



June 20, 2020

**Via Electronic Submission:** <http://comments.cftc.gov>

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

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

Dear Mr. Kirkpatrick:

Managed Funds Association<sup>1</sup> (“**MFA**”) welcomes the Commodity Futures Trading Commission’s (“**CFTC**” or “**Commission**”) proposed rulemaking on Form CPO-PQR (“**Proposal**”)<sup>2</sup> and commends its intention to “streamline its data collection requirements” and “make better use of the data it collected”.<sup>3</sup> We agree with the Commission that Form CPO-PQR should be revised in a way that would support the Commission’s ability to exercise its oversight of commodity pool operators (“**CPOs**”) and their operated pools while reducing reporting burdens for market participants.<sup>4</sup> In our letter, we provide comments to enhance the security of the data provided to the National Futures Association (“**NFA**”) and the Commission, and on the schedule of investments.

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<sup>1</sup> 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 over time. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

<sup>2</sup> Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 26,378 (May 4, 2020) (the “**Proposal**”), available at: <https://www.cftc.gov/sites/default/files/2020/05/2020-08496a.pdf>.

<sup>3</sup> Statement of Commissioner Dan M. Berkovitz on the Proposed Rule to Amend Form CPO-PQR Reporting Requirements for Commodity Pool Operators, April 14, 2020, (“**Statement of Commissioner Berkovitz**”) available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement041420>.

<sup>4</sup> Proposal *supra* n. 2.

## I. Background

Many MFA members are registered with the Commission as CPOs (and/or commodity trading advisors) and with the Securities and Exchange Commission (“SEC”) as investment advisers. As such, they are required to file the Form CPO-PQR with the Commission and the Form PF with the SEC. In prior letters, MFA has recommended that regulators consolidate and streamline Forms CPO-PQR and PF to more effectively assess risk across commodity pools and investment funds, and reduce the significant regulatory costs imposed on operators and advisers of private pools/funds.<sup>5</sup> MFA greatly appreciates the Commission’s leadership and efforts to work with the SEC in this respect. While we are disappointed that the agencies have not been able to progress to a simpler, consolidated form, we are very pleased that the Commission has determined to implement sound CPO regulation by collecting information that it intends to, and can effectively, use.<sup>6</sup>

## II. Comments

MFA strongly supports revising Form CPO-PQR. The Commission has determined after seven years of experience with Form CPO-PQR that the data collected has not met its expectations, it should stop collecting data it cannot use effectively, and it should amend Form CPO-PQR to enhance integration with existing and more developed data streams.<sup>7</sup> This is significant for the sound regulation of the industry—to review and reassess the tools in the toolbox, what fits and what doesn’t, and to discard and retool as appropriate. The Proposal further supports the Commission’s data protection initiatives by stopping the collection and potential exposure of data unnecessary to regulatory requirements.<sup>8</sup> While we support regulators having appropriate access to registrant data to soundly oversee registrants and markets, data collection must be balanced with

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<sup>5</sup> Letter from the Honorable Richard H. Baker, President and CEO, MFA, and Jennifer W. Han, Associate General Counsel, MFA, to the Honorable Christopher Giancarlo, Chairman, CFTC, on October 9, 2018, on “A Streamlined Form PF: Reducing Regulatory Burdens,” available at: <https://www.managedfunds.org/wp-content/uploads/2020/04/MFA.CFTC-Form-PF.final-w.-attachment.10.9.18-1.pdf>.

<sup>6</sup> Statement of Chairman Heath P. Tarbert in Support of Revising Form CPO-PQR, April 14, 2020, (“**Statement of Chairman Tarbert**”) available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement041420b>.

<sup>7</sup> Proposal *supra* n. 2 at 26380. *See also* Statement of Chairman Tarbert *supra* n. 6; Statement of Support by Commissioner Brian Quintenz Regarding Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, April 14, 2020, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement041420b>; Concurring Statement of CFTC Commissioner Rostin Behnam Regarding Amendments to Compliance Requirements for Commodity Pool Operators and Form CPO-PQR, April 14, 2020, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/behnamstatement041420b>; Statement of Commissioner Dawn D. Stump Regarding CFTC Open Meeting on April 14, 2020, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement041420>; and Statement of Commissioner Berkovitz *supra* n. 3.

<sup>8</sup> Statement of CFTC Commissioner Dawn D. Stump on Data Protection Initiative, March 1, 2019, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement030119>; and Statement of CFTC Commissioner Dawn D. Stump Announcing Important Progress in the CFTC’s Data Protection Initiative, July 12, 2019, available at: <https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement071219>.

the real-world costs imposed on registrants, investors, and market competition as a result of barriers to entry. We provide several recommendations below on the Proposal.

