

June 15, 2020

Via Electronic Filing (www.cftc.gov)

Mr. Christopher Kirkpatrick
Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

**Re: Amendments to Compliance Requirements for Commodity Pool Operators
on Form CPO-PQR (RIN No. 3038-AE98)**

Dear Mr. Kirkpatrick:

The Investment Adviser Association (“IAA”)¹ appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“CFTC’s” or “Commission’s”) proposal to amend Form CPO-PQR and Rule 4.27 governing the form filing for commodity pool operators (“CPOs”).² IAA members are investment advisers registered with the SEC and may also be registered as CPOs under the Commodity Exchange Act by virtue of advising a registered investment company or a private fund that meets the definition of commodity pool. We appreciate and support the Commission’s efforts in the Proposal to reduce regulatory burdens and improve the regulatory environment for CPOs, particularly those CPOs that are also SEC-registered advisers.³

¹ The IAA is the largest organization dedicated to advancing the interests of investment advisers registered with the Securities and Exchange Commission (“SEC”). For more than 80 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. The IAA’s member firms manage more than \$25 trillion in assets for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

² *Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR*, 86 FR 26378, RIN 3038-AE98 (May 4, 2020) (“Proposal”), available at <https://www.cftc.gov/sites/default/files/2020/05/2020-08496a.pdf>.

³ Since the CFTC amended registration rules in 2012 to eliminate existing registration exemptions for some SEC-registered advisers of investment vehicles, even if they trade *de minimis* amounts of commodity interests, the IAA has urged the CFTC to harmonize and rationalize CFTC regulation for CPOs and commodity trading advisers (“CTAs”) to reduce the regulatory burden on SEC-registered advisers that are dually registered with the CFTC for the same activity. While the Proposal does not address the registration provisions, we appreciate the steps the Commission has proposed to reduce filing burdens for dually-registered CPOs.

I. Background and Summary of Recommendations

The CFTC adopted Form CPO-PQR in 2012 after the CFTC and the SEC jointly adopted Form PF for private fund advisers registered with both agencies, which was required by the Dodd-Frank Act.⁴ The CFTC intended for the data collected under Form CPO-PQR to be used to increase its understanding of its registrant population, assess the market risk associated with pooled investment vehicles under its jurisdiction, monitor for systemic risk, and identify trends among commodity pools.⁵ Currently, CFTC Rule 4.27(d) permits the filing of Form PF by dually-registered advisers and CPOs in lieu of filing Schedules B and C of Form CPO-PQR.⁶ Prior to the CFTC adopting Form CPO-PQR, the National Futures Association (“NFA”) had adopted its own Form PQR in 2010 to require quarterly reporting of data by all NFA members that are CPOs in order to support the NFA’s risk-based examinations program for CPOs. NFA Rule 2-46 permits CPOs to file CFTC Form CPO-PQR in lieu of NFA Form PQR. The NFA does not allow for substituted compliance for dual registrants that file Form PF.⁷

The Commission acknowledges, after a retrospective review of its current priorities and resources and seven years of receiving Form CPO-PQR data, that it has not made full use of the detailed information in Form CPO-PQR.⁸ It recognizes that other data streams and regulatory initiatives have been more effective in enhancing its ability “to surveil financial markets for risk posed by all manner of market participants, including CPOs and their operated pools.”⁹ As a result, the Commission seeks to streamline Form CPO-PQR to better balance the burden on CPOs with the Commission’s need to obtain data for effective oversight of the commodity markets.¹⁰

The Commission proposes several significant amendments to Rule 4.27 and Form CPO-PQR. In particular, it proposes to: (i) eliminate Schedules B (except the Schedule of Investments) and C of the form; (ii) move the current Schedule of Investments from Schedule B to Schedule

⁴ See *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 FR 11252 (Feb. 24, 2012); Proposal at 26379.

⁵ Proposal at 26379-80.

⁶ Currently, Schedule B of Form CPO-PQR must be filed annually by mid-sized CPOs and quarterly by large CPOs for each separate pool. Current Schedule C is required on a quarterly basis for large CPOs for each large pool. Most CPOs are also currently required to submit Schedule A of Form CPO-PQR on an annual basis (mid-sized CPOs) or a quarterly basis (large CPOs). See Proposal at 26380.

⁷ See Proposal at 26380.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

A; (iii) require a CPO and pool to report their legal entity identifiers (“LEIs”) if they have them; and (iv) require all CPOs (including small and mid-sized CPOs) to file Form CPO-PQR on a quarterly basis. Finally, to the extent that a CPO has timely filed NFA Form PQR, that filing will be deemed to satisfy the Form CPO-PQR filing requirement. Under the proposal, filing a Form PF will no longer be deemed to satisfy the Form CPO-PQR requirement.¹¹

We support the Commission’s proposal. In particular, we:

(i) Support the CFTC’s effort to reduce the burden of the form’s requirements by eliminating Schedules B and C and to permit firms to file the NFA’s Form PQR instead of Form CPO-PQR;

(ii) Recommend that the CFTC amend the Form CPO-PQR Schedule of Investments to be consistent with the 2010 NFA Schedule of Investments and clarify that only commodity-related brokers need to be reported; and

(iii) Recommend that the CFTC streamline and clarify the final Instructions and related Frequently Asked Questions (“FAQs”) to provide consistency for CPOs.

