

CFTC Adopts Final Rule Amendments Simplifying CCO Duties and Annual Report Rules for FCMs, Swap Dealers and MSPs

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The CFTC unanimously approved [Final Rule amendments](#) on August 21, 2018 to the regulations governing chief compliance officer (“**CCO**”) duties and annual compliance reporting requirements for FCMs, swap dealers and MSPs (“**Registrants**”). These amendments are the first substantive rule amendments to be adopted under Chairman Giancarlo’s Project KISS—an agency-wide effort to simplify and modernize CFTC rules, regulations and practices to make them more efficient and less onerous for regulated entities.

As amended, the Final Rule:

- **Eliminates the requirement that the CCO annual report address “each” applicable regulatory requirement when assessing its written policies and procedures.**
- **Permits dual Registrants to submit a single CCO annual report covering the annual reporting requirements relevant to multiple registration categories.**
- **Permits affiliated Registrants to incorporate by reference in their CCO annual reports sections from an annual report prepared by an affiliated Registrant within the current or immediately preceding reporting period.**
- **Modifies CCO responsibilities by:**
 - adding “in all material respects” to the requirement to certify that information in the CCO annual report is accurate and complete;
 - clarifying that the CCO must take “reasonable steps” to (i) resolve material conflicts of interest, (ii) ensure that the Registrant establishes, maintains and reviews written policies and procedures for the remediation of noncompliance issues, and (iii) ensure that the Registrant establishes written procedures for the handling of noncompliance issues;
 - removing the requirement to consult with the board or senior officer in connection with establishing procedures for addressing noncompliance issues. The CFTC notes that routine noncompliance issues may be resolved in the normal course of business; and
 - limiting the CCO’s duty to administer policies and procedures to those specifically related to the Registrant’s business as an FCM, swap dealer or MSP, as applicable.
- **Implements technical changes that largely align with market practice and the SEC’s analogous rules for security-based swap dealers.** Consistent with the CFTC’s goal of harmonizing its rules with those of the SEC, the changes include:
 - clarifying the reporting line of the CCO by defining the term “senior officer” as “the chief executive officer or other equivalent officer of a registrant”;

- requiring that if the Registrant has an audit committee, then the CCO shall furnish the CCO annual report to the audit committee not later than its next scheduled meeting after the date on which the CCO annual report is furnished to the CFTC, but in no event more than 90 days after the Registrant provides the CFTC with such report; and
- clarifying that the resources discussion in the CCO annual report should be limited to those resources allocated to the specific activities for which the entity is registered.

The CFTC confirmed in the adopting release that any existing substituted compliance determinations relating to the CCO rules are not affected by the rulemaking. The CFTC also expressly declined to address the requirement that the Volcker Rule compliance program be included in the CCO annual report. The adopting release notes, however, that the CFTC may address the requirement in future guidance or rulemakings.

In addition to the Final Rule, the CFTC also provided updated guidance in a new Appendix C to Part 3 regarding the CCO annual report's form and content. Appendix C supersedes CFTC Staff Advisory No. 14-153. The appendix provides greater clarity on the form and content of the CCO annual report, including that:

- the description of written policies and procedures may be appropriately brief;
- the CFTC expects a comprehensive description of the assessment process and the results of the effectiveness of the assessment;
- the CCO annual report contain the identification and discussion of each area of improvement and the discussion of what changes are recommended to address each area of improvement;
- for each area of improvement, the CCO annual report should include a discussion of the proposed improvements, the time frame for their implementation and cross-references to the regulation(s) that the recommended changes would address;
- the discussion of areas for improvement and recommended changes should reflect continuity from one reporting cycle to the next, such that CCO annual reports filed in the current cycle address the outcomes, monitoring and testing of changes that were proposed in the prior cycle, to the extent such changes were implemented in the current period;
- the CCO annual report describe the standard used to determine a noncompliance event's materiality, a description of each material noncompliance event, discussion on the course of remediation, how the implementation of remediation is being executed, any testing of the remediation and the results from such testing; and
- the discussion of resources set aside for compliance with the Commodity Exchange Act and CFTC regulations should contain the following specific types of information:
 - budget allocated;
 - full-time compliance staffing levels;
 - partially allocated staff counts (if applicable), with information on how much of each employee's time is devoted to such compliance;
 - managerial resources;
 - general infrastructure information;
 - if applicable, use of third-party vendors and outsourcing; and
 - any material deficiencies in compliance resources, and if there are no material deficiencies in the resources devoted to compliance, an express statement to that effect.

The Final Rule will be effective on September 26, 2018. This means that Registrants with fiscal years ending June 30th should comply with the amendments, as their reports are due at the end of September. It is unclear whether this tight deadline will pose challenges to such Registrants, since most of the amendments streamline or simplify existing requirements.

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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