requires the personnel responsible for making such records to be absent from their normal business sites.</p> <p>Condition:</p> <ul style="list-style-type: none"> <li>• A record of the date and time (to the nearest minute) must otherwise be created and maintained pursuant to CFTC Regulations 1.35, 5.18, 23.202 or 155.3, as applicable.</li> </ul>	Futures commission merchants (FCMs), introducing brokers (IBs), retail foreign exchange dealers (RFEDs), floor brokers (FBs) and swap dealers (SDs)	June 30, 2020
20-03 20-04 20-05 20-06	<p>Relief from the requirement to make and keep records of oral communications if a written business continuity plan requires personnel who would normally be required to use a recorded line to be absent from their normal business sites.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• A written record of the communication (including the date, time, identifying information of the participants and subject matter) must be maintained.</li> <li>• Affirmative steps must be taken to collect any written materials created pertaining to the content of the relevant oral communication and to maintain them pursuant to applicable CFTC books and records requirements.</li> </ul>	FCMs, IBs, RFEDs, FBs and SDs	June 30, 2020

<b>CFTC No-Action Letter(s)</b>	<b>Description of Relief Provided</b>	<b>Affected Persons</b>	<b>Expiration Date</b>
20-07	<p>Relief from compliance with audit trail, monitoring and trade reconstruction requirements where noncompliance arises from a SEF's inability to record voice communications for trading personnel displaced from their normal business sites in connection with the SEF's COVID-19 pandemic response.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• SEFs relying on the relief are expected to establish and maintain a supervisory system that is reasonably designed to supervise the activities of personnel working remotely.</li> <li>• Recording must continue at normal business sites.</li> <li>• Reasonable efforts must be made to create written or electronic records of unrecorded oral communications (including date, time, identifying information of the participants and subject matter).</li> <li>• Transaction records must be maintained regardless of the location of the voice trading personnel.</li> <li>• Orders entered into the SEF by voice trading personnel must be retained as usual.</li> <li>• Relief from monitoring requirements under CFTC Regulation 37.400(b) is limited to those situations where a SEF cannot conduct real-time, in-person monitoring and cannot comprehensively and accurately reconstruct trading because the SEF lacks voice recordings.</li> <li>• All requirements to maintain records under CFTC Regulations 37.1000(a)(1) and 37.1001 continue to apply except for requirements related to maintaining a complete audit trail.</li> </ul>	SEFs	June 30, 2020

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
20-09	<p>Relief from the requirement to comply with audit trail and related requirements to the extent noncompliance is related to the displacement, in connection with the COVID-19 pandemic, of FCMs, IBs, RFEDs, FBs, SDs and unregistered members of DCMs (collectively, Affected Market Participants) from a DCM's trading floor and/or other designated premise from which customer orders may be placed.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• DCMs are expected to remain vigilant in their self-regulatory functions and to implement compensating controls designed to ensure that the relief does not facilitate or allow Affected Market Participants to take advantage of market volatility to engage in improper trading.</li> <li>• DCMs require Affected Market Participants to continue to conduct customer business in accordance with exchange rules applicable to trading conducted on the trading floor or in accordance with relief provided by CFTC No-Action Letters 20-02, 20-03, 20-04, 20-05 and 20-06 (described above).</li> <li>• Customer orders entered by Affected Market Participants must be retained in the DCM system's normal electronic audit trail.</li> <li>• All other exchange rules will continue to apply.</li> </ul>	DCMs	June 30, 2020
<b>2. Reporting Requirements</b>			
20-03 20-06	<p>Relief from any requirement to submit a chief compliance officer (CCO) annual report pursuant to CFTC Regulation 3.3.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• The annual report must be required to be submitted before September 1, 2020.</li> <li>• The report must be filed within 30 days of the original deadline under CFTC Regulation 3.3.</li> </ul>	FCMs and SDs	September 1, 2020

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
20-08	<p>Relief from the requirement to submit an annual compliance report (ACR) or a fourth-quarter financial report (4QR) within the CFTC's required 60-day period pursuant to CFTC Regulations 37.1501(f)(2) and 37.1306(d), respectively.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• ACR/4QR must be required to be submitted to the CFTC before September 1, 2020.</li> <li>• ACR/4QR must be submitted no later than 120 days after the end of a SEF's fiscal year.</li> </ul>	SEFs	September 1, 2020
20-11	<p>Relief from the requirement to file a report on Form CPO-PQR within 90 days of year end (for small and mid-sized CPOs) and within 60 days of each quarter end (for large CPOs).</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• Small and mid-sized CPOs must file by May 15, 2020.</li> <li>• Large CPOs must file by July 15, 2020 (for the quarter ended March 31, 2020).</li> </ul>	CPOs	May 15, 2020 or July 15, 2020
	<p>Relief from the requirement to file and deliver to pool participants pool annual reports pursuant to CFTC Regulations 4.7(b)(3) or 4.22(c) within 90 days of the end of a pool's fiscal year.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• The pool annual report must be required to be filed and delivered on or before April 30, 2020.</li> <li>• The annual certified financial statements for the CPO's operated commodity pools must be filed with NFA and distributed to pool participants no later than 45 days of the original deadline.</li> </ul>		April 30, 2020

CFTC No-Action Letter(s)	Description of Relief Provided	Affected Persons	Expiration Date
	<p>Relief from the requirement to distribute either quarterly or monthly account statements within 30 days of the end of the applicable period pursuant to CFTC Regulations 4.7(b)(2) or 4.22(b)(3).</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>The periodic account statement must be required to be distributed on or before April 30, 2020.</li> <li>The periodic account statement must be distributed within 45 days of the original deadline.</li> </ul>		April 30, 2020
<b>3. Location Requirements</b>			
20-04	<p>Relief from any requirement to be physically located in any pit, ring, post or other place provided by a DCM pursuant to the definition of “floor broker” in CFTC Regulation 1.3 or to be registered as an IB because of a failure to be in such place, if a written business continuity plan requires the FB to be absent from such place.</p> <p>Condition:</p> <ul style="list-style-type: none"> <li>The FB must comply with all applicable rules of any DCM on which it has trading privileges.</li> </ul>	FBs	June 30, 2020

***NFA Notices to Members***

NFA Notice	Date of Notice	Description of Notice/Relief	Affected Persons
Notice I-20-10: Information on Coronavirus/COVID-19	March 4, 2020	Statement that the NFA is working with CFTC staff regarding issues raised in connection with the COVID-19 pandemic, including the possible need for regulatory relief, and that the NFA and CFTC staff intend to take a practical approach in this regard to give members appropriate flexibility. NFA also encouraged members to review their business continuity plans, to identify key relationships that will be necessary to maintain business until normal operations have resumed and to keep NFA informed of particular concerns or needs for regulatory relief.	All NFA members

NFA Notice	Date of Notice	Description of Notice/Relief	Affected Persons
Notice I-20-11: Information on CFTC Regulatory Reporting Requirements	March 12, 2020	Reminder to SD members of their reporting obligations in relation to business continuity and disaster recovery plans and of the CFTC's expectation to be notified if an SD implements a teleworking policy or puts in action its business continuity plan.	SDs
Notice I-20-12: Coronavirus Update—NFA Branch Office Requirements	March 13, 2020	<p>Statement that the NFA will not pursue a disciplinary action against a member that permits its associated persons (APs) to temporarily work from locations not listed as a branch office and without a branch manager.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• Member must implement alternative supervisory procedures to adequately supervise APs and meet the member's recordkeeping requirements.</li> <li>• Supervisory procedures must be documented.</li> <li>• APs are expected to return to the member's main office or listed branch location once the firm is no longer operating under contingencies pursuant to its business continuity plan.</li> </ul>	FCMs, RFEDs, IB, CPOs and commodity trading advisors
Notice I-20-13: Coronavirus (COVID-19) Update—Regulatory Relief	March 18, 2020	Relief for FCMs and IBs that are in compliance with the CFTC's applicable no-action relief (described above) from the following requirements: (i) the requirements of NFA Compliance Rule 2-10 relating to compliance with the applicable recordkeeping requirements in CFTC Regulation 1.35, including those relating to timestamping and recording oral communication; (ii) the requirements of NFA Compliance Rule 2-26 relating to compliance by FCMs with the timestamp recordkeeping requirements of CFTC Regulation 155.3; and (iii) the requirement for FCMs to provide NFA with a copy of their CCO annual reports in accordance with CFTC Regulation 3.3.	FCMs and IBs
		Relief for SDs that are in compliance with the CFTC's applicable no-action relief (described above) from the following requirements: (i) the requirements of NFA Compliance Rule 2-49 relating to compliance with the recordkeeping requirements of CFTC Regulation 23.202, including those relating to timestamping and recording oral communications, and (ii) the requirement for SDs to provide NFA with a copy of their CCO annual reports.	SDs

NFA Notice	Date of Notice	Description of Notice/Relief	Affected Persons
		<p>Relief for foreign-exchange dealer members (FDMs) that are in compliance with the CFTC’s applicable no-action relief (described above) from the following requirements: (i) the requirements of Compliance Rule 2-10 relating to compliance by FDMs with the applicable recordkeeping requirements in CFTC Regulation 1.35, including those relating to timestamping and recording oral communications, and (ii) the requirements of NFA Compliance Rule 2-36 relating to compliance by FDMs with the timestamp recordkeeping requirements of CFTC Regulation 5.18.</p> <p>30-day extension to prepare a CCO annual report in compliance with CFTC Regulation 3.3 within 60 days of the FDM’s fiscal year end (applicable only to those FDMs with CCO annual reports due between March 31 and September 1, 2020).</p>	FDMs
Notice I-20-13: Coronavirus (COVID-19) Update—Regulatory Relief for CPOs and CTAs	March 23, 2020	<p>Relief for CPO members submitting NFA Form PQR for the quarters ended December 31, 2019 and March 31, 2020.</p> <p>Conditions:</p> <ul style="list-style-type: none"> <li>• CPO Members must submit NFA Form PQR for the quarter ended December 31, 2019 by May 30, 2020.</li> <li>• CPO Members must submit NFA Form PQR for the quarter ended March 31, 2020 by July 15, 2020.</li> </ul>	CPOs
		<p>Relief for CTA members submitting NFA Form PR for the quarter ended March 31, 2020.</p> <p>Condition:</p> <ul style="list-style-type: none"> <li>• CTA Members must submit NFA Form PR for the quarter ended March 31, 2020 by June 30, 2020.</li> </ul>	CTAs
		<p>Relief for CPOs that are in compliance with the CFTC’s applicable no-action relief under No-Action Letter 20-11 (described above) from the following requirements in NFA Compliance Rule 2-13:</p> <ul style="list-style-type: none"> <li>(i) to file and deliver to pool participants pool annual reports pursuant to CFTC Regulations 4.7(b)(3) or 4.22(c) within 90 days of the end of a pool’s fiscal year, and</li> <li>(ii) to distribute either quarterly or monthly account statements within 30 days of the end of the applicable period pursuant to CFTC Regulations 4.7(b)(2) or 4.22(b)(3).</li> </ul>	CPOs

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