We discuss our comments below.

II. Recommendations

A. We Support the CFTC’s Proposal to Eliminate Schedules B and C and Permit CPOs to File the NFA’s Form PQR in Lieu of Form CPO-PQR

The CFTC proposes to eliminate the majority of the information required to be filed in Schedule B – except for current Item 11, Schedule of Investments, which it proposes to move to Schedule A – and all of Schedule C. The Proposal provides several reasons for this change. First, the Commission notes that the data has not shown the trends across CPOs or pools that the CFTC had expected to see because filers have flexibility in how they calculate and report certain data in the form.¹² Second, as noted above, over the years since the 2008 financial crisis and the Dodd-Frank Act, the CFTC has received new data from other sources that is related to swaps transactions, which has “enhance[d] the Commission’s ability to broadly surveil financial markets for risk posed” in the over-the-counter and exchange-traded swaps markets by market participants such as CPOs.¹³ Third, the CFTC has enhanced its oversight of, and reporting

¹¹ Proposal at 26381.

¹² *Id.*

¹³ *Id.* The data includes “extensive information related to trading, reporting, and clearing of swaps” (*e.g.*, the CFTC requires detailed information about swap trading, swap transaction data reporting to swap data repositories, and clearing of swaps, including those entered into by CPOs, whether on an exchange or over-the-counter).

requirements for, market participants across the board, which has provided the Commission with substantial data on positions and activities of clearing members and customers, including CPOs and the pools they operate.¹⁴

The Commission also notes that the Proposal would provide the ability to more easily integrate the proposed Form CPO-PQR with the CFTC's more developed data streams than can be done with the current form, and that the proposed form would better enable the CFTC, with some additional data analysis, "to oversee and assess the impact of CPOs and their operated pools in the commodity interest markets in an effective manner."¹⁵ The Commission states that the reporting of LEIs for a CPO and its operated pools "would be key to helping facilitate this integration with respect to CPOs and pools that engage in the swaps markets" and that the "improved data integration would mitigate the need to engage in a more extensive, and likely more burdensome, effort to improve the utility of the data fields requested in current Schedules B and C."¹⁶ The Commission also proposes to amend Rule 4.27(c)(1) to permit substituted compliance for CPOs that file NFA Form PQR in lieu of having to file the CFTC Form CPO-PQR.¹⁷

The Commission requests comment on all aspects of the Proposal. We support the Proposal and the Commission's efforts to streamline and improve its data collection, integration, and analysis. We appreciate the CFTC tailoring the regulatory reporting requirements for CPOs to limit data collection to data that the Commission will make use of and eliminating the more detailed information in Form CPO-PQR that has not been helpful for the CFTC's oversight purposes. We also support the proposal to permit CPOs to file the NFA Form PQR in lieu of the CFTC Form CPO-PQR. We commend the Commission for offering CPOs additional filing efficiencies without compromising the Commission's ability to obtain affected data.¹⁸

B. We Recommend that the CFTC Amendments Align the Schedule of Investments with the NFA's 2010 Form Schedule of Investments and Clarify that Only Commodity-Related Brokers Need to be Reported

The Commission requests comment on whether it should consider amending the Schedule of Investments to align with the simpler schedule that appeared in NFA Form PQR in

¹⁴ Proposal at 26382 (citing CFTC Rule 39.19 and large trader reporting in Part 18 of CFTC regulations).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Proposed Rule 4.27(c)(1) ("a commodity pool operator required to file NFA Form PQR with the National Futures Association for the reporting period may make such filing in lieu of the report required under this section consistent with appendix A to this part.").

¹⁸ *See* Proposal at 26383.

2010.¹⁹ We support this option, and we recommend that the CFTC amend the Form CPO-PQR Schedule of Investments to be as they appeared in the NFA’s 2010 Form PQR.²⁰ In addition to aligning the specific data fields in CFTC Form CPO-PQR’s Schedule of Investments to the NFA’s 2010 Schedule, the CFTC should also raise the threshold for reporting on the Schedule from the current five percent of investments held in the pool to ten percent, the threshold that existed in the NFA’s 2010 Schedule. The NFA also supports such an alignment and has determined that the NFA 2010 Schedule of Investments satisfies its data collection needs for purposes of its oversight of CPOs.²¹ We agree that these changes would significantly reduce burdens on CPOs while still providing useful data.²²

In addition, we recommend that the CFTC clarify that the question requiring a CPO to list every pool “broker” in Form CPO-PQR²³ includes only commodity-related brokers and not non-commodity brokers.²⁴ The burden is substantial for CPOs that may have hundreds of relationships with approved executing brokers for non-commodity interests to list every one of these brokers. Unlike trading in commodity interests, where most transactions are governed by trading agreements, buying and selling stocks and bonds and other assets involves no trading agreements and no confined set of counterparties, so the CPO has to re-evaluate this information every quarter. For pools holding a large number of non-commodity interest positions, the gathering of this data for non-commodity asset classes is further complicated by the differences in legal names of brokerage firms, as compared to trading codes or acronyms. The regulatory interest in collecting the non-commodity interest brokers is also not clear but we do not believe this information is necessary to implement Form CPO-PQR or to assist the CFTC in its oversight of the commodities markets. Because any perceived regulatory benefit is outweighed by the

¹⁹ Proposal at 26384 (Question 6).

²⁰ However, we question whether the items requiring disclosure in the Schedule of Investments related to fixed income subcategories of asset backed securities and CLO investments, as well as the detailed sector breakdowns of equities, are relevant and necessary for CFTC oversight.

²¹ See NFA Letter to CFTC Re: RIN 3038—AE98: Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR (June 10, 2020), available at <https://www.nfa.futures.org/news/newsComment.asp?ArticleID=5240> (“the Commission requests comment on the content of the Schedule of Investments, including whether the Commission should amend it to make it align with the schedule that appeared in NFA’s Form PQR in 2010. NFA fully supports this amendment because we believe a more streamlined schedule will significantly alleviate filing burdens on CPOs without negatively impacting the usefulness of the information that is collected.”).

²² We understand that the NFA may need to amend its Form PQR to revert to the 2010 version and to add the LEI field that the CFTC has proposed to include. We would support these changes.

²³ “Broker” is defined in the form to mean “any entity that provides clearing, prime brokerage or similar services to the Pool.”

²⁴ The NFA has added instructions relating to CFTC Form CPO-PQR – not included in the CFTC’s instructions – that state, “Please report all broker relationships, even those brokers that are not used for commodity interest business.” See <https://www.nfa.futures.org/EasyFilePlus/EFPTemplate.aspx?template=PQR>.

substantial burdens on asset managers that may be CPOs of pools that hold large numbers of non-commodity interest positions, we ask that the CFTC clarify that the reference to “broker” in Form CPO-PQR refers only to a commodity-related broker.²⁵

C. We Recommend that the CFTC Update the Form’s Instructions and Related FAQs to Reflect the Changes that are Adopted

Given the significant proposed changes to the structure of Form CPO-PQR, the Commission asks whether there are ways the CFTC could further clarify and refine the form’s instructions to provide CPOs with greater certainty that they are completing the form correctly.²⁶ We appreciate the question and recommend that the Commission add a specific instruction to the form to reflect the change under Rule 4.27(c) to allow for substituted compliance with NFA Form PQR. Specifically, we suggest that the instruction state that a CPO “required to file NFA Form PQR with the NFA for the reporting period may make the NFA filing in lieu of the Form CPO-PQR report required under Rule 4.27(c).” This clarity will assist CPOs that frequently review the instructions for the form in addition to or instead of the text of the rule to ensure the filing is accurate and complete.

We also believe that the Commission could improve the clarity of the form by amending the Instructions and FAQs²⁷ to remove terms and language that will not apply to the newly revised form, including, but not limited to, references to parallel managed accounts, parallel pool structures, and aggregating funds for reporting purposes.²⁸

²⁵ We would expect that, following such clarification, the NFA would interpret the term “broker” the same way.

²⁶ Proposal at 26384 (Question 5).

²⁷ See CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO-PQR (Nov. 5, 2015), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/faq_cpoc110515.pdf.

²⁸ We do not agree, however, with any recommendation to eliminate Instruction 4. Such an amendment would be considered a significant change in how CPOs currently report on the form and should be considered, if at all, as part of a formal rulemaking, with notice and comment.

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We appreciate the Commission's consideration of our comments on this important Proposal and would be happy to provide any additional information that may be helpful. Please contact the undersigned or Monique Botkin at (202) 293-4222 if we can be of further assistance.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'GCB', enclosed within a large, hand-drawn oval.

Gail C. Bernstein
General Counsel

cc: The Honorable Heath P. Tarbert, Chairman
The Honorable Brian D. Quintenz, Commissioner
The Honorable Rostin Behnam, Commissioner
The Honorable Dawn D. Stump, Commissioner
The Honorable Dan M. Berkovitz, Commissioner

Joshua B. Sterling, Director, Division of Swap Dealer and Intermediary Oversight
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