**1. Incorporate alphanumeric identifiers in Form CPO-PQR to mitigate potential cyber breaches, and require registrants to separately report LEIs and CPO and pool identifying information.**

The Commission has prioritized the protection of information it gathers from cybersecurity threats.<sup>9</sup> To enhance protections for registrant data, we think the Commission should require the use of alphanumeric identifiers (*i.e.*, universally unique identifiers or hash identifiers) within Form CPO-PQR to obscure the identity of the registrant and its pools to anyone who gains access to the filings without authorization. These steps could mitigate damage from a potential cyber breach of NFA’s EasyFile system.<sup>10</sup> We understand that despite regulators’ best efforts they may not always be able to protect the confidential information that they hold. As such, it is important for regulators to consider the design of registrant reporting and information collection to protect against cyber breaches.

Collecting data through the use of alphanumeric identifiers can be made consistent with the Commission’s request for registrants to file legal entity identifiers (“LEIs”), which we support. We believe registrants should file LEI numbers for the CPO and its pools, along with responses to questions seeking CPO and pool identifying information from Form CPO-PQR in a separate submission to NFA/CFTC. This separation of data and identity would make it more difficult for any cyberattack to use highly confidential information against a specific manager or to leak it to the public or the media, and it is a practice used in similar contexts, such as the SEC’s consolidated audit trail.<sup>11</sup>

Accordingly, MFA recommends that the Commission amend Form CPO-PQR to require CPOs to use confidential alphanumeric identifiers for the CPO and its pools on Form CPO-PQR, and to separately file LEI numbers and CPO and pool identifying information.

**2. Amend the Schedule of Investments to Align with NFA’s 2010 Form PQR.**

The Proposal continues to seek significant amounts of granular information through the Form CPO-PQR schedule of investments, which we understand is inconsistent with how NFA and

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<sup>9</sup> *See id.*

<sup>10</sup> *See, e.g.*, Statement on Cybersecurity, Chairman Jay Clayton, SEC, Sept. 20, 2017, (disclosing the cyber intrusion into the SEC’s EDGAR system) available at: <https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20>; and Statement on EDGAR Hacking Enforcement Action, Chairman Jay Clayton, SEC, Jan. 15, 2019, (discussing SEC enforcement action against individuals who hacked into EDGAR and traded based on stolen, nonpublic information) available at: <https://www.sec.gov/news/public-statement/statement-clayton-011519>.

<sup>11</sup> *Cf.*, Update on Consolidated Audit Trail; Temporary COVID-19 Staff No-Action Letter; Reducing Cybersecurity Risks, Chairman Jay Clayton, SEC, March 17, 2020, (providing that to reduce cybersecurity risks the Consolidated Audit Trail would not collect from broker-dealers certain sensitive information of investors, including social security numbers, tax payer identification numbers, dates of birth, and account numbers) available at: <https://www.sec.gov/news/public-statement/statement-clayton-cat-covid-19-nal-cybersecurity-2020-03-17>.

CFTC uses the data. We understand that the Form CPO-PQR data is useful for comparing general trends and comparisons of a pool over time and identifying potentially violative activity. The schedule of investments, however, seeks information at levels insignificant to systemic risk and overly granular for how the information is used. In addition, as the recent COVID-19 related market volatility has shown, data the Commission receives with respect to trading, reporting and clearing of swaps from futures commission merchants, designated contract markets, swap execution facilities and derivatives clearing organizations is much more timely, standardized and useful for market oversight and surveillance.<sup>12</sup>

MFA members report that Form CPO-PQR is significantly more burdensome to file than its predecessor—NFA’s 2010 Form PQR. As we believe the Form CPO-PQR data is more granular than necessary, we recommend that the Commission align the schedule of investments with the NFA’s 2010 Form PQR.<sup>13</sup> In particular, we recommend that the Commission amend: (1) the schedule of investments subcategory investment and itemization reporting thresholds from 5% to 10% of a pool’s net asset value; and (2) the subcategories subsequently added to NFA’s 2010 Form PQR. Please see **Appendix A** for a mark-up of the proposed Form CPO-PQR. We also recommend that the Commission provide registrants with at least six months from the adoption of a final rule to the effective date of a revised Form CPO-PQR to allow for coding and software changes.

### **3. Amend Form CPO-PQR Instructions to include FAQs provided by the Commission and NFA.**

Since the Commission adopted Form CPO-PQR, the Commission and NFA have each issued frequently asked questions (“FAQs”) in response to registrant questions on their filing obligations.<sup>14</sup> In adopting a final Form CPO-PQR, the Commission should incorporate relevant, substantive FAQs into the instructions of Form CPO-PQR. Doing so will consolidate Form CPO-PQR filing information and facilitate a registrant’s compliance with reporting obligations. Otherwise, the Commission will need to separately issue FAQs with respect to the Proposal to replace the existing FAQs, which would be less effective than centralizing and incorporating FAQs and instruction examples into Form CPO-PQR. Thus, MFA recommends that the Commission incorporate relevant FAQs issued by the Commission and NFA into the instructions of Form CPO-PQR.

