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June 15, 2020

Mr. Christopher Kirkpatrick, Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Amendments to Compliance Requirements for Commodity Pool Operators on
Form CPO-PQR (RIN 3038-AE98)

Dear Mr. Kirkpatrick:

The Investment Company Institute (ICI)¹ appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (CFTC or Commission) on its proposal to streamline the periodic reporting requirements applicable to commodity pool operators (CPOs).² We focus our comments on how the Proposal would affect registered fund CPOs—that is, sponsors of US registered investment companies (registered funds) that are both registered as investment advisers with the Securities and Exchange Commission (SEC) and as CPOs with the Commission.

In this letter, we begin with a brief discussion of how the current reporting requirements affect registered fund CPOs. We explain why the reporting regime contemplated in the Proposal would be a significant improvement for registered fund CPOs and for the Commission alike, and we recommend two modifications to improve the Proposal consistent with the agency's regulatory objectives. We then explain why the alternative approaches outlined in the Commission's cost-benefit analysis are inadvisable and would detract from, rather than further, the Commission's goals. Finally, we conclude by asking that the Commission move expeditiously to adopt the Proposal.

¹ The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US\$24 trillion in the United States, serving more than 100 million US shareholders, and US\$6.5 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

² *Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR*, 85 Fed. Reg. 26378 (May 4, 2020) (Proposal), available at <https://www.govinfo.gov/content/pkg/FR-2020-05-04/pdf/2020-08496.pdf>.

Effect of the current requirements on registered fund CPOs

Amended in 2012 as part of a broader rulemaking, Commission Regulation 4.27 requires the periodic reporting on Form CPO-PQR of information about a CPO and the pools that it operates.³ The form is composed of three separate schedules that seek varying degrees of information, ranging from identifying information about the CPO, its pools and service providers (on Schedule A) to very detailed information about each pool a CPO operates, both on an aggregate and pool-by-pool basis (Schedules B and C). The relative size of a CPO determines which of the schedules the CPO is required to file and how frequently. Small CPOs are required to file Schedule A once annually, while the largest CPOs file Schedules A, B and C on a quarterly basis.

In the same rulemaking, the Commission adopted amendments to Regulation 4.5 that brought certain registered fund advisers into scope as CPOs, even though these entities and the registered funds they advise are comprehensively regulated by the SEC. The Commission did not evaluate the extensive periodic reporting requirements to which registered funds and their advisers already adhere—it simply subjected registered fund CPOs to the new Form CPO-PQR requirements.⁴ A year later, in a rulemaking intended to “harmonize its requirements with those of the SEC,”⁵ the Commission again failed to consider the overlap in periodic reporting requirements occasioned by the fact that registered fund CPOs are dually registered with the SEC and the CFTC.⁶

As we have explained on several occasions, there is significant overlap between the SEC’s reporting requirements for registered funds and their advisers and the CFTC’s reporting requirements for registered fund CPOs.⁷ Both SEC and CFTC rules require registered funds to report detailed

³ *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11252 (Feb. 24, 2012) (2012 Rulemaking); *correction notice published at* 77 Fed. Reg. 17328 (Mar. 26, 2012).

⁴ *Id.* at 11266 (“With respect to the assertion that registered investment companies should not be required to file Form CPO–PQR, the Commission believes that it is important to collect the data in Form CPO–PQR from registered investment companies whose activities require CPO registration to assess the risk posed by such investment vehicles to derivatives markets and the broader financial system. Consequently, the Commission intends to require from registered investment companies that are also registered as CPOs the same information that it is requiring from entities solely registered as CPOs.”).

⁵ *Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators*, 78 Fed. Reg. 52308 (Aug. 22, 2013).

⁶ *Id.* at 52326 (“CPOs of [registered investment companies (RICs)] were not required to comply with its filing obligations under [CFTC Regulation] 4.27 or file form CPO–PQR until the finalization of this rulemaking. The reporting obligations for CPOs of RICs with respect to form CPO–PQR under the [Paperwork Reduction Act] and the costs and benefits were addressed in the 2012 Final Rule and restated in the Proposal only for informational purposes.”).

⁷ *See, e.g.*, Letter to Christopher Kirkpatrick, Secretary, CFTC, from Dorothy M. Donohue, Acting General Counsel, ICI, dated Sept. 28, 2017, at vii, available at <https://www.ici.org/pdf/30889a.pdf> (outlining the comprehensive SEC periodic reporting requirements for registered funds and their advisers that provide a holistic picture of the adviser and its investment activities).

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information about fund portfolio holdings, portfolio characteristics, and risk metrics. Both SEC and CFTC rules require registered advisers to report information about the funds and accounts they manage, including data about fund and account holdings. While the SEC and CFTC require different information in some instances, both rule sets are intended to accomplish similar regulatory objectives.

