



January 27, 2016

Via Email

Amanda Olear, Associate Director, Registration and Compliance
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Industry Response to “CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO-PQR”

Dear Ms. Olear,

The Investment Adviser Association,¹ the Investment Company Institute,² the Alternative Investment Management Association³ and the Managed Funds Association⁴ (the

¹ The Investment Adviser Association (“IAA”) is a not-for-profit association that represents the interests of investment adviser firms registered with the U.S. Securities and Exchange Commission (“SEC”). The IAA’s membership consists of about 600 firms that collectively manage \$16 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit www.investmentadviser.org.

² The Investment Company Institute (“ICI”) is a leading, global association of regulated funds, including mutual funds, closed-end funds, exchange-traded funds (“ETFs”), 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 U.S. fund members manage total assets of \$17.9 trillion and serve more than 90 million U.S. shareholders.

³ The Alternative Investment Management Association (“AIMA”) has over 1,700 corporate members and over 10,000 individual contacts in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. AIMA’s manager members collectively manage more than \$1.5 trillion in assets.

IAA, the ICI, AIMA and the MFA, together, the “Associations”) are jointly writing to respectfully urge the Commodity Futures Trading Commission (“CFTC” or “Commission”) Division of Swap Dealer and Intermediary Oversight (the “Division”) to revise a small number of responses set forth in the November 5, 2015 publication, “CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO-PQR.” While the Associations and their members welcome the Division’s issuance of this guidance as a general matter, we are concerned that the Division’s responses in certain areas may be inconsistent with Commission statements and the regulatory objectives underlying Form CPO-PQR. Our concerns, which relate to Frequently Asked Questions (“FAQs”) 7, 15 and 16 (regarding the treatment of Parallel Managed Accounts for reporting purposes), 29-31 (regarding the reporting of a Pool’s monthly rates of return) and 42 (regarding the scope of “spot currency transactions”), are outlined below.⁵

I. *Treatment of Parallel Managed Accounts for Reporting Purposes.*

We respectfully urge the Division to revise the reporting obligation for a Parallel Managed Account and the largest Pool to which the Parallel Managed Account relates (the “Related Pool”). The direction to aggregate a Parallel Managed Account with the Related Pool for reporting purposes, as contemplated by the Division’s response in FAQ 7, appears to be based on language that is part of Instruction 3 to Form CPO-PQR (“assets held in Parallel Managed Accounts should be treated as assets of the Pools with which they are aggregated”). A separate Instruction to Form CPO-PQR, however, suggests that a commodity pool operator (“CPO”) should do exactly the opposite. Specifically, Instruction 5 discusses the aggregation of funds or accounts for determining reporting thresholds and for determining if a Pool is a

⁴ Managed Funds Association (“MFA”) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

⁵ Capitalized terms used, but not defined herein, have the meanings set forth in CFTC Form CPO-PQR as adopted by the Commission (“Form CPO-PQR”) in the final rule, “Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations,” 77 Fed. Reg. 11252 (Feb. 24, 2012) (the “Adopting Release”).

qualifying Pool for reporting purposes. Example 2 in that Instruction expressly states that a [dependent] parallel managed account is to be disregarded for reporting purposes.⁶

When CPOs began implementing Form CPO-PQR four years ago, they used their best judgment in interpreting the instructions to the Form, in the absence of official guidance.⁷ Generally, it has been the industry practice to aggregate Parallel Managed Accounts with Related Pools when calculating reporting thresholds and responses to particular “cover page” questions (*e.g.*, the highest total aggregated Pool AUM during the reporting period). It has not been industry practice to aggregate Parallel Managed Accounts to Related Pools for reporting purposes. As discussed more fully below, we believe there are several sound reasons to support the industry’s current approach:

Avoidance of Double Reporting. Commodity trading advisors (“CTAs”) already report managed accounts on Form CTA-PR. Reporting Parallel Managed Accounts with their Related Pools, as contemplated by FAQ 7, would result in double reporting as between Form CPO-PQR and Form CTA-PR and as between CPOs and CTAs. Some of the confusion surrounding the appropriate treatment of Parallel Managed Accounts also stems from the definition of “Parallel Managed Account” provided in Form CPO-PQR, which is “any managed account or other pool of assets that the CPO operates and that pursues substantially the same investment objective and strategy and invests side-by-side in substantially the same assets as the identified Pool” (emphasis underscored in original instructions). Generally, a CPO does not operate a managed account; such an account would be managed or advised by a CTA. This distinction is important, as discussed further below, with respect to the mechanics of aggregating Parallel Managed Account data with data of a Related Pool.

Consistency with Form PF. The industry’s current approach is consistent with the CFTC’s stated objective to require reporting of information comparable to that required in Form PF.⁸ Form PF has separate rules for calculating thresholds and for reporting purposes.

⁶ FAQ 10 states “[t]he term ‘dependent parallel managed accounts’ is not a term that has been defined in the Form CPO-PQR. As such, any reference to a ‘dependent parallel managed account’ in the instructions should be read to mean ‘parallel managed account.’”

⁷ See also Adopting Release at 11268. The Commission explained that it believed that it would be most efficient for “registrants to use a form that is based upon the format of NFA’s Form PQR, with which current registrants are already familiar.” NFA’s Form PQR, the predecessor to Form CPO-PQR, was filed on a pool-by-pool basis.

⁸ The Adopting Release notes that one objective of gathering information on Form CPO-PQR is “to . . . require reporting of information comparable to that required in Form PF.” See Adopting Release at 11253.

Instructions 5 and 6 to Form PF provide that parallel managed accounts are not aggregated with a related fund for reporting purposes; these instructions also clearly specify that parallel managed accounts are aggregated for purposes of calculating reporting thresholds. Substantial variations in reporting assets as between Form CPO-PQR and Form PF would make meaningful comparison impossible, particularly with respect to CPOs that largely report their Pool data on Form PF, but also provide information with respect to such Pools on Schedule A and the Schedule of Investments on Form CPO-PQR.

NFA Reconciliation. The industry's current approach is consistent with how the National Futures Association (the "NFA") uses data from Form CPO-PQR reporting in its regulatory program. We understand that the NFA uses this information to understand and monitor the activities of a CPO and its Pools and to identify any unusual or suspicious activity. As part of its oversight, NFA reconciles Form CPO-PQR information with other materials filed by the CPO. For example, the NFA compares Pool data reported on Form CPO-PQR with that Pool's annual financial statements. If a CPO were required to include its Parallel Managed Account assets in a Related Pool's Schedule of Investments, as contemplated by the Division's response to FAQ 7, the NFA would be unable to distinguish assets of the Related Pool from assets of a Parallel Managed Account and, thus, be unable to reconcile the PQR data with Pool financial statements. The NFA staff would be forced to follow up with each CPO to understand its PQR data, which would reduce the usefulness of the data to NFA and greatly increase the amount of work NFA would need to do in order to understand a CPO's operations.

In addition, if a CPO complies with FAQ 16, which indicates that a Parallel Managed Account should be aggregated with the largest Related Pool, the Parallel Managed Account may not be aggregated with the same Related Pool each quarter. This reporting discrepancy could make it difficult for the NFA to compare and track a CPO's quarterly Form CPO-PQR filings, particularly with respect to rates of return. This is because each reported rate of return would essentially be that of a different "fictional" Pool, comprised of the CPO's Parallel Managed Accounts aggregated with the larger of Related Pools (*e.g.*, the rate of return could be provided for a Parallel Managed Account and Pool A in one quarter, and for the Parallel Managed Account and Pool B for another quarter, depending upon which Related Pool is larger during the reporting period). As noted above, the NFA staff would have to follow up with each CPO in order to make accurate comparisons of Pool data for successive quarters.

Moreover, it hasn't been readily apparent to the Associations or their members how aggregating Parallel Managed Accounts with Related Pools for Form CPO-PQR reporting purposes would provide more useful or superior information for regulators. In fact, given the design and questions of Form CPO-PQR, we are concerned that aggregating Parallel Managed

Accounts for reporting purposes would degrade the quality or usefulness of information reported to regulators on Form CPO-PQR because the data wouldn't match up with other data points provided by a pool. Regulators wouldn't be able to reconcile Form CPO-PQR with a Related Pool's financial statements, rates of return or other Related Pool disclosures, nor would a regulator be able to confirm or reconcile data with a Pool third party service provider.

Aggregation Would Be Burdensome. Reporting of aggregated data, as contemplated by the Division's response to FAQ 7, would be an onerous and labor-intensive process because data relating to managed accounts and to Related Pools are maintained on separate systems by separate entities. While the same CTA may trade on behalf of both a Parallel Managed Account and its Related Pool, different, unrelated entities maintain the books and records for the Parallel Managed Account and its Related Pool. The administrator of the Related Pool maintains the Related Pool's books and records, including daily trade files, and facilitates reporting of the Related Pool on Form CPO-PQR (and Form PF, if applicable). When Form CPO-PQR reporting was adopted, many CPOs and administrators in the industry had technology systems put in place to help gather and generate the PQR data. By contrast, the CTA to a Parallel Managed Account and a Parallel Managed Account's custodian (which is typically chosen by the accountholder, not the CTA) typically maintains the books and records associated with the Parallel Managed Account, and the CTA relies on internal resources, as well as data supplied by the custodian, to comply with regulatory reporting requirements.

If CPOs were required to report aggregated data for Parallel Managed Accounts and their Related Pools, CPOs would need to assemble the data manually from various sources. Currently, CPOs are not set up, and may not have the technological means, to receive and aggregate such data from their fund administrators and affiliated CTAs.

In order to include Parallel Managed Accounts in their reporting on Form CPO-PQR, many CPOs would need to first build infrastructure to receive data from, often multiple, fund administrators, and their affiliated CTAs. CPOs would also need to hire more staff to perform the manual process of aggregating, and reprogram any automated reporting functions. Further, CPOs may rely more heavily on their service providers. Fund administrators would likely receive simultaneous requests from all of their CPO clients and also need additional time to process the requests and assist with necessary build-outs. For many of the Associations' members, it would be physically impossible to build new systems, reprogram existing systems and/or hire staff in order to timely file fourth quarter or full year 2015 Forms CPO-PQR. Additionally, as described above, the data-gathering and reconciliation process will re-occur each quarter, possibly requiring more than 60 days to compile the data and complete an accurate Form CPO-PQR on an ongoing basis.

The Associations have been working with their respective memberships to provide accurate and useful data to the CFTC and the NFA in order to further the objectives of the Adopting Release with respect to Form CPO-PQR reporting. We respectfully urge the Division to revise its responses to FAQs 7, 15 and 16 to make it clear that CPOs should not aggregate Parallel Managed Accounts for reporting purposes.

II. *Reporting Monthly Rates of Return.*

We respectfully urge the Division to reconsider requiring reporting of monthly rates of return where the CPO only calculates quarterly rates of return, as indicated in CFTC FAQs 29, 30 and 31. CFTC FAQ 30 states that “Form CPO-PQR requires the calculation and entry of monthly rates of return irrespective of when the Pool calculates its rates of return for other purposes.” This is inconsistent with the practice of some firms in the industry (*e.g.*, private equity fund managers) that do not calculate monthly performance returns. Many private equity firms only have Pool rates of return calculated on a quarterly basis, often because these rates of return are calculated based on valuation information provided by third parties (such as the underlying portfolio companies and professional valuation consultants). Additionally, private equity funds typically offer infrequent redemption opportunities and investors are often committed for the life of the fund. In these instances, producing monthly rates of return would not provide any meaningful value to investors and may actually increase the costs to the fund to produce this information for no discernible regulatory benefit.⁹ These managers may be unable to reliably calculate rates of return on a monthly basis, especially when Pool assets consist of real property and difficult-to-value or illiquid assets. Moreover, requiring these managers to use estimated values may not be particularly informative or reliable. Further, the CPO of a Pool that invests substantially all of its assets in other Pools or funds are often not in a position to receive monthly performance data from all the underlying Pools or funds because, for example, Form CPO-PQR is not required to be filed with respect to an investee fund and monthly performance is not calculated for such fund in the ordinary course of business.

