



# Commodity Futures Trading Commission

## Office of Public Affairs

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## **Proposed Rules on 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**

The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to specify the reporting requirements applicable to advisers to private funds that are registered with the Securities and Exchange Commission (SEC) as investment advisers and with the CFTC as commodity pool operators (CPOs) or commodity trading advisors (CTAs). This is a joint rulemaking with the SEC. The CFTC is separately proposing amendments to the compliance obligations of CPOs and CTAs that include a requirement for CPOs and CTAs that are registered solely with the CFTC to file similar reports, as well as several other changes.

### **Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)**

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. Section 406 requires that the SEC and CFTC jointly issue rules, after consultation with the Financial Stability Oversight Council (FSOC), establishing the form and content of reports required to be filed by investment advisers registered with both Commissions.

### **Form and Content of Required Reports by Dual Registrants**

The proposed SEC rule would require investment advisers registered with the SEC that advise one or more private funds to file Form PF with the SEC. The proposed CFTC rule would require CPOs and CTAs registered with both the CFTC and SEC to satisfy certain proposed CFTC filing requirements by filing Form PF with the SEC. 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.

Dual registrants with assets under management less than \$1 billion would be required to file Section 1 of Form PF on an annual basis. Dual registrants with assets under management equal to or exceeding \$1 billion would be required to file Sections 1 and 2 of Form PF on a quarterly basis.

Only Sections 1 and 2 of Form PF are being proposed jointly as these are the sections relevant to dual registrants.

### **Proposed Reporting for CPOs and CTAs that are not Dual Registrants**

The Commission is proposing new reporting requirements for CPOs and CTAs that are consistent with the reporting required of dual registrants under the Dodd-Frank Act and as proposed in Form PF. Proposed Forms CPO-PQR and CTA-PR are substantively identical to Form PF with appropriate modifications. The amount of information that a CPO or CTA will be required to disclose on the proposed forms and the frequency of reporting will vary depending on both the size of the operator or advisor and that of the advised pools. This tiered approach

acknowledges the fact that smaller operators, advisors, and pools are less likely to present significant risk to the stability of the futures and derivatives markets, and therefore, such entities should have a lesser compliance burden. The Commission is proposing that the new forms be filed with National Futures Association, similar to other filings that CPOs and CTAs make pursuant to Commission regulations. The Commission is also proposing to amend Regulation 145.5 to treat certain proprietary information collected in proposed Forms CPO-PQR and CTA-PR as nonpublic records.

## **Other Changes to CPO and CTA Compliance Obligations**

Following the recent economic turmoil, and consistent with the tenor of the provisions of the Dodd-Frank Act, the Commission has reconsidered the level of regulation that it believes is appropriate with respect to entities participating in the commodity futures and derivatives markets. The Commission believes that it is necessary to rescind or modify several of its exemptions and exclusions to more effectively oversee its market participants and manage the risks that such participants pose to the markets. Specifically, the Commission is proposing to:

- Reinstate trading criteria for registered investments companies claiming exclusion from the CPO definition under Regulation 4.5;
- Rescind the exemption from CPO registration under Regulations 4.13(a)(3) and (4);
- Revise Regulation 4.7 so that CPOs may no longer claim exemption from the requirement that an exempt pool's annual report contain certified financial statements;
- Modify the participant qualification criteria of Regulation 4.7 to incorporate the SEC's accredited investor standard by reference rather than by direct inclusion of its terms;
- Require all persons claiming exemptive or exclusionary relief under Regulations 4.5, 4.13, and 4.14 to confirm their notice of claim of exemption or exclusion on an annual basis; and
- Amend the risk disclosure statement that must be included in CPO and CTA disclosure documents to describe certain risks specific to swaps transactions.