To comply with both SEC and CFTC rules, registered fund CPOs have had to develop and maintain systems and manual processes to source, compile and report multiple sets of similar information for the same registered fund(s). The costs of this overlapping reporting have been borne, and continue to be borne, by registered fund shareholders—typically American families who invest in registered funds to save for college, prepare for retirement, and otherwise achieve their financial goals.

ICI views on the Proposal

ICI appreciates the Commission undertaking this evaluation of the Form CPO-PQR reporting requirements and for acknowledging that the data it now collects has not been particularly helpful for the agency's regulatory purposes. We likewise appreciate the acknowledgement that over the last seven years, none of the data collected on Form CPO-PQR—which was designed in part to capture data thought to be useful to the Financial Stability Oversight Council (FSOC)—has actually been shared with FSOC.⁸

The Commission proposes to streamline its data collection so that a revised Form CPO-PQR could be more easily integrated with other data that the Commission receives, including extensive information related to trading, reporting and clearing of swaps and reporting by other CFTC registrants and large traders in the commodity interest markets. The release explains that adding a reporting element for legal entity identifiers (LEIs) for the CPO and its operated pools (to the extent that LEIs have been obtained) “would be key to helping facilitate this integration.” The CFTC “believes that this information, when integrated with other data streams available to the Commission, would provide an effective and efficient way for the Commission to oversee and assess the impact of CPOs and their operated pools in the commodity interest markets.”⁹

Ideally, we believe the Commission should adopt a substituted compliance approach to periodic reporting by registered fund CPOs, as it did for registered fund disclosure documents in the 2013 harmonization rulemaking.¹⁰ This approach is appropriate in view of the comprehensive reporting that registered fund CPOs and their registered fund pools provide to the SEC, under rules that were enhanced in 2016. In this Proposal, in fact, the Commission recognizes the strength of the SEC

⁸ Proposal at 26387.

⁹ *Id.* at 26385.

¹⁰ *See* Regulation 4.12(c)(3)(i) (exempting a registered fund CPO from the Part 4 requirements for pool disclosure documents, subject to certain conditions).

reporting regime, noting that “[r]egistered investment companies are subject to a comprehensive scheme of periodic financial reporting under the federal securities laws, and most of that data is publicly available on the SEC’s website through its EDGAR filing system.”¹¹

The comprehensive quarterly portfolio holdings reports that registered funds file with the SEC include derivatives positions. These reports also require disclosure of LEIs (to the extent that registered funds have obtained them) and, for each derivatives contract, the name and LEI of the counterparty. Under a substituted compliance approach, the Commission could integrate the information in those reports with its other data sources and thereby have a full view of registered fund activity in the commodity interest markets.¹²

Nevertheless, ICI endorses the Proposal as a helpful improvement to the current system. It would significantly reduce the reporting burdens to which registered fund CPOs are currently subject, while ensuring that the Commission continues to receive regular information from all CPOs for purposes of monitoring activity in the commodity interest markets. The Proposal also would allow CPOs to comply with the Commission’s requirements through timely filing of corresponding reports required by the National Futures Association (NFA).

Whether this rulemaking successfully accomplishes the Commission’s goals will depend on whether the resulting data set is properly calibrated to the Commission’s regulatory interests and limited to the information that *actually will be used* in monitoring activity in the commodity interest markets. For this reason, we strongly recommend that the Commission modify the Proposal by incorporating into Form CPO-PQR the version of the schedule of investments that NFA adopted in 2010 (2010 Schedule). As NFA explains in its comment letter, the data elements in the 2010 Schedule are what NFA regularly uses as part of its risk monitoring system and NFA “does not have a need for the more granular

¹¹ Proposal at 26382. The Commission goes on to explain that “registered management investment companies—a category that includes those investment companies that are also commodity pools—file with the SEC annual reports on Form N–CEN, quarterly reports of their portfolio holdings on Form N–PORT, and information about their liquidity on Form N–LIQUID.” *Id.* at n.52. In addition, the SEC requires registered fund advisers to file Form ADV, which calls for both census-type information and information about the adviser’s business, including types of advisory services offered, fee schedule, disciplinary information, conflicts of interest, and qualifications of key personnel.

¹² Indeed, when registered fund advisers first came into scope as CPOs, then Chairman Gary Gensler envisioned a substituted compliance approach. In remarks at an industry conference just one month after the 2012 rulemaking was finalized, Gensler remarked: “Yes, you need to register with the CFTC but we are more than happy to use the forms that you use over at the SEC... just send the same stuff over... You are right, they would be dually registered but we take all the same documents... I think once they’re registered we ought to be able to take the forms from the other agency.” The Honorable Gary Gensler, Chairman, Commodity Futures Trading Commission, “Outlook from the CFTC,” Remarks to the U.S. Chamber of Commerce Sixth Annual Capital Markets Summit, Washington, D.C. (Mar. 28, 2012), available at <http://www.uschamber.com/webcasts/6th-annual-capital-markets-summit> (specific quote on Webcast Part 2 beginning at 24:00).

