

NFA Provides Relief to Permit CTAs to Present Gross Past Performance to ECPs; CFTC Proposes Updates to Form CPO-PQR

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In April, the National Futures Association (NFA) provided relief to permit commodity trading advisors (CTAs) who are also registered as investment advisers with the Securities and Exchange Commission (SEC) to provide presentations of gross performance to eligible contract participants (generally investors with at least \$10 million in total assets) (ECPs) in certain one-on-one situations, bringing NFA rules regarding presenting gross performance more closely in line with SEC rules. The Commodity Futures Trading Commission (CFTC) also proposed amendments to Form CPO-PQR.

CTA Promotional Material Relief

NFA [Notice I-20-18](#), which is immediately effective, permits CTAs who are also SEC-registered investment advisers to present past performance gross of all fees and expenses to ECPs in non-public, one-on-one situations. Prior regulations and guidance (including [NFA Compliance Rule 2-9](#) and [Interpretive Notice 9003](#)) required that any presentations of past performance in promotional materials be displayed net of all fees and expenses.

In order to take advantage of the relief, the CTA must:

- provide the ECP client with written disclosure that the performance results are presented on a gross basis and do not reflect the deduction of fees and expenses, which will reduce the client's returns; and
- offer to provide the ECP client with the performance results net of any fees and expenses agreed upon with the client at or prior to exercising discretion over the client's account.

CTAs are not required to make any filing to claim the relief provided by the new notice.

Form CPO-PQR

The CFTC has proposed changes to Form CPO-PQR which, if adopted, are intended to improve the CFTC's data gathering and monitoring ability. The proposed changes would require commodity pool operators (CPOs) to list the Legal Entity Identifier (LEI) of the CPO and its commodity pools (if applicable) on Schedule A, thereby enabling the CFTC to obtain real-time data from sources other than registrants, such as derivatives clearing organizations and swaps data repositories. The proposal would also remove certain questions regarding a pool's auditors and marketers and certain additional pool-level information. The CFTC has requested that comments to the proposed rule be submitted by June 15, 2020.

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