Additionally, the requirement to report monthly rates of return, as contemplated by the Division’s response to FAQ 30, is inconsistent with CFTC Regulation 4.7(b)(2), which only requires quarterly reporting. Therefore, we respectfully request that the Commission permit

⁹ By contrast, Form PF clearly contemplates that all funds may not produce monthly returns and does not require such monthly performance calculations if they are not calculated in the normal course of the fund’s operations. The instructions in Item 17 of Section 1b of Form PF state that “You [the reporter] are required to provide monthly and quarterly performance results only if such results are calculated for the reporting fund (whether for purposes of reporting to current or prospective investors or otherwise).”

CPOs to report monthly rates of return only if such results are calculated, and, if monthly rates of return are not calculated, to permit CPOs to report quarterly rates of return.

Finally, CFTC FAQ 29 states that a “CPO will be required to enter the Pool’s monthly rates of return for the last 7 years or the life of the pool if less than 7 years.” We respectfully request that, if a pool has been in existence for more than seven years, but has only calculated rates of return on a quarterly basis until now, a CPO is not required to have the past intra-quarter rates calculated.

III. *Spot Currency Positions.*

We respectfully request that the Division amend its response set forth in CFTC FAQ 42 with respect to “spot currency transactions” to be consistent with previous CFTC interpretations. FAQ 42 states that “Spot currency transactions are the purchase or sale of a foreign currency for delivery within two days.” The CFTC previously stated that “[A] foreign exchange transaction generally will be considered a bona fide spot transaction if it settles by an actual delivery of the relevant currencies within two business days. A foreign exchange transaction with a longer settlement period may be considered a bona fide spot transaction depending on the customary settlement deadline of the relevant market.”¹⁰ The CFTC has also interpreted “securities conversion transactions” to be within the definition of “spot currency transactions.”¹¹ Our members inform us that the industry generally operates on the exceptions to the two-day settlement in reliance on the CFTC’s statements. Accordingly, we respectfully request that the CFTC amend its response to FAQ 42 to state that a foreign exchange transaction with a settlement period longer than two business days may be considered a bona fide spot transaction depending on the customary settlement deadline of the relevant market.

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The Associations respectfully request that the Division delay the FAQs’ implementation until the first quarter 2016 filing. The Associations have been working with their respective members since the FAQs were issued to evaluate the effect of the Division’s responses on

¹⁰ “Further Definition of ‘Swap,’ ‘Security-Based Swap,’ and ‘Security-Based Swap Agreement’; Mixed Swaps; Security-Based Swap Agreement Recordkeeping; Final Rule,” 77 Fed. Reg. 48207, 48257 (August 13, 2012).

¹¹ For these purposes, the CFTC has defined a “securities conversion transaction” as “[a]n agreement, contract or transaction for the purchase or sale of an amount of foreign currency equal to the price of a foreign security with respect to which (i) the security and related foreign currency transactions are executed contemporaneously in order to effect delivery by the relevant securities settlement deadline and (ii) actual delivery of the foreign security and foreign currency occurs by such deadline . . .” *Id.*

members' current data collection and reporting. Our collective members have indicated that the Division's current responses to the FAQs discussed in this letter create a significant impact on CPOs regarding identifying and collecting data for the filing, a process that typically begins in mid-January with respect to the annual/fourth quarter filing. A temporary reprieve in the FAQs' effectiveness would be especially useful while the Associations work with the Division to address the issues we raise in this letter, particularly the issue regarding Parallel Managed Accounts, before firms undertake the intensive work of gathering information for the filing.

We look forward to discussing the issues raised in this letter with you.

Sincerely,

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