



# Commodity Futures Trading Commission (CFTC) Swap Dealer Chief Compliance Officer (CCO) Annual Report Advisories January 2025

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# Executive Summary

Summarized in this document are the details on additional guidance offered by the Commodity Futures Trading Commission (Commission or CFTC) in relation to the CCO Report via Advisory Letters 19-24 & and 22-17.



## CCO Annual Report

Swap Dealer Chief Compliance Officers are required to annually file a CCO compliance report to the Commission. The minimum content requirements for this report are captured in CFTC Rule 3.3(e)(1)-(6). More prescriptive details can be found in Appendix C to Part 3. Internal and external furnishing requirements of the CCO Annual Report are further outlined in CFTC Rule 3.3(f)(1)-(6).

Regulation 3.3: eCFR :: 17 CFR 3.3 -- Chief compliance officer.



## Final Rule

The **final rule** regarding the CCO Annual Report focuses on the registrant's Board and Senior Officer on areas requiring additional compliance resources or changes to business practices; and provide the Commission and the swap dealer's management with a detailed overview of the state of compliance of swap dealers with applicable regulatory obligations.



## Advisory Letter 19-24

CFTC Staff Letter 19-24 (dated December 2019) provides further guidance on certain requirements applicable to Swap Dealers in relation to the preparation and submission of the CCO annual compliance report. The advisory letter was provided following the regulators' review of CCO Reports submitted for the 2018 fiscal year, for which guidance and recommendations were provided for CCO Annual Report sections that have common deficiencies.

CFTC Letter 19-24: <https://www.cftc.gov/csl/19-24/download>



## Advisory Letter 22-17

CFTC Staff Letter 22-17 (dated December 2022) provides guidance relevant for non-U.S Swap Dealers & Non-U.S Major Swap Participants relying on substituted compliance for the CCO Annual Report.

CFTC Letter 22-17 <https://www.cftc.gov/csl/22-17/download>

**Staff advisories are not binding on the Commission and should not be interpreted as establishing new regulatory requirements.**

# Staff Advisory Letter 19-24

# Annual Report Requirements – Policies & Procedures

## Common Deficiencies & Staff Recommendations

CFTC 19-24 Staff Advisory released on 4<sup>th</sup> December 2019 provided registrants guidance on common deficiencies in the CCO Annual Report submissions and provided recommendations made by The Division of Swap Dealer & Intermediary Oversight (DSIO) staff in relation to the deficiencies.

### CCO Annual Report Requirement

*CFTC Rule 3.3(e) Annual Report. The Chief Compliance Officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant. The annual report shall, at a minimum, contain a description of:*

#### 3.3(e)(1)

*The **written policies and procedures** of the futures commission merchant, swap dealer, or major swap participant described in paragraph (d) of this section, **including the code of ethics and conflicts of interest policies**;*

#### 3.3(e)(2)

*The futures commission merchant's, swap dealer's, or major swap participant's **assessment of the effectiveness of its policies and procedures** relating to its business as a futures commission merchant, swap dealer or major swap participant;*



The above are **distinct standalone sections that the CCO Annual Report is required to address**. Exams pointed out that registrants rolled up areas of improvements (as required in paragraph (e)(3)) into the section that covers the CCO's assessment of the effectiveness of policies and procedures (paragraph 3.3(e)(2)). These are **separate requirements that should individually be addressed in annual reports**.

*Advisory letters 19-24 and 22-17 re-iterates the expectation that registrants **operate with a compliance framework that ensures continued compliance with the CCO Annual Report requirements**.*

# Areas for Improvement to Compliance

## Common Deficiencies & Staff Recommendations

### 3.3(e)(3) Areas for improvement, and recommended potential or prospective changes or improvements to a Swap Dealer's compliance program and supporting resources.

The Commission requires registrants to identify areas of improvement to their Swap Dealer business as a whole, while also addressing how the compliance function may be improved.

#### Common Deficiencies

- 1 Include a discussion of why the areas they identify in the CCO Annual Reports needs improvement.
- 2 Include the current status of the area for improvement. For example, whether a compliance failure was ongoing and/or if there is a remediation plan in place.
- 3 Cite to the Commission regulation associated with the area for improvement.
- 4 Failure to provide an adequate discussion of the CCO's recommended improvements or changes
- 5 Provide sufficient context or explanatory information regarding an area for improvement.