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information currently in the Schedule” required under Rule 4.27. NFA further opines that the 2010 Schedule “elicits the information necessary for both the CFTC's and NFA's needs.”¹³

Likewise, we recommend that the Commission take this opportunity to clarify the scope of question 5 in current Schedule A, which seeks information about pool brokers. Responses to this question should be limited to the brokers that a CPO uses with respect to commodity interest transactions. This result is consistent with the Commission’s stated objectives in the Proposal, which is to be able to match up its existing data streams with data from revised Form CPO-PQR in order to better monitor the commodity interest markets.

Inadvisability of alternatives to the Proposal

In its cost-benefit analysis, the Commission contemplates two possible alternatives to the Proposal. The first alternative is to rescind Form CPO-PQR in its entirety and require all CPOs to file all or part of Form PF with NFA. The second alternative is for the Commission to “devote resources to rectifying the challenges with the data reported under current Form CPO-PQR.”¹⁴ The release expresses the Commission’s preliminary view that “the proposed changes to Form CPO-PQR, relative to the alternatives, would permit the Commission to discharge its regulatory duties with respect to CPOs and their operated pools that might have the greatest impact on market and systemic risk while easing reporting obligations on a significant number of CPOs.”¹⁵ We agree.

Replacing Form CPO-PQR with an obligation to file all or part of Form PF would impose *additional* burdens on registered fund CPOs. Although registered fund CPOs are dually registered with the SEC, they are not required to file Form PF for their registered funds. If this alternative were adopted, registered fund CPOs would have to adapt the systems and processes they put in place for Form CPO-PQR in order to file Form PF—a reporting form designed for hedge funds—and continue to complete and file periodic reports with the SEC at both the fund and adviser level.

The release acknowledges that FSOC may receive less data if the Proposal is adopted, noting that “some CPOs that are filing CFTC-only pool information through Form PF may stop doing so.” Respectfully, the Commission should not repeat the past by designing its reporting requirements based on the perceived data needs of FSOC. Rather, the Commission should focus squarely on the information that

¹³ Letter to Christopher Kirkpatrick, Secretary, CFTC, from Carol A. Wooding, Senior VP, General Counsel and Secretary, NFA, dated June 11, 2020, available at <https://www.nfa.futures.org/news/newsComment.asp?ArticleID=5240>.

¹⁴ Proposal at 26388.

¹⁵ *Id.*

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it needs—and will use—in pursuit of its regulatory mission.¹⁶ Should FSOC determine that it needs information about certain pools that is not collected by the Commission, FSOC has the necessary authority under the Dodd-Frank Act to obtain that information.¹⁷

ICI likewise concurs with the Commission’s preliminary belief that the agency’s limited resources should not be spent on trying to make better use of the voluminous and very specific pool-level data sought in Schedules B and C of current Form CPO-PQR. As NFA’s experience demonstrates, a targeted data set is most useful for initial monitoring purposes. If that data raises a red flag with respect to a particular pool or its CPO, the Commission has the authority to request additional—and more recent—information from the CPO to evaluate any potential concerns.

* * *

¹⁶ See, e.g., Statement of Commissioner Dawn D. Stump Regarding CFTC Open Meeting on April 14, 2020, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement041420> (“While the subject of today’s proposal is CFTC Form CPO-PQR, I think it would be helpful to level set the conversation with a review of the different overlapping forms these investment advisors are required to file with various regulatory authorities. I am hopeful this will demonstrate why a correction is warranted to best achieve the distinct missions of regulators who are tasked to work together, rather than apply duplicative requirements on competing forms . . . The new form proposed today significantly reduces complexity and refocuses the information requested on Form CPO-PQR to the CFTC’s specific regulatory tasks.”).

¹⁷ See Dodd-Frank Wall Street and Consumer Protection Act sections 112(d) (outlining FSOC’s authority to obtain information) and 154(b) (outlining the authorities of the Office of Financial Research to collect information on FSOC’s behalf).

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We appreciate the opportunity to share our views on the Proposal, which represents a significant improvement over the current reporting regime for CPOs, and we urge its prompt adoption by the Commission. If you have any questions, please feel free to contact me at rgraham@ici.org or Sarah A. Bessin, Associate General Counsel, at sarah.bessin@ici.org.

Sincerely,

/s/ Rachel H. Graham

Rachel H. Graham
Associate General Counsel

cc: The Honorable Heath P. Tarbert
The Honorable Brian D. Quintenz
The Honorable Rostin Behnam
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