asset management group

December 11, 2023

Submitted electronically via CFTC Comments Portal

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

Re: Comments to proposed amendments to Rule 4.7 (RIN 3038-AF25)

Dear Mr. Kirkpatrick:

The members of the Asset Management Group of the Securities Industry and Financial Markets Association ("**SIFMA AMG**")[1] appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (the "**CFTC**" or the "**Commission**") on the proposed amendments to Rule 4.7 (the "**Proposal**")[2] to (i) update the "Qualified Eligible Person" definition, (ii) add minimum disclosure requirements for pools and trading programs, (iii) permit monthly account statements for funds of funds and (iv) make certain technical amendments.

Executive Summary

We support the aspects of the Commission's Proposal that would update the Portfolio Requirement and codify fund-of-funds reporting relief.

We encourage the Commission to decline to adopt the Proposal's prescriptive disclosure requirements. In particular, we believe that existing market practice provides robust disclosure to prospective investors in Rule 4.7 pools and accounts. The Proposal's granular disclosure requirements are not well-suited to the Rule 4.7 context and are not supported by a consideration of the costs and benefits of such requirements. Prospective investors in Rule 4.7 pools and accounts are sufficiently sophisticated to request additional supplementary information from sponsors and advisers to meet their individual diligence needs and do not require retail-like disclosures in offering documents and account brochures. The Proposal would impose costs on all investors – even those not seeking or interested in such disclosures – which do not outweigh the potential benefits to investors.

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[1] SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceed $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. SIFMA AMG appreciates the assistance of Jeremy Liabo, Anne Fox, and Laura Appelt at Ropes & Gray LLP in the preparation of this response.

[2] Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools, 88 Fed. Reg. 70852 (proposed Oct. 12, 2023) (to be codified at 17 C.F.R. pt. 4). Capitalized terms used and not defined herein have the meaning assigned to them in the Proposal.

Background

CFTC Rule 4.7 (“**Rule 4.7**”) creates an exemption from certain compliance requirements under Part 4 of the CFTC’s regulations for pools and accounts where participation is restricted to sophisticated investors who qualify as Qualified Eligible Persons (“**QEPs**”).[3] The Commission adopted Rule 4.7 in 1992 on the premise that QEPs are sufficiently financially sophisticated and have sufficient leverage and resources to protect their own interests when participating in such pools and accounts.[4] For this reason, Rule 4.7 exempts such pools and accounts from many of the disclosure, reporting and recordkeeping requirements of Part 4. In fact, the 1992 adopting release issued by the Commission explained that “QEPs are able to identify and obtain the information they deem necessary to evaluate the investment offered and thus [ ] prescriptive rules imposing specific disclosure requirements are not essential.”[5]

On October 12, 2023, the Commission proposed amendments to Rule 4.7 to (i) update the “Qualified Eligible Person” definition, (ii) add minimum disclosure requirements for pools and trading programs, (iii) codify relief for CPOs operating funds-of-funds who choose to distribute monthly account statements within 45 days of month-end and (iv) make certain technical amendments.[6] In issuing the Proposal, the Commission noted its intent to modernize Rule 4.7, which has not undergone significant amendments since it was first adopted in 1992.[7] In particular, the Commission noted that the derivatives markets have evolved, with Rule 4.7 pools and accounts increasingly engaging in complex derivatives activities and participating in novel investment products such as futures on digital assets.[8] The Commission also explained that the current regulatory framework does not provide the Commission with sufficient oversight over Rule 4.7 disclosures.[9]

In the Proposal, the Commission expressed concern that the lack of disclosure obligations in Rule 4.7 “fails to ensure that all QEPs have the leverage and resources to demand the information necessary . . . to make informed investment decisions, or to engage in ongoing close monitoring to confirm that the information provided remains accurate and complete to facilitate their continued understanding of their investments.”[10] As a solution to this concern, the Commission incorporated certain affirmative disclosure obligations in the Proposal, drawn from Part 4’s requirements for retail pools and accounts.[11]

The members of SIFMA AMG include CTAs and CPOs who operate Rule 4.7 separate accounts and private funds. In such capacity, our members manage strategies that use derivatives to obtain speculative exposure and to hedge risk. In connection with such strategies and in their capacity

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[3] 17 C.F.R. § 4.7 (2019).

