



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

February 26, 2016

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

Ladies and Gentlemen:

This is in response to a letter dated January 27, 2016 submitted to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). The letter was submitted jointly by the Investment Company Institute, the Investment Adviser Association, the Alternative Investment Management Association, and the Managed Funds Association (the “Associations”). By the letter, the Associations request that the Division consider revising or, in the alternative, providing relief from certain positions articulated by the Division in a recent publication providing answers to frequently asked questions concerning Commission Form CPO-PQR (“the FAQs”).¹

Background:

In 2012, the Commission adopted Regulation 4.27, which implements Form CPO-PQR (the “Form”), a data collection instrument for commodity pool operators (“CPOs”).² The initial and subsequent filings of the Form gave rise to a number of questions from members of the industry regarding how CPOs should answer certain portions of the Form. The Division published the FAQs as a response to the industry’s request for clarification.

In response to the FAQs, the Associations request revised guidance, or relief from, certain items in the Form. Specifically, the Associations have identified the following items of concern:

- I. The treatment of parallel managed accounts for reporting purposes;
- II. Reporting monthly rates of return; and

¹ CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO-PQR, November 5, 2015; available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/faq_cpocta110515.pdf.

² *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 FR 11252 (Feb. 24, 2012); correction 77 FR 17328 (March 26, 2012).

III. Spot currency positions.

I. Treatment of Parallel Managed Accounts for Reporting Purposes

The Associations request that the Division revise its position with respect to the treatment of Parallel Managed Accounts for reporting purposes.³ Specifically, the Division clarified in FAQ 7 that for reporting purposes, Parallel Managed Accounts should be aggregated with the Pool with the largest AUM to which the Parallel Managed Accounts relate, in accordance with Instruction 3 in the Form. The Associations note that this may not be consistent with the manner in which all CPOs have interpreted this requirement.

The Division notes that FAQ 7 reaffirms the instructions to the Form, and the manner in which Parallel Managed Account are aggregated for reporting purposes. The Division, however, recognizes that in some instances, additional changes may be required for a CPO to report compliant data. The Division wishes to provide a sufficient opportunity to allow CPOs and their back-office personnel to make any necessary operational changes. Accordingly, and acting pursuant to the authority delegated to it by Regulations 140.93 and 4.12(a), the Division hereby provides exemptive relief from aggregating and reporting Parallel Managed Accounts to the Pool with the largest AUM to which the Parallel Managed Accounts relate as required by Instruction 3 of the Form until the Reporting Period ending December 31, 2016 for all CPOs. The Division believes that this exemptive relief will provide ample time for CPOs to become compliant with these aggregation requirements.

II. Reporting Monthly Rates of Return

The Associations also request that the Division reconsider FAQs 29, 30, and 31, each of which clarify that Form CPO-PQR requires a CPO to report monthly rates of return for a Pool. The Associations state that calculating monthly rates of return may not be consistent with the practices of all CPOs. The Associations cite as an example, private equity firms, which generally compute rates of return on a quarterly basis as they may hold illiquid assets and/or other hard to value assets which make monthly rate of return computations challenging. In order to maintain consistent filing and data reporting requirements, monthly rates of return for all Forms CPO-PQR is required. Monthly rate of return information is of particular importance to both the Commission and the National Futures Association in the performance of their respective examination and oversight of CPOs. Accordingly, the Division reaffirms that CPOs are required to report monthly rates of return on the Form. With respect to certain illiquid and other hard-to-value assets, the Division believes that the rates of return reported on the Form for the intra-quarter months is satisfied if the CPO reports estimates of the monthly rates of return, so long as such rates of return are based on reasonable methodologies. That is, such methodologies would

³ Capitalized terms used, but not defined herein, have the meanings set forth in Form CPO-PQR.

result in estimated rates of return that are reasonably consistent with rates of return that would be calculated if all assets and positions are revalued at current market values.⁴

Additionally, the Associations requests that the Division confirm that it would not require CPOs that had previously reported quarterly rates of return on the Form to recalculate and report data for the inter-quarter months for the previous seven years, or the life of the Pool if less than seven years, as required by the instructions to Form CPO-PQR, and reiterated by the FAQs. The Division is not applying the FAQ on a retroactive basis. Accordingly, to the extent that a CPO made a reasonable interpretation of the requirements of the Form, and used that interpretation as the basis of its reporting of rates of return, the Division does not expect the CPO to recalculate rates of return and amend prior submissions, or populate future submissions with respect to the previous Reporting Periods.

III. Spot Currency Positions

The Associations request that the Division reconsider its response with respect to spot currency transactions, as used in FAQ 42. The purpose of FAQ 42 was to clarify where spot currency positions should be reported on the Form, and not to define the term. The Division confirms that that any reference to spot currency transactions contained in FAQ 42 is not limiting, but is instead only used for demonstrative purposes regarding where such transactions must be reported in the Form. Accordingly, FAQ 42 does not limit otherwise applicable definitions of spot currency transaction available to CPOs or other market participants.

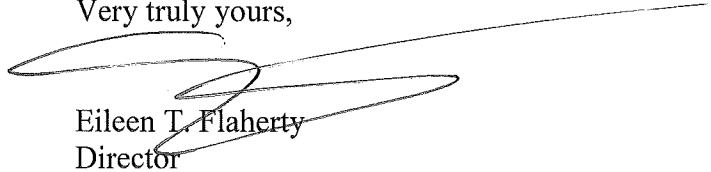
Any relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in the Commission regulations issued thereunder. The Division also retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief, or positions provided herein in its discretion.

If you have any questions regarding this letter, please contact Amanda Olear, Associate Director, at 202-418-5283 or aolear@cftc.gov, or Michael Ehrstein, Special Counsel, at 202-418-5957 or mehrstein@cftc.gov.

⁴ The Division stresses however, that even a reasonable estimate is not a substitute for the quarterly valuation and rate of return as customarily reported. Further, a reasonable estimate cannot be used for assets with readily available pricing data.

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Very truly yours,

A handwritten signature in black ink, appearing to read "Eileen T. Flaherty", written over a horizontal line.

Eileen T. Flaherty
Director
Division of Swap Dealer and Intermediary
Oversight

cc: Regina Thoele, Compliance
National Futures Association