Commodity Futures Trading Commission
Office of Public Affairs
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Q & A – Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors; and Amendments to Compliance Obligations of Commodity Pool Operators and Commodity Trading Advisors

What is the goal of the proposed rulemaking?

The notice of rulemaking issued jointly by the CFTC and SEC proposes to implement new statutory provisions enacted by Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") with respect to reporting by entities that are registered as investment advisers with the SEC and as commodity pool operators (CPOs) or commodity trading advisors (CTAs) with the CFTC. The CFTC is separately proposing related changes to CPO and CTA compliance obligations under its regulations.

Who will be required to report under the proposed rules?

CPOs and CTAs that advise private funds and are registered as investment advisers with the SEC will be required to file Form PF. All Form PF filers will file Section 1; only those with more than $1 billion in assets under management will file the more detailed information in Section 2 of Form PF.

Will dually registered CPOs and CTAs have to make duplicative filings?

The information reported through the various reporting forms is designed to be complementary, and not duplicative. For dually registered CPOs and CTAs, filing Form PF would be deemed a filing with both the SEC and CFTC. However, all private fund advisers that are also registered as CPOs and CTAs with the CFTC would be required to file Schedule A of proposed Form CPO-PQR (for CPOs) or Schedule A of proposed Form CTA-PR (for CTAs). Additionally, to the extent that they operate or advise commodity pools that do not satisfy the definition of "private fund" under the Dodd-Frank Act, private fund advisers that are also registered as CPOs or CTAs would still be required to file proposed Form CPO-PQR (for CPOs) and proposed Form CTA-PR (for CTAs), as applicable.

For what purpose is the information in the reports being collected?

Section 404 of the Dodd-Frank Act directs the SEC to require private fund advisers to maintain records and file reports containing such information as the SEC deems necessary and appropriate in the public interest and for investor protection or for the assessment of systemic risk. The records and reports must include a description of certain information about private funds, such as the amount of assets under management, use of leverage, counterparty credit risk exposure, and trading and investment positions for each private fund advised by the adviser.

Information collected about private funds on Form PF, together with information the SEC collects on Form ADV and the information the CFTC separately has proposed CPOs file on Form CPO-PQR and CTAs file on Form CTA-PR, will provide the Commissions with important information about the basic operations and strategies of private funds and will be important in obtaining a baseline picture of potential systemic risk across the entire private fund industry.

Will the information be publicly available?

Information reported to the SEC on Form ADV would be publicly available, whereas information reported on proposed Forms PF, CPO-PQR and CTA-PR would be confidential to the extent permitted under applicable law.

Why is the Commission proposing to rescind the exemptions from CPO registration under Regulations 4.13(a)(3) and (4)?

With the passage of the Dodd-Frank Act, the regulatory environment has changed from that which was in existence when Regulations 4.13(a)(3) and (a)(4) were promulgated in 2003. One of the primary purposes of the Dodd-Frank Act is to promote transparency with respect to the activities of participants in the financial markets. Sections 403 and 404 of the Dodd-Frank Act generally require registration and reporting by investment advisers to private funds. Many private funds claim an exemption from SEC registration under sections 3(c)(1) and (7) of the Investment Company Act of 1940 (the "Investment Company Act"). The Dodd-Frank Act, although not rescinding these exemptions from registration under the Investment Company Act, requires the advisers of such funds to register with the SEC as "private fund investment advisers". The Commission's proposal seeks to eliminate the exemptions under Regulations 4.13(a)(3) and (4) for operators of pools that are similarly situated to private funds. It is the Commission's view that the operators of these pools should be subject to similar regulatory obligations, including proposed Form CPO-PQR, in order to provide improved transparency and increased accountability with respect to these pools. The Commission has determined that it is appropriate to limit regulatory arbitrage through harmonization of the scope of its data collection with respect to pools that are similarly situated to private funds so that operators of such pools will not be able to avoid oversight by either the Commission or the SEC through claims of exemption under the Commission's regulations.

Why is the Commission proposing to reinstate trading criteria in Regulation 4.5?

In 2010, the Commission became aware of certain registered investment companies that were offering series of de facto commodity pool interests claiming exclusion under Regulation 4.5. The Commission consulted with market participants and NFA regarding this practice. Following this consultation, NFA submitted a petition for rulemaking in which NFA suggested certain revisions to Regulation 4.5 with respect to registered investment companies. To stop the practice of registered investment companies offering futures-only investment products without Commission oversight, the Commission is proposing to amend Regulation 4.5 to reinstate the pre-2003 operating criteria consistent with the language proposed by NFA in its petition. The Commission sought comment on NFA's petition and has included specific questions derived from those comments in its solicitation of comments on this proposal.

What other changes are being proposed?

The Commission is proposing two changes to Regulation 4.7, which currently makes available relief from certain disclosure, reporting and recordkeeping requirements to CPOs of pools that are offered solely to qualified eligible participants (QEPs):

- The first proposal would remove exemptive relief from the certification requirement for financial statements in annual reports of Regulation 4.7-exempt pools.
- The second proposal would modify the QEP qualification criteria to incorporate the SEC's accredited investor standard by reference rather than by direct inclusion of its terms. Section 413 of the Dodd-Frank Act instructs the SEC to examine and adjust the threshold for "accredited investor" status under its regulations and initially increases the threshold amount so that it is significantly greater than the current provisions of Regulation D. Incorporation by reference will permit the Commission's definition of QEP to

continue to include the specific terms of the accredited investor standard in the event that it is later modified by the SEC without requiring the Commission to amend Regulation 4.7 each time to maintain parity.

The Commission is proposing to require that all persons claiming exemptive or exclusionary relief under Regulations 4.5, 4.13, and 4.14 confirm their notice of claim of exemption or exclusion on an annual basis. This change will promote improved transparency regarding the number of entities either exempt or excluded from the Commission's registration and compliance programs, which is consistent with one of the primary purposes of the Dodd-Frank Act. An annual notice requirement would enable the Commission to determine whether exemptions and exclusions should be modified, repealed, or maintained as part of the Commission's ongoing assessment of its regulatory scheme.

The Dodd-Frank Act expanded the scope of the Commission's authority to include swaps. Accordingly, the Commission is proposing to amend the risk disclosure statement that must be included in CPO and CTA disclosure documents to describe certain risks specific to swap transactions.