[4] Exemption for Commodity Pool Operators with Respect to Offerings to Qualified Eligible Participants, 57 Fed. Reg. 34853 (Aug. 7, 1992) (codified at 17 C.F.R. § 4.7).

[5] *Id.* at 34857.

[6] 88 Fed. Reg. at 70852.

[7] *Id.* at 70853.

[8] *Id.* at 70857.

[9] *Id.* at 70858.

[10] *Id.* at 70856.

[11] *Id.* at 70859.

as investment advisers registered with the Securities and Exchange Commission (the "**SEC**"), our members provide customary disclosures to prospective account clients and pool participants by various means including investment management agreements, Form ADV disclosures, private placement memoranda, and other documents that may be requested by prospective investors from time to time.

In light of this background, we appreciate the opportunity to discuss the Proposal's disclosure requirements, along with other aspects of the Proposal, herein.

Discussion

We support the Commission's proposals to (i) update the QEP Portfolio Requirement to account for the effects of inflation and (ii) codify relief for CPOs operating funds-of-funds who choose to distribute monthly account statements within 45 days of month-end. However, we oppose the Proposal's prescriptive disclosure mandate.

I. The Proposal's disclosure mandate is not necessary in light of existing practice nor supported by cost-benefit analysis.

Our opposition to the Proposal's disclosure mandate is an inherent result of the Commission's determination to incorporate into the Proposal certain disclosure requirements from the Part 4 rules. In our view, the Part 4 regime, which is designed to address the needs of retail investors, is not appropriate in the Rule 4.7 context. Until this point, the Commission has carefully tailored requirements applicable to certain sophisticated investors (*i.e.*, QEPs) and distinguished such requirements from those applicable to retail investors, in recognition of the differences in leverage and knowledge across these groups. Imposing prescriptive retail disclosure requirements on offering documents and account brochures for privately offered investment products that are available only to sophisticated investors, as the Proposal would do, does not align with the Commission's prior reasoning in adopting Rule 4.7, and in our view is not appropriate or necessary given existing industry practice.

In contrast to investments in retail products, investments in Rule 4.7 pools and accounts are privately negotiated transactions. As discussed in greater detail below, any disclosure documents or account brochures provided to prospective investors at the outset of a transaction generally serve as the baseline, not the sole basis, upon which prospective investors make their investment decisions. Like prospective investors in other privately offered products, it is market practice for prospective investors in Rule 4.7 funds and separate accounts to request any additional information they require to analyze the investment opportunity and make an informed investment decision.

The disclosure practices that exist today with respect to Rule 4.7 products largely reflect the expectations and demands of investors which have evolved in the thirty years since Rule 4.7 was adopted. Indeed, the private funds industry has grown over the past several decades and continues to grow. The popularity of such products with sophisticated investors is testament that such investors are satisfied with the information they currently receive, and given their level of sophistication, they are sufficiently empowered to negotiate and request more information as needed to suit their specific needs. We are concerned that the Proposal will inhibit the growth that the industry has seen up to this point.

Moreover, sponsors of Rule 4.7 products have built their businesses around existing disclosure practices. CPOs and CTAs who offer retail products have established infrastructures that are constructed to comply with prescriptive disclosure mandates and annual update schedules. In contrast, CPOs and CTAs who offer Rule 4.7 products often have fundamentally different and often leaner structures that are designed to promptly respond to *ad hoc* requests from prospective investors. As a result, the proposed disclosure mandate would impose a material and costly administrative burden on operators and advisors of Rule 4.7 pools and accounts. Such costs may deter future product development and would be passed through to Rule 4.7 pool and account participants. As discussed below, we believe that such costs would greatly outweigh any potential benefits that prospective investors would receive from such prescriptive disclosures.

A. The Commission should not impose mandatory disclosure requirements on CTAs advising Rule 4.7 accounts.

We are of the strong view that the Commission should not impose mandatory disclosure requirements on accounts advised under Rule 4.7 in light of the unique nature of these products and their clients. Even more so than participants in Rule 4.7 pools, it is our experience that Rule 4.7 account clients are highly sophisticated investors who seek separate accounts to satisfy their specific investment needs. Many of our CTA members are also CPOs and offer separate accounts only to QEPs who seek to invest a substantial amount of capital through a separate account structure rather than a pool participation. As a result, Rule 4.7 account arrangements are often heavily negotiated and may involve bespoke investment strategies. These investors have the power to request the information they require to make informed investment decisions and have little need for exhaustive mandated disclosures that were designed originally with retail clients in mind.

Furthermore, a prospective Rule 4.7 client seeking retail-oriented disclosures has the right, under existing regulations, to decline to have its account treated as a Rule 4.7 exempt account. In such case, the prospective client will either receive a full Part 4 disclosure document or, if the CTA determines that the costs to prepare such a document outweigh the benefits of the account, it may decline to establish a separate account arrangement with the client.

In our experience, CTAs rarely, if ever, provide disclosure documents of the type contemplated under the Proposal to Rule 4.7 account clients.[12] Building out the infrastructure needed to comply with the Proposal would be expensive and time consuming. The cost of doing so may be particularly acute with respect to bespoke Rule 4.7 accounts as a separate disclosure document may need to be prepared for each client. In response to these costs, CTAs may increase their management fees, restrict Rule 4.7 accounts to only their largest clients, and/or stop offering Rule 4.7 accounts altogether.

Moreover, the Proposal would cause the Commission to expend its limited resources protecting sophisticated investors who are beyond the scope of its core regulatory interests. Because there are fewer exemptions available to registered CTAs than to CPOs, many CTAs rely on Rule 4.7 with respect to accounts which, if pools, could be operated pursuant to CPO registration exemptions. For example, due to the lack of a trading program-specific *de minimis* exemption, registered CTAs will often rely on Rule 4.7 in connection with strategies that trade a *de minimis* level of commodity interests for non-pool account clients (*e.g.*, corporate assets, endowments, etc.). Similarly, because registered

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[12] Unlike the disclosure document that would be required under the Proposal, the Form ADV Part 2 Brochure, which many CTAs provide to prospective Rule 4.7 account clients, is not customized for each trading program.

non-U.S. CTAs are unable to stack the Rule 3.10(c)(4) exemption, many rely on Rule 4.7 with respect to the accounts of non-U.S. clients, even where, for example, the client is a pool operated by a registered CPO pursuant to Rule 3.10(c)(5).[13] In light of this context, the practical effect of the Proposal will be the Commission finding the resources to impose mandated retail disclosures on accounts that have *de minimis* exposure to commodity interests and/or no material U.S. nexus, and/or to discourage such accounts from trading in commodity interests altogether. Importantly, these are accounts for which the CFTC has acknowledged that additional protections of Rule 4.7 are not necessary, but simply do not have exemptions available to them as a technical matter.

We are also concerned by the Proposal's approach to performance disclosures for Rule 4.7 accounts. The Proposal would require that CTAs advising Rule 4.7 accounts disclose performance information for all accounts directed by the CTA and each of its trading principals for the past five years, regardless of whether such accounts follow a similar trading program to the account being offered. We think such disclosure will be of questionable benefit to prospective investors, and moreover, there is risk that such disclosure will be misleading. Additionally, in our experience CTAs advising Rule 4.7 accounts do not currently provide capsule performance information to prospective clients, and therefore imposing such a requirement will materially increase costs which will ultimately be passed through to clients and/or impede future product development.

We therefore recommend that the Commission not adopt the Proposal's mandatory disclosure requirements in respect of Rule 4.7 accounts.

If, however, the Commission determines that disclosure requirements in respect of Rule 4.7 accounts are necessary, then we ask, in the alternative, that the Commission strictly limit such mandate in terms of both content and recipients and to allow for satisfaction through substituted compliance. Specifically, we ask that only general disclosures regarding risk factors, the CTA's trading programs, fees and conflicts of interest be required to be provided to clients who are (a) natural persons and (b) legal organizations who are not eligible contract participants.[14] We also ask that where such information is disclosed to clients or prospective clients through compliance with an existing regulatory regime (*e.g.*, via disclosure in the CTA's Form ADV Part 2 brochure), the Commission should permit satisfaction of the disclosure requirement by substituted compliance.

B. The Commission should not impose mandatory disclosure requirements on CPOs operating Rule 4.7 pools.

i. The Commission should eliminate the requirement to disclose granular details of a pool's investment program.

General disclosure regarding a private fund's investment program is common in offering documents. In our experience, as a best practice, which we support, private fund managers commonly include a description of the fund's investment objectives and strategy in marketing materials and offering documents. Such disclosure typically includes a description of the fund's strategy, a list of the types of instruments that may be traded, a description of any applicable investment guidelines or limitations and an explanation of the fund's intended use of leverage, among other elements. The

[13] For example, an exempt CTA may rely on Section 4m(3) for a *de minimis* account or Rule 4.14(a)(8) for a *de minimis* pool. A non-U.S. exempt CTA may rely on Rule 3.10(c)(4) if all of its clients are non-U.S.

[14] We note that National Futures Association Rule 2-30 requires certain disclosures to be made to clients who are individuals and who are not eligible contract participants.

disclosure of such information is critical to sophisticated prospective investors' ability to determine whether an investment in a particular product is suitable for their respective needs. In fact, we often see prospective investors use this general disclosure as a springboard for further discussion and diligence requests relating to the fund's investment program.

In light of this experience, we do not believe that it is necessary to require Rule 4.7 pool operators to disclose the detailed list of specific elements of the pool's investment program that the Proposal would impose. We expect that prospective investors in Rule 4.7 pools are sufficiently sophisticated to request and obtain any additional information regarding a private fund's investment strategy they deem to be imperative after reviewing the general disclosure provided in the offering documents. We also expect that such prospective investors are capable of deciding not to invest in a given pool if they are not satisfied with the level of disclosure provided on the pool's investment program. To affirmatively require specific elements of a pool's investment program to be disclosed to prospective investors would only serve to increase costs associated with preparation and periodic update of such materials, and such costs will ultimately be borne by investors.

Furthermore, we anticipate that requiring Rule 4.7 pool operators to disclose granular details about their pools' investment programs in offering materials would have potential inhibiting effects on the private funds industry. Such mandated disclosures may impede the ability of fund operators to implement the often broad and flexible investment mandates that we commonly see employed by private funds relying on Rule 4.7. In our experience, such funds often employ an intentionally broad strategy in order to maximize value for investors, and the sophisticated investors who seek out these products often do so because of these qualities. Importantly, it is common for private funds relying on Rule 4.7 to employ strategies that are not committed to one particular market; instead, they seek pricing opportunities and may engage in arbitrage across all markets. It would be highly impractical to include granular details on all such potential investments in an offering document, so instead, we commonly see expansive descriptions of the fund's major categories of strategies and assets included, with appropriate amendments if another category later becomes a material component of the portfolio. In contrast, the Proposal's requirement would either result in disclosures which are drafted with so much flexibility (in light of pool operators' wide-ranging investment discretion) as to be meaningless to prospective investors or in disclosures which must be updated so frequently to reflect the instruments actually in play as to be impractical and costly, with limited benefit to prospective investors who are more interested in broader disclosure regarding the pools' overall investment mandate.

We are also concerned that the Proposal's requirements may result in disclosure of confidential proprietary trading strategies. Private funds often rely on trade secrets in developing and executing their investment strategies, given the complex and often bespoke nature of these products. A requirement to disclose confidential aspects of these strategies in offering documents could facilitate replication and exploitation of such strategies by third parties. Such a material risk may further deter future development of Rule 4.7 funds. Additionally, if CPOs decide to modify their trading strategies to shield such proprietary information from disclosure, existing pool participants may be harmed by a resulting decrease in returns.

We recommend that the Commission not adopt the requirement to disclose granular details of a pool's investment program. In our view, best market practice already demands general disclosure of material information on the investment program, including a description by category of the pool's material investments, general disclosure about other types of investments that the pool may in the future gain exposure to, and a description of the general investment program to be used by the pool.

ii. The Commission should not adopt the granular disclosure requirements regarding a pool's fees and expenses.

Disclosure of certain information relating to fees and expenses that are expected to be charged to private funds is consistent with current best practice, which we fully support. For example, private fund offering documents commonly include a description of the types of fees and expenses expected to be borne by the fund broken out by category. In our experience, investors in private funds find this information useful, and they are often well-equipped to negotiate such expenses on a category-by-category basis. Such disclosure provides sophisticated investors with the opportunity to evaluate a potential investment and to request additional information as needed.

However, we do not think it is necessary or helpful to provide a break-even analysis or disclosure of specific dollar amounts to prospective investors as the Proposal would mandate, or to require CPOs with respect to their Rule 4.7 pools to (i) explain how base amounts are calculated when a fee or expense is determined by reference to a base amount, (ii) explain how increases in value in the pool are measured and calculated when a fee or expense is based on an increase in value of the pool, and (iii) disclose the nature, amount and responsible party for any fees or expenses of the pool that are paid by a person other than the pool. These concepts, which are drawn from the Part 4 requirements, are designed for retail funds with fixed expense structures, and we do not believe these are necessary or appropriate to impose in the private fund context.

The requirement to provide a break-even analysis is not consistent with current market practice, and we are not aware of requests from prospective investors for such an analysis. Instead, prospective investors in Rule 4.7 pools frequently request any information they may need in order to complete their own analyses. This is in contrast to retail investors who may require more rote disclosure from pool operators. Additionally, it is unclear to us what incremental benefit a break-even analysis of fees and expenses may provide to prospective investors, given that private fund investors already receive performance information net of fees and expenses under current practices. Similarly, given that private fund investors already receive information on the dollar amounts of fees and expenses charged to the fund under standard current reporting practices (such as in regular capital account statements), and prospective investors may request copies of such reports, we do not think it is necessary to impose a requirement to disclose specific dollar amount details regarding fees and expenses in offering documents.

Moreover, we are concerned that a requirement to disclose a break-even analysis or dollar amounts of fees and expenses may result in unintentional negative effects on prospective investors. Given that private fund operators do not currently prepare offering materials in this format, compliance with the Proposal's requirement would increase costs, which would be passed through to investors. We also note that Rule 4.7 pools are generally more complex products than retail funds, often comprised of multiple layers of entities including sub-funds and/or special purpose vehicles. Each entity within a private fund's structure may have significantly different expenses depending on the structure and types of instruments traded. A requirement to provide granular disclosures on fees and expenses at each of these levels will result in highly lengthy and potentially confusing disclosures of questionable benefit to prospective investors.

Furthermore, we are concerned that under certain circumstances, there is potential for these disclosures to be misleading to prospective investors. For example, where a fund has not yet commenced operations, the Proposal would require that the break-even analysis rely on estimates.

Even with appropriate disclaimers, it may be difficult for pool operators to ensure that such estimates are not misleading. Similarly, for funds that have commenced operations, pool operators must rely on prior year fees and expenses in preparing updated fee disclosures; however, this practice relies on the assumption that fees and expenses will be relatively consistent from year to year. In our experience, pools that operate on a pass-through expense model tend to have highly variable expenses from year to year. Under such circumstances, there is risk that any disclosures which were premised on an assumption of constant expenses may be misleading to prospective investors.

We therefore recommend that the Commission not adopt the granular disclosure requirements regarding a pool's fees and expenses.

iii. The Commission should not adopt the affirmative requirement to disclose past performance in offering documents.

We encourage the Commission to not adopt the requirement to disclose past performance in offering documents for Rule 4.7 pools on the grounds that this requirement is not consistent with current practice, would result in duplicative disclosures, and would substantially increase costs ultimately borne by investors with little corresponding benefit.

Firstly, an affirmative requirement to disclose past performance in offering documents is not consistent with market practice or current regulatory requirements applicable to private funds. Instead, private fund operators commonly provide historical performance information to prospective investors in other forms of advertising material (such as marketing decks) that are updated more frequently than formal offering documents. In our experience, prospective investors in private funds typically seek more current performance information than what would be included in an offering document, and we do not expect that they will derive much utility from being provided the same information in the offering document. Imposing such a requirement is therefore needlessly duplicative. Additionally, because prospective investors in Rule 4.7 pools are sophisticated, they may decline to invest in a pool if they are not provided disclosure to their level of need regarding past performance.

We also note that private fund operators are already subject to complex regulatory regimes regarding disclosure of past performance, some components of which are likely to conflict with the Proposal's requirements. These include not only the marketing rules promulgated by the SEC (which have already significantly increased regulatory burdens on private fund sponsors in this respect) but also current CFTC authority to oversee and prosecute material misstatements in pool offering documents.

Furthermore, the aspects of performance on which the Proposal would require disclosure are not consistent with what prospective private fund investors typically request. For example, it is not common for prospective investors to request peak-to-valley performance information as the Proposal would require. The Proposal's requirement that pools with fewer than three years of operating history include performance of any major commodity trading advisors or major investee pools is also not consistent with current practice. In our experience, this information is not always readily available in an investor-facing format and may be difficult for private fund operators to obtain. Such information may also be potentially misleading to prospective investors in the absence of very carefully crafted disclaimer statements and is of questionable utility to prospective private fund investors, who are sophisticated enough to request the performance information they require in order to make an adequately informed investment decision.

Finally, we expect that an affirmative requirement to disclose past performance will impose administrative burdens on private fund operators, which will in turn increase costs passed through to investors. In particular, as noted above, when private fund operators present past performance to prospective investors, they typically do so in a format different from what the Proposal would impose. Requiring performance information to be included in offering documents pursuant to mandated methodologies that are not widespread in the market will increase costs incurred in connection with the preparation and update of such disclosures.

We therefore recommend that the Commission not adopt the affirmative requirement to disclose past performance in offering documents of Rule 4.7 pools.

iv. The Commission should not subject Rule 4.7 offering documents to Part 4 delivery and update requirements.

We are of the view that the Proposal overreaches in its application of the Part 4 delivery and update requirements to Rule 4.7 offering documents. For example, the Proposal would prohibit use of any offering documents that are dated more than 12 months prior to the date of use, regardless of whether they contain outdated or misleading information (and within 21 calendar days of discovery that the document is materially inaccurate or incomplete), therefore imposing a requirement on Rule 4.7 pool operators to update offering documents at least once annually, and likely more frequently. We agree that offering documents should not be used if they contain material outdated and misleading information; however, we do not think that mandated annual updates are necessary to achieve this result. Existing regulatory regimes, including Rule 4.7, and anti-fraud laws mandate prompt delivery of material updates, and market practice has developed accordingly.

We think that the material update standard that is current market practice is appropriate and entirely sufficient in the Rule 4.7 pool context. Notably, it ensures that prospective investors do not receive materially stale or misleading information, which is crucial to enabling sophisticated investors to evaluate a prospective investment and request additional information according to their needs. To impose an arbitrary annual update requirement may create a heavy burden on pool operators who do not have systems in place for annual non-material updates.[15] Additionally, the cost of preparing such updates may be material because unlike with respect to retail funds, many CPOs of Rule 4.7 funds do not currently have the infrastructure to facilitate an annual disclosure update across their private funds relying on Rule 4.7. These costs will be passed through to the existing participants in the pool, who may have little use for such updated documents given that, in our experience, they generally receive current performance data and information regarding the pool on a more frequent basis already via standard reporting. We believe that a material update standard aligns with the Commission's stated desire to impose an "ongoing requirement to keep [disclosures] accurate" without imposing unnecessary burdens and costs on Rule 4.7 pool operators and participants.

Similarly, we do not think that the imposition of the Part 4 requirement to append a pool's latest Annual Report and Account Statement to the offering document is necessary in the Rule 4.7 context. In our experience, prospective investors in Rule 4.7 pools are sophisticated enough to request copies of a pool's latest audited financial statements and other reports where such information would inform their investment decision-making. Mandating the affixation of such reports to the pool's offering document would create unnecessary burdens with little benefit to those prospective investors

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[15] We also note that the Proposal is not clear as to whether pools that are closed to new investors, in liquidation or no longer being marketed will require annual offering document updates.

who do not find such information useful and would result in pool operators having to disclose on a broad scale information they would otherwise only provide to prospective investors in the diligence stage. Furthermore, we expect that the requirement to append the Annual Report and Account Statement to a pool's offering document will cause such materials to be deemed marketing materials subject to SEC regulation and oversight, which is not consistent with the preparation and intended use of such materials under current guidelines.

We therefore recommend that the Commission not subject Rule 4.7 offering documents to Part 4 delivery and update requirements.

C. The Proposal's disclosure mandate is not supported by the Commission's cost-benefit analysis.

The Commission has not shown that the Proposal is supported by cost-benefit analysis. Instead, the Commission states in the Proposal that it "lacks the data necessary to reasonably quantify all of the costs and benefits" of the Proposal.[16] In particular, the Commission's cost-benefit analysis does not account for current practices,[17] and therefore the purported benefits that it cites fail to recognize current market practice which, as discussed above, dictates that prospective investors in Rule 4.7 products already receive robust disclosure in connection with their evaluation of and participation in such products. Existing disclosure practices reflect the demands of prospective investors and existing regulatory requirements.

The Commission has not identified a problem with the existing market practice which necessitates the imposition of a disclosure mandate on Rule 4.7 products. Investors have choices, and many investment products are subject to extensive disclosure mandates. However, the increasing popularity of private funds is evidence that investors are satisfied with market practice. As a result, we think the Proposal's mandatory disclosure requirements would only serve to increase costs borne by CPOs, CTAs, investors, and the Commission with no apparent countervailing benefit to investors. Indeed, the Commission's proposal to increase the QEP Portfolio Requirement (which we discuss below) would seem to further undermine any potential benefit to potential investors in Rule 4.7 pools and accounts of the Proposal's disclosure requirements, as it would ensure that only those investors who are sufficiently sophisticated are permitted to participate in such products.

Because the Commission has not directly engaged with the costs and benefits of the Proposal through the lens of current market practices, nor has it identified a deficiency in need of remedying, the Commission has not adequately articulated a reason to deviate from current disclosure practices.

We encourage the Commission to engage with a deeper analysis of current market practices and overlapping regulatory requirements applicable to the industry before codifying the proposed disclosure mandate.

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[16] 88 Fed. Reg. at 70868.

[17] Indeed, in its discussion of the costs and benefits of the Proposal, the Commission referred to reports applicable to mutual funds, *Id.* at 70871 nn. 109–110, which are marketed to retail investors and in our experience rely on Rule 4.5 or Rule 4.12(c)(3) rather than Rule 4.7. These reports are not directly applicable to the private funds industry and are not relevant to a cost-benefit analysis of the Proposal.

II. We support the Commission's proposals to update the QEP Portfolio Requirement and to codify fund-of-funds reporting relief.

We support the Commission's proposals to (i) update the QEP Portfolio Requirement to account for the effects of inflation and (ii) codify relief for CPOs operating funds-of-funds who choose to distribute monthly account statements within 45 days of month-end. We think that both of these proposals reflect common-sense updates which are in line with the Commission's goal of modernizing Rule 4.7.

In particular, given the Commission's historic focus on the sophistication of participants in Rule 4.7 pools and accounts compared to retail investors, we think it makes sense to update the Portfolio Requirement to ensure that QEPs remain limited to those investors who are truly sophisticated. In our view, this update should address the Commission's concerns articulated in the Proposal at large regarding investor sophistication and access to information, thus obviating the need to impose mandatory disclosure requirements in addition. We are also in favor of codification of the fund-of-funds account statement relief as a common-sense approach to solve an issue that is experienced by many CPOs who operate funds-of-funds.

Recommendations

For the reasons stated above, we encourage the Commission to decline to adopt the proposal to require retail type disclosures to be provided to sophisticated prospective investors in pools and accounts operated pursuant to Rule 4.7.

If, however, the Commission declines to do so, we ask that the Commission allow for at least an 18-month compliance period to allow CPOs and CTAs adequate time to develop the necessary compliance programs.

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On behalf of SIFMA AMG, we appreciate the opportunity to respond to the Proposal and your consideration of our comments and recommendations. If you have any questions or require additional information, please do not hesitate to contact Kevin Ehrlich at (202) 962-7336 (kehrlich@sifma.org) or our outside counsel, Ropes & Gray LLP, attention Jeremy Liabo at (312) 845-1326 (jeremy.liabo@ropesgray.com), Anne Fox at (312) 845-1323 (anne.fox@ropesgray.com) or Laura Appelt at (312) 845-1286 (laura.appelt@ropesgray.com).

Sincerely,

Kevin Ehrlich
Managing Director, SIFMA AMG

cc: Honorable Rostin Benham, Chairman
Honorable Kristin N. Johnson, Commissioner
Honorable Christy Goldsmith Romero, Commissioner
Honorable Summer K. Mersinger, Commissioner
Honorable Caroline D. Pham, Commissioner