



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and
Intermediary Oversight

To: All Commodity Pool Operators
Attention: Chief Financial Officer
Subject: Annual Reporting for Commodity Pools
Date: January 16, 2008

The Division of Clearing and Intermediary Oversight (“DCIO” or “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) is issuing this letter to assist commodity pool operators (“CPOs”), and their public accountants, with the preparation and filing of annual financial reports required under the Commodity Exchange Act (“Act”) and Commission regulations.¹ This letter highlights regulatory changes affecting CPOs with respect to financial filing and provides reminders of requirements in response to common deficiencies observed in prior years’ annual reports. CPOs, including those that operate in non-U.S. jurisdictions, are encouraged to provide this letter to their public accountants and others that assist in the preparation of commodity pool annual financial statements.

The Division has issued similar letters in prior years, which are available at the Commission’s website.² Those letters should be consulted with respect to commodity pool annual financial statements and reporting. Specifically relevant and still applicable information is not being reproduced here as it is available in such prior letters, including:

- American Institute of Certified Public Accountants’ (“AICPA”) Statement of Position (“SOP”) 03-04, *Reporting Financial Highlights and Schedule of Investments by Nonregistered Investment Partnerships: An Amendment to the Audit and Accounting Guide, Audits of Investment Companies* ([2005 letter](#); an illustration of the investments schedule and additional fund of funds disclosures can be found in Attachment B);
- Reports for pools for the fiscal year in which an initial claim of exemption under Regulation 4.13 is filed ([2006 letter](#));

¹ The Act is codified at 7 U.S.C. §1 et seq. The Commission’s regulations are found in Title 17 of the Code of Federal Regulations. The Commission’s internet website, www.cftc.gov, provides links to both the Act and Commission regulations.

² Prior letters from 1998 forward are available at the Commission’s website at <http://www.cftc.gov/industryoversight/intermediaries/guidancecporeports.html>.

- Notice of replacement of accountant ([2006 letter](#));
- Notice regarding election of fiscal year other than calendar year ([2006 letter](#));
- Requests for confidential treatment of commodity pool annual reports ([2006 letter](#)); and
- AICPA SOP 95-2, *Financial Reporting by Nonpublic Investment Partnerships*, applicability to both required audited and unaudited commodity pool annual financial reports ([2004 letter](#)).

In addition, CFTC interpretations and other staff letters that provide written guidance concerning the Act and the Commission's regulations are available on the Commission's website. In particular, CFTC [Interpretative Letter 94-3](#), *Special Allocations of Investment Partnership Equity*, addresses how a CPO should report a special allocation of partnership equity to the general partner or any other special class of participant of an investment partnership in the financial statements of a commodity pool.

To avoid the potential adverse consequences of National Futures Association ("NFA") disciplinary action or Commission enforcement action, CPOs must comply with NFA rules and Commission regulations. In 2007, the Commission brought two actions against CPOs for failure to file pool annual reports by the due dates set forth in the Commission's regulations. NFA, at the behest of the Commission, also initiated examinations of CPOs that did not file pool annual reports in a timely manner, and referred certain CPOs to NFA's Business Conduct Committee.

I. Due Dates of Commodity Pool Financial Filings – Late Filings

CPOs and public accountants should be familiar with the Commission's regulations, particularly Regulations 4.7 and 4.22, in preparing and filing commodity pool annual financial statements. These regulations establish the dates by which such commodity pool annual financial statements must be provided to participants and received by the NFA and contain the following specific requirements.

- **Commodity pool annual reports must be distributed to pool participants and filed with NFA within 90 calendar days of the pool's fiscal year end.** The filing date for Pool reports as of December 31, 2007 is March 31, 2008 (March 30, 2008, the 90th calendar day, is a Sunday). Copies of such reports should not be filed with the CFTC.
- **CPOs must submit annual reports to NFA electronically in accordance with NFA's [EasyFile electronic filing system](#) and procedures.**
- **An annual report may be distributed in hardcopy or electronically to pool participants. The CPO, however, must obtain a participant's prior consent to distribute an annual report in electronic format.**
- **Applications for an extension of the distribution and filing due date must be submitted to NFA prior to the original due date and must include the information required by Regulation 4.22(f)(1). Extension requests beyond 90 days should be addressed to the undersigned with copies to the NFA.**

- **CPOs of commodity pools that invest in other collective investment vehicles may obtain an “automatic” 60-day extension of the distribution and filing due date by submitting the information required by Regulation 4.22(f)(2) to NFA prior to the original due date. In subsequent years, the requisite representations required by Regulation 4.22(f)(2) may be made in a statement attached to and filed at the same time as the annual report.**
- Some CPOs have filed incomplete, or “draft”, unaudited financial statements for pools exempt under Regulation 4.7 in an attempt to meet the filing due dates. Draft filings do not satisfy the requirement to provide pool participants with an annual report prepared in accordance with Commission regulations, including compliance with U.S. GAAP.

II. Complex Entities

Master/Feeder Structures. Paragraph 7.07 of the AICPA Audit and Accounting Guide, *Audits of Investment Companies*, permits nonpublic feeder pools either to follow the disclosure and reporting provisions of SOP 95-2, as amended by SOPs 01-1 and 03-4, or to present a complete set of master financial statements with each feeder financial statement.

Fund of Funds. The Division believes that CPOs should report amounts of income and fees paid to operators of investment partnerships in which they invested significant portions of their capital as such information is deemed material for participants to fully comprehend the investment strategy and fee structure of the commodity pool. Accordingly, CPOs are strongly encouraged to disclose amounts of income and fees associated with investments in investment partnerships that exceed five percent of the pool’s net assets. The five percent threshold is consistent with the reporting thresholds set forth in SOP 95-2 and SOP 03-4 for investment partnerships. Illustrative disclosures are in Attachment B to this letter.

If a commodity pool’s annual financial statements are found deficient with respect to compliance with U.S. GAAP, the CPO may be required to revise the pool’s financial statements, distribute the revised statements to participants, and re-file the statements with NFA.

III. Requests for Limited Relief from U.S. GAAP Compliance for Certain Offshore Commodity Pools

Division staff is aware that, in November 2007, the U.S. Securities and Exchange Commission (“SEC”) approved rule amendments under which financial statements from foreign private issuers in their filings with the SEC will be accepted without reconciliation to U.S. GAAP if they are prepared using International Financial Reporting Standards (“IFRS”) as issued by the International Accounting Standards Board.

Division staff has received a number of questions about whether commodity pool financial statements prepared in accordance with IFRS will be accepted without reconciliation to U.S. GAAP. Commission regulations continue to require that audited and unaudited financial statements, as well as periodic account statements, be presented and computed in accordance with U.S. GAAP. The U.S. GAAP requirement also applies to pools operated pursuant to an

exemption under Regulation 4.13. CPOs and public accountants should be familiar with the requirements for commodity pool financial statements that have been issued by the AICPA.

Nevertheless, Division staff has, on a case-by-case basis, provided limited relief to CPOs that operate offshore pools by allowing such pools to prepare and to present pool financial statements in accordance with IFRS, or United Kingdom or Irish accounting standards, instead of U.S. GAAP. In cases where the Division provided relief, the relief was conditioned upon the offshore pool following certain key elements of U.S. GAAP standards, including: 1) determining fair values of investments in accordance with U.S. GAAP; 2) reporting of both realized and unrealized gains and losses through the statement of operations; 3) preparing a condensed schedule of investments;³ and 4) reporting special allocations of partnership equity in accordance with CFTC [Interpretative Letter 94-3](#). In addition, using other than U.S. GAAP must not conflict with any representations made to participants or potential participants in the pool.

CPOs operating offshore pools that would like to request relief from the U.S. GAAP requirement should send the request to the undersigned at the address shown on this letterhead. If you have any further questions, contact Ronald Carletta, Branch Chief, or Al Goll, Auditor, at the phone numbers or addresses listed in Attachment A.

IV. Initial Annual Reports and Final Annual Reports

A CPO that commences operation of a commodity pool is required to prepare an annual report for the pool within 90 days of the pool's fiscal year-end, even if the pool did not operate for a full 12-month period. A pool is deemed to commence operations upon the initiation of investment activities on behalf of participants, and not solely upon the receipt of participants' contributions. A CPO that lists a commodity pool with NFA by, for example, filing a disclosure document, but does not commence operation of the commodity pool prior to December 31, 2007 is not required to file a 2007 annual report with NFA for the commodity pool. However, the CPO must file a notice with NFA by January 30, 2008 notifying NFA that it did not operate the pool in 2007. A CPO may review a list of commodity pools listed with NFA by accessing NFA's EasyFile electronic filing system. Further information may be obtained from NFA's [Notice to Members](#), available at NFA's website, www.nfa.futures.org.

Upon request, the Commission may grant a CPO an exemption from the requirement to prepare an audited annual report as of the pool's initial year-end date in cases where a pool commences operations within three months of the end of its fiscal year. The exemption generally is conditioned upon the CPO filing with NFA and distributing to pool participants year-end unaudited pool financial statements that are prepared in accordance with U.S. GAAP and otherwise complying with Commission regulations. The exemption is further conditioned upon the CPO filing an audited annual report as of the date of the pool's second year-end that includes an income statement covering the period from the commencement of operations of the pool through the date of the pool's second year-end date. For the full requirements for such an exemption, please contact Kevin Walek, Assistant Director, at kwalek@cftc.gov, or (202) 418-5463.

³ As required by AICPA SOP 95-2, subsequently amended by SOP 01-1 and SOP 03-4.

Commission Regulation 4.22(c) requires a CPO to file with NFA and to distribute to pool participants a final annual report whenever a pool ceases trading. This requirement also is applicable for pools that have claimed an exemption under Regulations 4.7 or 4.12. The final report should be in the same format and include the same information as an annual financial report, even if the final report is not for a full 12-month period. If the final distribution of pool assets has not been made as of the balance sheet date, a subsequent event note to the financial statements should disclose the date on which all pool assets were subsequently, or are expected to be, distributed to the participants. A CPO should clearly state when it intends a report to be a final report. A legend on the cover of the report is an effective way to do so.

The final report is due within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after the assets are distributed to pool participants.

V. Accounting Developments

A. Financial Accounting Standards Board Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity* – CPOs are reminded of the continuing impact of Financial Accounting Standard (“FAS”) 150 on obligations to redeem interests in commodity pools as year-end financial statements are being prepared and notifications of redemptions are received by CPOs. If redemption of an equity interest is at the holder's option and the holder has elected to redeem its interest, under FAS 150 such interests would be mandatorily redeemable and should be reclassified from equity to liability. The threshold amounts for U.S. GAAP disclosures, including the summary schedule of investments and the financial highlights, also may be affected as such a reclassification would result in a lower net asset value (“NAV”).

B. Alternative Investments, Audit Considerations – The AICPA Practice Aid *Alternative Investments Audit Considerations: A Practice Aid for Auditors*, should be of interest to management of investor entities including, but not limited to, other investment companies (e.g., fund of funds). It provides guidance to assist auditors in addressing the existence and valuation assertions associated with alternative investments due to the lack of a readily determinable fair value and the limited investment information generally provided by investee fund managers.

C. AICPA Technical Guidance – AICPA recently issued technical guidance regarding accounting treatment of offering costs incurred by investment partnerships. This guidance:

- provides that investment partnerships that continually offer interests should amortize offering costs over a 12-month period, generally on a straight line basis; and
- defines the phrase “continually offer interests.”

Registrants are reminded that organization costs are not affected by this guidance and must be charged to expense as incurred as required by AICPA SOP No. 98-5, *Reporting on the Costs of Start-up Activities*. However, if appropriately disclosed to investors and potential investors,

NAV used to compute investment entrance and exit values, may be adjusted to amortize such costs differently, but generally not to exceed a period of 60 months.

D. FAS 157, Fair Value Measurements – Although FAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007, and interim periods within those fiscal years, earlier application is encouraged; provided that the reporting entity has not yet issued financial statements for that fiscal year, including any financial statements for an interim period within that fiscal year. This Statement:

- defines fair value;
- establishes a framework for measuring fair value in U.S. GAAP;
- expands disclosures about fair value measurements;
- applies under other accounting pronouncements that require or permit fair value measurements, the FASB having previously concluded in those accounting pronouncements that fair value is the relevant measurement attribute; and
- does not require any new fair value measurements; however, for some entities, the application of this Statement will change current practice.

The changes to current practice resulting from the application of this Statement relate to the definition of fair value, the methods used to measure fair value, and the expanded disclosures about fair value measurements.

Resources that may be helpful in understanding and applying FAS 157 are:

- *Measurements of Fair Value in Illiquid (or Less Liquid) Markets*, issued by the AICPA Center for Audit Quality, available at http://www.aicpa.org/caq/download/WP_Measurements_of_FV_in_Illiquid_Markets.pdf;
- AICPA Audit Risk Alerts: *Securities Industry Developments 2007/2008* and *Investment Companies Industry Developments 2007/2008*; and
- AICPA Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties*, when auditing financial statements that contain complex fair value measurements.

VI. Recent Regulatory Development Affecting CPOs

In 2007, the Commission amended its Part 4 Regulations to require CPOs and CTAs to file electronically with NFA all notices of exclusion or exemption from Part 4 requirements. The amendments were effective as of February 15, 2007, and apply to notices of exemption or exclusion under Regulations 4.5, 4.7, 4.12(b), 4.13 and 4.14(a)(8). However, persons or entities seeking an exemption under CFTC Advisory 18-96, *Relief for Certain Registered CPOs from Disclosure, Reporting and Certain Recordkeeping Requirements in Connection with the Operation of Offshore Commodity Pools*, should continue to file hardcopy notices with the NFA until further notice.

VII. DCIO and NFA Contact Information

If a CPO or a public accountant has any questions on the foregoing, please feel free to contact the DCIO staff or NFA staff listed in Attachment A to this letter.

Very truly yours,

A handwritten signature in black ink that reads "Thomas J. Smith". The signature is written in a cursive style with a vertical line to its right.

Thomas J. Smith
Deputy Director and
Chief Accountant

**ATTACHMENT A
CFTC DIVISION OF CLEARING AND INTERMEDIARY OVERSIGHT CONTACT
INFORMATION**

Regional Office Locations	Contacts	Location of CPO's Principal Office
Eastern Region		
140 Broadway, 19th Floor New York, NY 10005-1146	Ronald A. Carletta Phone: 646-746-9726 E-Mail: rcarletta@cftc.gov Al Goll Phone: 646-746-9723 E-Mail: agoll@cftc.gov Fax: (646)-746-9937	All states east of the Mississippi River, <i>except</i> Illinois, Indiana, Michigan, Ohio, and Wisconsin. Any location outside of the United States
Central Region		
525 West Monroe Street Suite 1100 Chicago, IL 60661	Lisa M. Marlow Phone: 312-596-0566 Fax: 312-596-0712 E-Mail: lmarlow@cftc.gov	Illinois, Indiana, Michigan, Ohio, and Wisconsin
Southwestern Region		
Two Emanuel Cleaver II Boulevard, Suite 300 Kansas City, MO 64112	Kurt Harms Phone: 816-960-7711 Fax: 816-960-7750 E-Mail: kharms@cftc.gov	All states west of the Mississippi River

National Futures Association Contact Information	
National Futures Association 300 South Riverside Plaza Suite 1800 Chicago, IL 60606	Tracey Hunt, Senior Manager, Compliance Phone: 312-781-1284 Fax: 312-559-3453 E-Mail: thunt@nfa.futures.org Denise Bent, Manager, Compliance Phone: 312-781-1483 Fax: 312-559-3371 E-Mail: dbent@nfa.futures.org

ATTACHMENT B

ILLUSTRATION – Fund of Funds Additional Disclosures

Note X. Investments

As of December 31, 2007, ABC Fund invested in other funds, none of which were related parties.

The following table summarizes ABC Fund's investments in other funds as of December 31, 2007. Funds in which ABC Fund invested more than 5% of its net assets are individually identified, while smaller investments in three other funds are aggregated. The management agreements of the investee funds provide for compensation to the managers in the form of fees ranging from 1% to 3% annually of net assets and performance incentive fees ranging from 5% to 25% of net profits earned.

Investment	% of ABC's Net Assets	Fair Value	Income (Loss)	Mgmt Fees	Incentive	Investment Objective	Redemptions Permitted
Airjo Fund Ltd.	5.0	\$ 2,500,000	\$200,000	\$ 25,000	\$ 30,000	Emerging market	Quarterly
Carron Int'l Fund	5.2	2,600,000	210,000	26,000	42,000	Sector investment	Monthly
Vital Fund NV	5.6	2,800,000	(30,000)	28,000	0	International equity	Semi-Annual
Other funds:	<u>4.2</u>	<u>2,100,000</u>	<u>100,000</u>	<u>24,000</u>	<u>25,000</u>	Other	Monthly-Annually
Total	<u>20.0%</u>	<u>\$10,000,000</u>	<u>\$480,000</u>	<u>\$103,000</u>	<u>\$97,000</u>		

An alternative illustrative table, for *unusual cases*, where the fee information cannot be obtained is shown below:

Investment	% of ABC's Net Assets	Fair Value	Income (Loss)	Mgmt Fees	Incentive	Investment Objective	Redemptions Permitted
Airjo Fund Ltd.	5.0	\$ 2,500,000	\$200,000	\$ 25,000	\$ 30,000	Emerging market	Quarterly
Carron Int'l Fund	5.2	2,600,000	210,000	26,000	42,000	Sector investment	Monthly
Other funds:	<u>4.2</u>	<u>2,100,000</u>	<u>100,000</u>	<u>24,000</u>	<u>25,000</u>	Other	Monthly-Annually
Subtotal	14.4	7,200,000	510,000	<u>\$75,000</u>	<u>\$97,000</u>		
Vital Fund NV	5.6	<u>2,800,000</u>	<u>(30,000)</u>	*	*	International equity	Semi-Annual
Total	<u>20.0%</u>	<u>\$10,000,000</u>	<u>\$480,000</u>				

* = The fund operator is not able to obtain the specific fee amounts for this fund and does not know what those amounts are. However, management fees are computed based on 1% per year of net asset balances at the beginning of each month; incentive fees are computed based on 20% per year of net income.