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<sup>12</sup> Providing the Commission and NFA with CPO LEI numbers through a separate filing from portfolio data would further integrate and make more useful the Commission’s existing data.

<sup>13</sup> As a response to the 2008 Financial Crisis, the Commission added “financial institutions” to Form CPO-PQR as a reporting category with respect to equities and derivatives positions. If the Commission and NFA determine that “financial institutions” is a useful category that was not in the 2010 NFA Form PQR, we would not object to leaving it in the Form CPO-PQR.

<sup>14</sup> See, e.g., CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO-PQR, November 5, 2015, available at: [https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/faq\\_cpocpa110515.pdf](https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/faq_cpocpa110515.pdf); and NFA CPO Form PQR FAQs, available at: <https://www.nfa.futures.org/faqs/members/CPOFormPQR.html>.

MFA appreciates the opportunity to contribute to the Commission's review of sound oversight of commodity pool operators. We look forward to speaking to the Commission and its staff on our recommendations. If the Commission or its staff have questions or comments, please do not hesitate to contact the undersigned at (202) 730-2600.

Respectfully Submitted,

/s/ Jenifer W. Han

Jennifer W. Han  
Managing Director & Counsel,  
Regulatory Affairs

cc: The Honorable Heath P. Tarbert, Chairman  
The Honorable Brian D. Quintenz, Commissioner  
The Honorable Rostin Behnam, Commissioner  
The Honorable Dawn DeBerry Stump, Commissioner  
The Honorable Dan M. Berkovitz, Commissioner  
Mr. Josh Sterling, Director, Division of Swap Dealer and Intermediary Oversight

# APPENDIX A

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

If "Yes," provide the following information:

- i. On what date was the halt or material limitation imposed?
- ii. If the halt or material limitation has been lifted, on what date was it lifted?
- iii. What disclosure was provided to participants to notify them that the halt or material limitation was being imposed? What disclosure was provided to participants to notify them that the halt or material limitation was being lifted?
- iv. On what date(s) was this disclosure provided?

## 11. POOL SCHEDULE OF INVESTMENTS

Provide the Pool's investments in each of the subcategories listed under the following seven headings: (1) Cash; (2) Equities; (3) Alternative Investments; (4) Fixed Income; (5) Derivatives; (6) Options; and (7) Funds. First, determine how the Pool's investments should be allocated among each of these seven categories. Once you have determined how the Pool's investments should be allocated, enter the dollar value of the Pool's total investment in each applicable category on the top, boldfaced line. For example, under the "Cash" heading, the Pool's total investment should be listed on the line reading "Total Cash." After the top, boldfaced line is completed, proceed to the subcategories. For each subcategory, determine whether the Pool has investments that equal or exceed 5% of the Pool's Net Asset Value. If so, provide the dollar value of each such investment in the appropriate subcategory. If the dollar value of any investment in a subcategory equals or exceeds 5% of the Pool's Net Asset Value, you must itemize the investments in that subcategory.

### CASH

#### Total Cash

At Carrying Broker

At Bank

### EQUITIES

#### Total Listed Equities

Stocks

- a. Energy and Utilities
- b. Technology
- c. Media

Long

Short

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

d. Telecommunication

e. Healthcare

f. Consumer Services

g. Business Services

~~h. Issued by Financial Institutions~~

i. Consumer Goods

j. Industrial Materials

Exchange Traded Funds

American Deposit Receipts

~~Other~~

~~Total Unlisted Equities~~

~~Unlisted Equities Issued by Financial Institutions~~

ALTERNATIVE INVESTMENTS

Long

Short

Total Alternative Investments

Real Estate

~~a. Commercial~~

~~b. Residential~~

Private Equity

Venture Capital

~~Forex~~

Spot

a. Total Metals

~~i. Gold~~

b. Total Energy

~~i. Crude oil~~

~~ii. Natural gas~~

~~iii. Power~~

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

c. Other

Loans to Affiliates

Promissory Notes

Physicals

a. Total Metals

i. Gold

b. Agriculture

c. Total Energy

~~i. Crude oil~~

~~ii. Natural gas~~

~~iii. Power~~

Other

**FIXED INCOME**

Long

Short

**Total Fixed Income**

Notes, Bonds and Bills

a. Corporate

~~i. Investment grade~~

~~ii. Non-investment grade~~

b. Municipal

c. Government

i. U.S. Treasury securities

~~ii. Agency securities~~

iii. Foreign (G10 countries)