*Registrants that did not include the areas for improvement in a standalone section, rather included it in the discussion of the CCO's assessment, - 3.3(e)(2) often did not include the explanatory information regarding the areas for improvement). DSIO staff note that the discussions on areas for improvement are not limited to only policies and procedures.*

#### Staff Recommendations



Identify the underlying regulatory requirement associated with a cited area for improvement.



Include a full discussion of the various areas or initiatives the CCO has identified that are intended to help facilitate the Registrant's compliance in the areas for improvement discussion and not limiting the discussion to policies and procedures.



Include in the areas for improvement a discussion of **issues that do not rise to the level of material non-compliance issues.**

*Certain CCO Annual Reports contained additional sections, such as "areas for continued focus and diligence". It is the recommendation of DSIO staff that registrants reporting compliance issues not rising to the level of material non-compliance could be included in the areas for improvement section and not reported in alternative sections of the report.*



Include discussions of **potential or prospective changes or improvements in a standalone section** in the CCO Annual Report.

*When a CCO Annual Report did not contain a stand-alone section addressing the CCO's recommended improvement or changes to the compliance program - it was more likely that this was not addressed, or did not provide adequate detail when included in the areas for improvement discussion.*



Include a discussion of any **recommendation or change to the compliance program** that necessitates a change in resource allocation.

*The Commission may not be completely familiar with each individual registrant and therefore information missing from the requirements of 3.3(e)(3) may not allow DSIO staff to form a complete view of the registrant's state of compliance for the scope of the CCO Annual Report.*

# Resources Dedicated to Compliance

## Common Deficiencies & Staff Recommendations

### 3.3(e)(4)

*The financial, managerial, operational, and staffing resources set aside for compliance with respect to the Commodity Exchange Act (CEA) and Commission regulations relating to its business as a futures commission merchant, swap dealer or major swap participant, including any material deficiencies in such resources.*

#### Common Deficiencies

- 1 Provide budget and staffing information at a parent or consolidated level, rather than a Registrant level.**

*An aggregate budget and staffing information for the parent entity does not provide the Commission with an adequate understanding of the resources dedicated to compliance with the CEA and Commission regulations.*

*Firms with multiple registrants must make an effort to provide budget and staffing information for each registrant within the CCO annual report.*

- 2 Compliance costs not related to complying with the CEA and Commission regulations aggregated with the compliance costs of complying with the CEA and Commission regulations.**

*The compliance costs for obligations which extend beyond those related to the CEA and Commissions regulations should be disaggregated from the compliance costs associated with complying with the CEA and Commission regulations.*

#### Staff Recommendations



Provide sufficient information for DSIO staff to **assess the adequacy of the resources dedicated to compliance** with the **CEA** and related **Commission regulations**.



If unable to provide precise numerical budget and staffing information related to compliance with the CEA and the Commission's regulations, **reasonably estimating the portion of the aggregated numerical information dedicated to such compliance**.

*DSIO staff recommends including an explanation of the basis for the provided estimate as a best practice going forward.*



**Include a description of compliance-oriented software**, including the name of the specific software used for compliance purposes, how the software is used by personnel, and how the software fits into the entity's overall regulatory compliance.



# Material Noncompliance Issues & Changes to Policies and Procedures

## Common Deficiencies & Staff Recommendations

**3.3(e)(5)** (5) Any material noncompliance issues identified and the corresponding action taken; and

**3.3(e)(6)** (6) Any material changes to compliance policies and procedures during the coverage period for the report.

### Common Deficiencies

- 1** Multiple or consecutive CCO Annual Reports that **only** discuss **material non-compliance issues** that were **identified by external entities** – potentially indicating an improper standard of materiality, insufficient self-evaluation, or lack of proper CCO engagement.

*CCO Annual Reports should clarify if the registrant has made a reliance upon a designated self-regulatory organization as the sole evaluator for its compliance program. Such reliance is inconsistent with the self-evaluation intent and purpose of Commission Regulation 3.3.*

*Commission Regulation 3.3 require the CCO to be actively engaged with the compliance activities of the registrant. CCO Annual Reports that only discuss material non-compliance issues that were identified by external entities may indicate an improper standard for materiality, insufficient self-evaluation or lack proper CCO engagement.*

**No common deficiencies were identified by the Commission in relation to 3.3(e)(6)**

### Staff Recommendations



Include a discussion of the **Registrant's independent evaluation** of its own compliance program.



**Include the standard of materiality** in the CCO Annual Report's discussion of material non-compliance issues under 3.3(e)(5).

*While 'material' is not defined by the commission for the purposes of 3.3(e)(5) - a standard of materiality as described by the registrant would allow DSIO staff to understand the process through which issues were selected for inclusion in the material non-compliance section of the report.*



**Identify those changes to the policies and procedures that are material**, as that term is defined and discussed by the Registrant in its CCO Annual Report.



# Furnishing the CCO Annual Report

## Common Deficiencies & Staff Recommendations

### 3.3(f)

#### Furnishing the Annual Report

#### Common Deficiencies

##### 1 Modification of the certification language contained in 3.3(f)(3)

*The certification statement as required for 3.3(f)(3) is modified, amended or otherwise altered by the certifying officer. Any language that deviates from the exact language of 3.3(f)(3) fails to satisfy the certification obligation rendering the CCO Annual Report noncompliant with 3.3(f)(3).*

##### 2 Absence of statement with regard to when furnishing the CCO Annual Report to the audit committee is not applicable to the registrant.

##### 3 Absence of coverage dates for which the CCO Annual Report covers.

#### Staff Recommendations



The certification statement **"to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the CCO Annual Report is accurate and complete in all material respects"** should not be modified.



When applicable, including a statement that the audit committee (or equivalent body) requirement in 3.3(f)(1) is **not applicable** to a Registrant in its CCO Annual Report.

*3.3(f)(1)(ii) specifies that **if** the registrant has established an audit committee (or equivalent body) that the CCO shall furnish the CCO Annual Report to such audit committee. In cases where a registrant has no such body, a statement should be included as to why the requirements to furnish the CCO Annual Report to the audit committee is not applicable, as outlined above.*



**Include the specific dates of coverage in the CCO Annual Report.** For example, if a registrant is on a calendar year fiscal year the report would contain the statement that the CCO Annual Report covers the time period from January 1<sup>st</sup> to December 31<sup>st</sup> of the relevant year.

**Annual reports are due for submission no later than 90 days after the fiscal year end**

# Staff Advisory Letter 22-17

# Staff Advisory Letter 22-17

## Substituted Compliance for Non-U.S. Registrants

Key observations from the CFTC Advisory 22-17 released 2<sup>nd</sup> December 2022 relevant to Non-U.S Swap Dealers & Non-U.S Major Swap Participants relying on substituted compliance for CCO Annual Reports.

### Overview

Where firms represent that they are relying on a Comparability Determination to prepare the Annual CCO Report, Market Participants Division staff would expect the firm provide a copy of the local annual compliance report

### Observations

MPD staff have observed significant deviation from the terms of the Determinations in relation to this requirement with firms providing instead either (a) or (b) below:

1

Reports that purport to be a home regulator report (but with alterations or redactions)

2

Reports that are clearly not a home regulator report but rather appear to have been prepared for the Commission in a format that mimics 3.3(e) but often fail to meet important substantive requirements of that rule

***MPD believe rules that fall into either of the above do not comply with the terms of the determination***

### Key considerations

While some non-US Swap Dealers (SDs) may believe some information in the “Home Report” is particularly sensitive or not relevant to the Commission’s regulatory purview, should non-US SD wish to not provide certain information contained in their Home Report their only alternative is to prepare, certify, and furnish to the Commission a CCO Annual Report in compliance with 3.3(e).

Non-US SDs must submit the report as it was prepared for the home regulator (with the only alteration being to translate to English where required).

**NOTE:** Staff Letter 19-24 provides further guidance on the Commission’s expectations for the CCO Annual Report.

# Conclusion

# Key Themes & Conclusions

Takeaways from CFTC Staff Advisories offered in relation to the CCO Annual Report



## Key Themes



Failure to include discussion for areas of improvement and whether issues are ongoing or have remediation plans in place



Lack of sufficient detail or context throughout key sections of CCO Annual Report, or absence of certain annual report requirements



Misinterpretation of budgeting, staffing, and compliance cost requirements



Failure to identify and cite associated rules as required throughout the CCO Annual Report



Absence or modification of key statements or dates required by the Commission

## Conclusion

- The CCO Annual Report should not be treated as a check the box exercise. The Commission expects firms to have an in depth understanding of CFTC regulatory requirements, their overall compliance with these requirements irrespective of materiality, and remediation plans for areas that require improvement.
- Firms should take time to understand the common deficiencies that the Commission has identified but also digest the additional guidance and staff recommendations that will allow registrants to better comply with the requirements under CFTC Regulation 3.3(e)&(f).
- Firms should also ensure proactive communications with the regulators i.e., via periodic check-ins (beyond the CCO Annual Report filing due date).

## How we can help

- 1 Assess compliance management systems to manage compliance activities and documentation
- 2 Leverage data analytics to help identify and mitigate compliance risk
- 3 Perform periodic independent reviews or audits to validate the attestation
- 4 Assess mechanism for reporting compliance incidents and breaches
- 5 Develop and deliver training to functional areas

# Appendix

CCO Annual Report Checklist & Appendix C to Part 3 - *Guidance on the Application of 3.3(e), Chief Compliance Officer Annual Report Form and Content*

# Illustrative Annual Report Checklist

A checklist of considerations based on Commission identified common deficiencies

## Illustrative

<input checked="" type="checkbox"/>	Rule 3.3	Checklist items
<input type="checkbox"/>	(e)(1)-(6)	Citation of Commission regulations
<input type="checkbox"/>	(e)(3)	Current status of areas identified for improvement
<input type="checkbox"/>	(e)(3)	Inclusion of sufficient detail and discussion regarding as to why areas identified for improvement need addressing
<input type="checkbox"/>	(e)(3)	A separate section that discusses areas for improvement specifically related to the compliance programme
<input type="checkbox"/>	(e)(3)	Adequate detail of the CCO's recommendations for improvements to the compliance programme
<input type="checkbox"/>	(e)(4)	Budgeting and resourcing information for only the entity or entities registered as a Swap Dealer
<input type="checkbox"/>	(e)(4)	Compliance costs specific to adherence to the CEA & Commission regulations
<input type="checkbox"/>	(e)(5)	Discussion of the independent evaluation completed for the compliance function
<input type="checkbox"/>	(e)(5)	Accompanying standard of materiality for material non-compliance issues identified
<input type="checkbox"/>	(f)	Original certification statement as provided by the Commission
<input type="checkbox"/>	(f)	If applicable to registrant – A statement that acknowledges the requirements to furnish the report to the audit committee is not applicable
<input type="checkbox"/>	(f)	Coverage dates for the CCO Annual Report



# Appendix C to Part 3

## Guidance on the Application of 3.3(e), Chief Compliance Annual Report Form & Content

### Regulatory Text

#### **A. Description of the Registrant's WPPs (§ 3.3(e)(1))**

In acknowledgment of the large number of WPPs that a Registrant implements to comply with CFTC regulations, the Commission understands that for purposes of the CCO Annual Report, specific WPP descriptions may be appropriately brief while still identifying the basic purpose of the policy or procedure and how the policy or procedure operates to achieve that purpose. The CCO Annual Report should include a summary overview that describes the general forms and types of WPPs the Registrant has, such as a compliance manual specific to the Registrant, global corporate manuals or policies, and/or business-unit-specific WPPs that support the applicable regulatory requirements. This summary overview would provide a narrative of the Registrant's system or program of WPPs, how they work as a whole, and how the Registrant generally puts the WPPs into practice as part of its compliance activities. With respect to the COI policy, it is the Commission's view that the CCO should describe the COI policy specific to the Registrant, addressing the specific requirements of § 1.71 or § 23.605 of this chapter, as applicable.

#### **B. Assessment of the Effectiveness of the Policies and Procedures (§ 3.3(e)(2))**

The Commission expects a CCO Annual Report to contain a comprehensive discussion of the assessment process; and the results of the effectiveness assessment. The regulation does not dictate the form or manner for the effectiveness assessment. Rather, the Commission would expect each Registrant to follow a process and present the resulting assessment in a form and manner that is appropriate for the size and complexity of the Registrant's applicable business activities and structure. While § 3.3(e)(2) no longer has a "requirement-by-requirement" standard, the CCO Annual Report should address all of the general areas of regulation applicable to the Registrant.

#### **C. Areas for Improvement and Recommended Changes (§ 3.3(e)(3))**

1. Section 3.3(e)(3) requires two components in the CCO Annual Report: an identification and discussion of each area that needs improvement; and a discussion of what changes are recommended to address each area needing improvement. In addressing these two elements, the CCO Annual Report should include, as applicable: A discussion of why the area needs improvement; a discussion of the proposed improvements and the time frame for their implementation; and a cross-reference to the regulation that a recommended change would address.

2. In general, identifying areas in need of improvement and recommending steps to affect those improvements should be a core function of compliance. Accordingly, a CCO Annual Report that makes no recommendations for changes or improvements to the compliance program may raise concerns about the adequacy of the compliance program review intended by the CCO Annual Report process. Moreover, there should be continuity from one reporting cycle to the next, such that where a previous CCO Annual Report discussed future changes or improvements that were being considered or planned, subsequent CCO Annual Reports should discuss the outcomes of the changes that were implemented during the most recent scope period, any monitoring or testing of those changes, whether any compliance issues arose from the changes and, if there were any issues, how those issues were handled. While this section may address improvements to the compliance program that have already been completed, the Commission believes that this section primarily should discuss recommended improvements in process and/or future plans to improve the Registrant's compliance program or resources devoted to compliance.

#### **Source**

eCFR :: Appendix C to Part 3, Title 17 -- Guidance on the Application of § 3.3(e), Chief Compliance Officer Annual Report Form and Content

## Appendix C to Part 3

### Guidance on the Application of 3.3(e), Chief Compliance Annual Report Form & Content

## Regulatory Text

### ***D. Resources Set Aside for Compliance (§ 3.3(e)(4))***

1. The resources description required by § 3.3(e)(4) should be appropriate for assisting the Registrant's senior management and the CFTC in assessing whether sufficient resources are dedicated to compliance. Accordingly, the description should include the following types of information: the budget allocated to the compliance department of the Registrant for compliance with the CEA and Commission regulations; full-time compliance staffing levels for such compliance activities; partially allocated staff counts (if applicable), with information on how much of such employees' time is devoted to the Registrant's compliance matters that are subject to CFTC oversight; an explanation of managerial resources (the explanation should clearly identify the division between staffing resources and management resources devoted to compliance); general infrastructure information (e.g., computers, compliance-oriented software, technology infrastructure, etc.); and if applicable, a description of the use of third party vendors or outsourcing for compliance activities. In most cases, to effectively inform the board of directors or senior officer and the Commission, the description should include quantifiable information for the financial, managerial, operational, and staffing resources allocated to compliance with the CEA and Commission regulations.

2. The Commission understands that a discussion of specific compliance budget allocations may not be as straightforward as described above depending on the size and complexity of the Registrant's compliance program and the extent to which the Registrant's compliance resources may be shared for other non-CFTC regulated business activities. The purpose of the CCO Annual Report requirement is to convey to senior management and the CFTC a clear understanding of the resources the Registrant has set aside for compliance with the CEA and Commission regulations. While some of the compliance resources used in a Registrant's CFTC compliance-related program may be used for compliance activities in other parts of a larger corporate enterprise, this sharing of resources does not negate the Registrant's obligation to discuss how the Registrant's compliance program is being resourced. For those instances where compliance resources are shared, it is recognized that the description of the shared resources may reasonably be more general in nature, providing approximations and estimates based on expected needs. However, the Commission expects that the CCO Annual Report will still address shared resources in as much detail as is necessary to convey the information needed to assess the overall compliance activities of the Registrant.

3. Section 3.3(e)(4) also requires that the CCO Annual Report include a discussion of any material deficiencies in compliance resources. If there have been reductions in the compliance program of the Registrant since the prior reporting period, for example, if there has been a reduction in compliance staff, a significant compliance budget decrease, or the Registrant initiated significant new business activities without a corresponding increase in compliance resources, the CCO Annual Report should include an explanation of why the compliance resources are not deficient in light of the changes. If there are no material deficiencies in the resources devoted to compliance, the Commission recommends that the CCO Annual Report contain an express statement to that effect so that the recipients of the report can see that the requirement was assessed

### ***E. Material Noncompliance Issues (§ 3.3(e)(5))***

The CCO Annual Report should include an explanation of the standard the Registrant used to determine a non-compliance event's materiality. In addition, this section of the CCO Annual Report should contain a description of each material non-compliance issue identified either through self-assessment procedures conducted within the Registrant, or noted by any external entities which conducted a review of the Registrant (such as a designated self-regulatory organization). The description should also include the corresponding actions taken, described in reasonable detail, as well as specific references to the Commission regulation or regulations that are implicated by the non-compliance event. Specifically, the Commission recommends that the CCO Annual Report include a discussion of the Registrant's deliberations on a course of remediation, how the implementation of the remediation is being or was executed, any follow-up testing of the remediation, and any noteworthy results from such testing. Additionally, the Commission recommends that CCOs consider including an overview of how the CCO or compliance department handles and tracks non-compliance events in general.

### ***F. Material Changes to WPPs (§ 3.3(e)(6))***

When describing any material changes to the WPPs, a description of the standard of materiality used should be provided. This description will provide meaningful context for any reported changes to the WPPs

#### **Source**

eCFR :: Appendix C to Part 3, Title 17 -- Guidance on the Application of § 3.3(e), Chief Compliance Officer Annual Report Form and Content

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