iv. Foreign (all other)

d. Gov't Sponsored

e. Convertible

~~i. Investment grade~~

~~ii. Non-investment grade~~

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

Certificates of Deposit

- a. U.S.
- b. Foreign

Asset Backed Securities

a. Mortgage Backed Securities

i. Commercial Securitizations

- ~~A. Senior or higher~~
- ~~B. Mezzanine~~
- ~~C. Junior/Equity~~

ii. Commercial Resecuritizations

- ~~A. Senior or higher~~
- ~~B. Mezzanine~~
- ~~C. Junior/Equity~~

iii. Residential Securitizations

- ~~A. Senior or higher~~
- ~~B. Mezzanine~~
- ~~C. Junior/Equity~~

iv. Residential Resecuritizations

- ~~A. Senior or higher~~
- ~~B. Mezzanine~~
- ~~C. Junior/Equity~~

~~v. Agency Securitizations~~

- ~~A. Senior or higher~~
- ~~B. Mezzanine~~
- ~~C. Junior/Equity~~

~~vi. Agency Resecuritizations~~

- ~~A. Senior or higher~~
- ~~B. Mezzanine~~
- ~~C. Junior/Equity~~

b. CDO Securitizations

- ~~i. Senior or higher~~
- ~~ii. Mezzanine~~
- ~~iii. Junior/Equity~~

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

- c. CDO Resecuritizations
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- d. CLOs Securitizations
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- e. CLO Resecuritizations
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- ~~f. Credit Card Securitizations~~
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- ~~g. Credit Card Resecuritizations~~
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- ~~h. Auto-Loan Securitizations~~
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- ~~i. Auto-Loan Resecuritizations~~
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~
  
- j. Other
  - ~~i. Senior or higher~~
  - ~~ii. Mezzanine~~
  - ~~iii. Junior/Equity~~

Repos

Reverse Repos

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

**DERIVATIVES**

Positive OTE

Negative OTE

**Total Derivatives**

Futures

- a. Indices
  - i. Equity
  - ii. Commodity
- b. Metals
  - i. Gold
- c. Agriculture
- d. Energy
  - i. Crude oil
  - ii. Natural gas
  - iii. Power
- e. Interest Rate
- f. Currency
- g. Related to Financial Institutions
- h. Other

Forwards

Swaps

- a. Interest Rate Swap
- b. Equity/Index Swap
- c. Dividend Swap
- d. Currency Swap
- e. Variance Swap
- f. Credit Default Swap
  - i. Single name CDS
    - A Related to Financial Institutions
  - ii. Index CDS
  - iii. Exotic CDS
- g. OTC Swap
  - i. Related to Financial Institutions
- h. Total Return Swap
- i. Other

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

**OPTIONS**

Long Option Value

Short Option Value

**Total Options**

Futures

- a. Indices
  - i. Equity
  - ii. Commodity
- b. Metals
  - i. ~~Gold~~
- c. Agriculture
- d. Energy
  - i. ~~Crude oil~~
  - ii. ~~Natural Gas~~
  - iii. ~~Power~~
- e. Interest Rate
- f. Currency
- g. ~~Related to Financial Institutions~~
- h. Other

Stocks

- a. ~~Related to Financial Institutions~~

Customized/OTC

Physicals

- a. Metals
  - i. ~~Gold~~
- b. Agriculture
- c. Currency
- d. Energy
  - i. ~~Crude oil~~
  - ii. ~~Natural gas~~
  - iii. ~~Power~~
- e. Other

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

**FUNDS**

Long

**Total Funds**

Mutual Fund

a. U.S.

b. Foreign

NFA Listed Fund

Hedge Fund

Equity Fund

Money Market Fund

Private Equity Fund

REIT

Other Private funds

Funds and accounts other than private funds (i.e., the remainder of your assets under management)

**ITEMIZATION**

a. If the dollar value of any investment in any subcategory under the heading "Equities," "Alternative Investments" or "Fixed Income" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/Short	Cost	Fair Value	Year-to-Date Gain (Loss)
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b. If the dollar value of any investment in any subcategory under the heading "Derivatives" or "Options" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/Short	OTE	Counterparty	Year-to-Date Gain (Loss)
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c. If the dollar value of any investment in any subcategory under the heading "Funds" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Fund Name	Fund Type	Fair Value	Year-to-Date Gain (Loss)
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## OATH

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BY FILING THIS REPORT, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CPO-PQR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CPO-PQR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CPO-PQR on behalf of the CPO:

Capacity in which the above is signing on behalf of the CPO: