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Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware

The CFTC's New and Improved Form CPO-PQR Navigating the Revised Form and Filing Landscape

I. Introduction and Executive Summary

At an open meeting held on October 6, 2020, the Commodity Futures Trading Commission (the "**CFTC**" or the "**Commission**") unanimously adopted final amendments to Form CPO-PQR and CFTC Rule 4.27 (the "**Amendments**") designed to reduce reporting obligations of registered commodity pool operators ("**CPOs**") under the Form while maintaining the Commission's ability to oversee activities of CPOs and their operated pools.[1] The Amendments reflect the Commission's reassessment of the value and utility of information collected by Form CPO-PQR in light of lessons learned by the Commission since 2012, when the Form was adopted, as well as the emergence of alternate, and in many respects superior, monitoring and data collection tools now available to the Commission or in development.

This Client Alert summarizes the Amendments and related developments (including the Commission's directives to its staff to give some areas further study), describes the background and regulatory goals, points out next steps for reporting CPOs, and discusses the comments received on the Commission's proposal of the Amendments earlier this year (the "**Proposal**").[2] The Commission's responses to the comments are discussed in some detail, as they provide additional guidance on questions that may arise in complying with the new requirements. We conclude with a brief "Food for Thought" section pointing to certain areas that may merit consideration as market participants navigate the changed landscape for completing and filing the Form and ponder possible future engagement as the Commission and its staff consider further improvements. A redline of significant changes against the prior Form and rules is provided as an Appendix to this Client Alert (the "Redline Appendix").

II. Summary of Changes

The Amendments create a revised and substantially simplified Form CPO-PQR ("**Revised Form CPO-PQR**" or the "**Revised Form**"), to be filed by all reporting CPOs on a quarterly basis, regardless of size. Prior to the Amendments, both the scope of information required by the Form and the frequency of filing (quarterly or annual) were determined by the CPO's status as a "small," "mid-sized," or "large" CPO, based on aggregated pool assets under management.

A. Revised Form CPO-PQR. The Revised Form:

- Eliminates Schedules B and C of the Form, which previously required detailed

[1] Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 71,772 (Nov. 10, 2020), https://www.federalregister.gov/d/2020-22874 (the "**Adopting Release**").
[2] *See* Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO-PQR, 85 Fed. Reg. 26,378 (May 4, 2020), https://www.federalregister.gov/d/2020-08496 (the "**Proposing Release**").

pool-specific information for pools operated by mid-sized CPOs (Schedule B) and large CPOs (Schedules B and C);

- Incorporates into the Revised Form the Pool Schedule of Investments (the "**PSOI**") previously required by Question 6 of Schedule B;[3]
- Adds a requirement to report the Legal Entity Identifier ("**LEI**") for any CPOs or operated pools that have LEIs;[4]
- Deletes questions regarding pool auditors and marketers;[5]
- Eliminates instructions and reporting requirements regarding "Parallel Managed Accounts";[6]
- Simplifies the reporting requirement relating to pool subscriptions, redemptions, trading halts and other limits on redemptions (including elimination of information relating to a pool's "high water mark");[7]
- Clarifies that a pool's investments in underlying funds must be reported on the PSOI, even if the pool's underlying fund assets are disregarded for other purposes of the Revised Form;[8]
- Revises the definition of "GAAP" to reflect the ability of reporting CPOs to use certain "alternative accounting principles, standards, or practices" already permitted under Commission Rule 4.27(c)(2) (now redesignated as Rule 4.27(c)(4));
- For pools operated by Co-CPOs, removes an instruction requiring the CPO with the higher assets under management (aggregated across all pools operated by the CPO) to report for the pool;[9] and
- Makes a number of other changes to the questions and instructions reflecting the "one form fits all" approach of the Revised Form, including elimination of existing reporting thresholds, changes to certain defined terms, technical changes to citations and cross-references (all changes to the defined terms and other significant changes are identified in the Redline Appendix).

B. Amended Rule 4.27. As amended, Rule 4.27 (the Commission's rule that requires CPOs to file Form CPO-PQR and sets out the timing and other filing requirements):

- Requires quarterly filing of Revised Form CPO-PQR by all reporting CPOs;[10]
- Permits reporting CPOs to file NFA Form PQR, the comparable form already required by the National Futures Association (the "**NFA**") to be filed quarterly, in lieu of filing the Revised Form (provided that NFA Form PQR is

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[3] Note that while the PSOI was previously part of Schedule B of Form CPO-PQR, which was required only for mid-sized and large CPOs, the PSOI is also required by NFA Form PQR, discussed below, which is filed by all reporting CPOs on a quarterly basis. Accordingly, as a practical matter, incorporating the PSOI into Revised Form CPO-PQR does not result in an increase in the amount or frequency of information required to be filed.

[4] *See* Questions 1.c (CPOs) and 3.d (Pools) of Revised Form CPO-PQR. New Instruction 9 (Reporting of Legal Entity Identifiers (LEIs)) makes clear that "CPOs are **NOT** required to obtain LEIs for themselves or their operated Pools, solely for the purpose of completing this Form CPO-PQR, where such CPOs or Pools are not otherwise required to have them for their operations" (emphasis in original). Note that Question 3 of the Revised Form (Pool Information), which includes the new LEI requirement, also eliminates a number of prior data screens, including place of organization, fiscal year-end, foreign regulatory authorities and master-feeder status. *See* the Redline Appendix.

[5] *See* Questions 8 and 9, respectively, of the prior Form.

[6] *See* Instructions 3 and 5 of the prior Form. For further information about the reasons for this change, see the discussion of Parallel Managed Accounts in Section IV below.

[7] *See* Question 10 (Pool Subscriptions and Redemptions) of Revised Form CPO-PQR compared to Question 12 of the prior Form, as set forth in the Redline Appendix.

[8] *See* new Instruction 4.

[9] *See* revised Instruction 1. Neither the Proposing Release nor the Adopting Release provides an explanation for this revision.

[10] As amended in 2019, Rule 4.27 excepts from the Form CPO-PQR reporting requirements any registered CPO that operates only pools for which the CPO claims an exclusion under Rule 4.5 or an exemption under Rule 4.13(a). *See* Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Registered Investment Companies, Business Development Companies, and Definition of Reporting Person, 84 Fed. Reg. 67,343 (Dec. 10, 2019), https://www.federalregister.gov/d/2019-26161.

determined by the Commission to be substantively consistent with the Revised Form, which is expected to be the case upon the NFA's amendment of its Form to include the LEI data screen);[11] and

- No longer permits CPOs to rely on filing Form PF with the Securities and Exchange Commission (the "**SEC**") as substituted compliance for filing Form CPO-PQR.[12]

C. Effective and Compliance Dates

The amendments became effective on December 10, 2020, at which time the previous Form CPO-PQR was replaced by the Revised Form. Reporting CPOs will not be required to file either the prior Form or Revised Form CPO-PQR for the reporting period ending December 31, 2020. In order to provide reporting CPOs with sufficient time to adjust to the Revised Form, the first required filing of the Revised Form will be for the first calendar quarter of 2021, ending on March 31, 2021.[13] The deadline for filing the Revised Form for that reporting period is 60 days after the end of the quarter, which is May 30, 2021.

Reporting CPOs must still file NFA Form PQR for the period ending December 31, 2020. On December 4, 2020, the NFA sent a notice to Members reminding them of this obligation.[14] The notice also states that the NFA has already revised its Form PQR to conform to Revised Form CPO-PQR, including adding screens to capture LEIs, eliminating certain questions and schedules related to reporting schedules, and making minor operational and help text changes. The template for the revised NFA Form will be available on December 21, 2020. All of the changes reflected in the NFA's revised Form PQR will be effective for the filing required for the period ending December 31, 2020, which must be filed via the NFA's EasyFile electronic filing system by March 31, 2021.

For filings of Revised Form CPO-PQR following the compliance date, reporting CPOs will be permitted to file NFA Form PQR as substituted compliance if the Commission has determined that the NFA Form is substantively identical to Revised Form CPO-PQR, pursuant to the process described in the Adopting Release. However, neither the Commission nor the NFA has yet confirmed that the revised NFA Form meets this requirement. Accordingly, it is possible that there may be further adjustments to the NFA Form once the CFTC review process is complete.

D. Next Steps

1. Preparing for the NFA Form PQR Filing by March 31, 2021

Reporting CPOs should familiarize themselves with the revised NFA Form PQR as soon as possible in order to take the measure of any changes that will be necessary to file the revised NFA Form on a timely basis. The updated Form PQR template will be available on the NFA's website on December 21, 2020. The NFA has notified Members that for XML filers, an updated schema will be available in the XML documentation section of EasyFile (Quarterly Reports) and that reporting CPO Members must update their systems used to generate XML documents to reflect the updated schema.

Note that to the extent the revised NFA Form PQR conforms with all of the changes reflected in Revised Form CPO-PQR, filers may have to make a number of adjustments, in addition to including LEIs where applicable, depending on their practices in filing the prior Form. These may include, among others: (a) including investments in equity funds

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[11] *See* amended Rule 4.27(c)(2) ("A reporting person required to file NFA Form PQR with the National Futures Association for the reporting period may make such filing in lieu of the report required under paragraph (c)(1) of this section; **provided that, the Commission has determined that NFA Form PQR is substantively consistent with appendix A to this part**")(emphasis added); *See also* Adopting Release at 71,782 ("The Commission has determined that, upon NFA's inclusion of questions eliciting LEIs, NFA Form PQR will be substantively consistent with Revised Form CPO-PQR"). The Adopting Release explains that the CFTC will ensure that NFA Form PQR is "substantively consistent" with Revised Form CPO-PQR by reviewing any proposed changes to NFA Form PQR consistent with the procedure set forth in Section 17(j) of the Commodity Exchange Act (the "**CEA**"). *Id.* at 71,783.

[12] *See* amended Rule 4.27(d) ("Commodity pool operators and commodity trading advisors that are dually registered as investment advisers with the Securities and Exchange Commission, and that are required to file Form PF under the rules promulgated under the Investment Advisers Act of 1940, shall file Form PF with the Securities and Exchange Commission, in addition to filings made pursuant to paragraph (c)(1) of this section").

[13] Adopting Release at 71,784.

[14] Notice to Members I-20-44, Dec. 4, 2020 (CPO Members – Changes to the NFA Form PQR), https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=5306.

on the PSOI, if they have not done so previously, and (b) excluding assets in Parallel Managed Accounts from certain questions (both of these changes are discussed in greater detail in Section IV, below).

2. Form PF – Inclusion of Non-Private Fund Pool Information

Dual registrants that have been including information about non-private fund pools on their Form PF in order to take advantage of the substituted compliance provisions, now rescinded, will have to re-evaluate this practice and adjust their filing systems accordingly.

III. Related Developments

A. Information Sharing Agreement with the Office of Financial Research

Also at the open meeting, the Commission announced the approval of a Memorandum of Understanding ("**MOU**") between the CFTC and the Office of Financial Research ("**OFR**") that establishes a framework for the CFTC to share with OFR information and data reported on Revised Form CPO-PQR, designed to allow both agencies to fulfill their statutory and regulatory mandates.[15] This action generated some controversy, and dissents to the action were filed by two Commissioners. Commissioner Brian Quintenz stated his belief that OFR does not need the information reported on the Revised Form in order to have a view into, or develop analyses on, systemic risk, and that "more should have been done to ensure any data shared under this agreement has a well-justified connection to systemic risk or financial stability."[16] Commissioner Dawn Stump expressed concern, as a practical matter, with the precedent of the MOU as it relates to broad disclosure of entire data sets without a more granular rationale.[17]

B. Continuing Evaluation of CPO Reporting Requirements (including the PSOI and Master-Feeder Arrangement Reporting) and Data Protection

The Adopting Release indicates that the Commission's assessment of the utility of information collected through the Form CPO-PQR channel is ongoing and its action at the open meeting "constitutes the first of several steps in the Commission's ongoing reassessment of Form CPO-PQR, the substantive information it seeks to collect, and the form and manner in which the Commission collects and uses that information."[18] In particular, the Adopting Release instructs the staff (1) to evaluate the ongoing utility of the PSOI information required by the Revised Form, within 18–24 months following the Compliance Date for the Amendments; (2) to consider separating LEI reporting from Form CPO-PQR for data security purposes; and (3) to analyze whether modifications to provide consolidated reporting of certain master-feeder structures may be appropriate.[19] The scope of these reviews is further described below in the discussion of comments received on each of these areas.

C. Staff Review of Form CPO-PQR "FAQs"

In 2015, the Commission staff published responses to frequently asked questions (the "**FAQs**"), which provided detailed answers to questions from CPOs attempting to complete Form CPO–PQR as originally adopted. In light of the

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[15] Adopting Release at 71,811 (Supporting Statement of Chairman Heath P. Tarbert).
[16] Dissenting Statement of Commissioner Brian Quintenz Regarding Memorandum of Understanding with Office of Financial Research Governing Sharing of CPO-PQR Data (Oct. 6, 2020), https://www.cftc.gov/PressRoom/SpeechesTestimony/quintenzstatement100620quintenz-dissenting-statement-regarding.
[17] Commissioner Stump stated in her dissent that "I have concerns with the precedent of this MOU as it relates to broad disclosure of entire data sets without a more granular rationale. As a matter of data protection, I expect information obtained by the Commission to have a proven use case. Therefore, I expect any other agency seeking the information we are entrusted to protect to offer a precise utility as justification for the requested data. More specifically, I question what particular functionality Form CPO-PQR is expected to offer OFR. Here, the vast scope of OFR's jurisdiction should not override the need for specific objectives to be conveyed." Dissenting Statement of Commissioner Dawn D. Stump Regarding the Memorandum of Understanding between the CFTC and the Office of Financial Research Regarding the Sharing of Data and Information Collected on Form CPO-PQR (Oct. 6, 2020), https://www.cftc.gov/PressRoom/SpeechesTestimony/stumpstatement10062010620-statement-commissioner-dawn-d-stump-open.
[18] Adopting Release at 71,775.
[19] *Id.* at 71,776, 71,779, 71,780.

> substantial revisions to the Form and related filing requirements effected by the Amendments, with the result that large portions of the FAQs will become obsolete or inaccurate, the staff is in the process of reviewing the FAQs with a view to making commensurate revisions, which will be completed and published as soon as practicable following adoption of the Amendments.[20]

IV. Background and Regulatory Goals

Form CPO-PQR was originally adopted in 2012, in the aftermath of the 2008 financial crisis, and was intended, among other things, to improve accountability and increase transparency of the activities of CPOs and the commodity pools which they operate or advise. In adopting the original Form, the CFTC indicated that the collected data would be used to increase and enhance its understanding of the registrant population, its assessment of market risks associated with commodity pools, and its monitoring for systemic risk.[21] Specifically, the Commission was interested in receiving information regarding the operations of CPOs and their pools, including their participation in commodity interest markets, their relationships with intermediaries, and their interconnectedness with the financial system at large.[22]

Earlier this year, the Commission published for notice and comment proposed amendments to Form CPO-PQR and related filing requirements designed to reduce the amount of data reported on the Form and to improve its utility.[23] The Proposal reflected, after seven years of experience with the Form, a reassessment of the scope of the Form and its alignment with the Commission's current regulatory priorities. In the Proposing Release, the Commission explained that its ability to make full use of the more detailed information collected under the Form had not met the initial expectations.[24] Moreover, as noted in the Proposing Release, since the Form's adoption, the Commission had devoted substantial resources to developing other data streams and regulatory initiatives designed to enhance the Commission's ability to broadly surveil financial markets for risk posed by all types of market participants, including CPOs and their operated pools.[25]

The Commission adopted the Amendments largely as proposed, for the reasons set forth in the Proposing Release, as summarized above. The policy rationale for the Amendments, which was shared by all of the Commissioners in their supporting statements, was succinctly expressed by Commissioner Dan Berkovitz:

> Eight years ago, the Commission began collecting information from CPOs on Form CPO–PQR. During that period, the Commission has come to learn that certain information in Form CPO–PQR has not materially improved the Commission's understanding of CPOs' participation in commodity interest markets, or its ability to assess the risks their pools may pose. The Final Rule eliminates information that has not proven to be of value to the Commission.[26]

In addition, as noted above under "Related Developments," the Adopting Release indicates that this reassessment is ongoing, with the Amendments being the first of several steps in the process.

V. Comments and the Commission's Responses

A. General Support for Reduced and Improved Form CPO-PQR Data Collection

The Proposal, which contemplated a substantial reduction in reporting burdens by both narrowing the scope of the data collected and eliminating the complex three-tiered, size-based reporting threshold framework of the original Form, was

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[20] Adopting Release at 71,782.
[21] Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252, 11253-54 (Feb. 24, 2012), https://www.federalregister.gov/d/2012-3390 (the "**2012 Adopting Release**").
[22] *Id.* Note that unlike Form PF, which is a joint SEC and CFTC form adopted at around the same time, Form CPO-PQR was not required by the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (the "**Dodd-Frank Act**").
[23] *See* Proposing Release, *supra* note 2.
[24] *Id.* at 26,380.
[25] *Id.*
[26] Adopting Release at 71,813 (statement of Commissioner Dan M. Berkovitz).

viewed as a welcome development and met with strong support from market participants on most of its components. The Commission received a total of ten letters commenting on the Proposal, including two from individuals, one from the NFA, and seven from industry professional and trade associations.[27]

The comment letters expressed strong support for the Proposal as a helpful improvement to the current system that would simplify and significantly reduce CPO reporting burdens, increase the regulatory integrity and utility of the data collected by the Form, and serve as a critical step in the development of a holistic market surveillance program with respect to registered CPOs and the pools they operate. Commenters supported having one streamlined form for all CPOs, which would eliminate the burdensome process of determining whether a CPO or pool meets various reporting thresholds, which had proved difficult to apply. In particular, the NFA supported the Commission's efforts to streamline and simplify CPO reporting requirements in a manner that would continue to facilitate effective oversight of these market participants.

Generally, the Commission adopted the amendments as proposed, with the addition of one significant further simplification suggested by commenters with respect to Parallel Managed Accounts. We discuss this change, as well as significant matters on which commenters made recommendations that were not accepted, in Section B, below.

B. Specific Recommendations

1. LEIs – Recommendations to Address Cybersecurity Concerns (Not Accepted)

The Commission proposed, and ultimately adopted, the addition to Form CPO-PQR of data screens requiring LEIs for CPOs and pools that have them, based on its belief that inclusion of LEIs on Revised Form CPO-PQR would facilitate the integration of the data collected on the Revised Form with the Commission's existing more developed alternate data streams that, in the Commission's view, provide "a more prompt, standardized, and reliable view into relevant market activity" than current Form CPO-PQR on its own.[28] The inclusion of LEI screens would thus leverage the Commission's ability to more effectively and accurately use the reduced data set that would be required by the Revised Form. Thus the proposal to require LEIs on the Revised Form was, in effect, part of a package with the proposed reduction in the scope of information to be collected, which, in combination, would result in a net improvement of the utility of the Commission's data collection on the Form.

While many commenters supported the inclusion of LEIs on Form CPO-PQR, others expressed concerns that the new requirement would increase the risk of exposure of highly confidential information through potential cyber breaches. For this reason, one commenter recommended that the Commission collect LEI data separately from Revised Form CPO-PQR and incorporate alphanumeric identifiers to conceal the identities of reporting CPOs in the Revised Form itself.[29]

The Commission adopted the LEI requirements as proposed. The Commission concluded that the proposed LEI fields should provide significant regulatory benefits, particularly with respect to the Commission's stated goal of developing a holistic surveillance program for registered CPOs and their operated pools.[30] The Commission also pointed out that the new requirement does not require CPOs or pools to obtain LEIs if they do not already have them. However, the Commission rejected a recommendation to limit the requirement to LEIs that are maintained and duly renewed.[31]

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[27] *See* Adopting Release at 71,774 n.47 (Comments were submitted by Mr. Chris Barnard (May 8, 2020); NFA (June 10, 2020) (the "**NFA Comment Letter**"); the Alternative Investment Management Association (June 11, 2020) (the "**AIMA Comment Letter**"); the Depository Trust and Clearing Corporation (June 15, 2020); the Global Legal Entity Identifier Foundation (June 15, 2020); the Managed Funds Association (June 20, 2020) (the "**MFA Comment Letter**"); the Investment Adviser Association (the "**IAA Comment Letter**") (June 15, 2020); the Securities Industry and Financial Market Association Asset Management Group (June 15, 2020) (the "**SIFMA AMG Comment Letter**"); Ms. Talece Y. Hunter (June 15, 2020); and the Investment Company Institute (June 15, 2020) (the "**ICI Comment Letter**")). The comment letters are available online at https://comments.cftc.gov/PublicComments/CommentList.aspx?id=3098.

[28] Adopting Release at 71,811 (Supporting Statement of Chairman Heath P. Tarbert).

[29] *See* MFA Comment Letter at 3; *see also* Adopting Release at 71,778 ("MFA recommended that the Commission incorporate alphanumeric identifiers to conceal the identities of reporting CPOs in the Revised Form, and that the Commission separate this data to mitigate potential breaches and enhance protections for collected registrant data.").

[30] Adopting Release at 71,778.

[31] *Id.* ("At this time, the Commission will not require CPOs that do not currently have LEIs to obtain them solely for the purposes of reporting on the Revised Form").

With respect to cybersecurity concerns, the Adopting Release states that adopting the separation proposal recommended by the commenter would delay adoption of the Amendments, which would not serve the Commission's own regulatory interests or those of registrants required to file Form CPO-PQR in its current format. This conclusion followed a review, and favorable assessment, of the Commission's current data security protocols.[32] It was further accompanied by (a) a direction to the CFTC staff to determine the feasibility, necessity, and advisability of separating a CPO's LEIs from the rest of Revised Form CPO-PQR, within 18-24 months of the Final Rule's compliance date, in connection with the PSOI review described below and (b) the Commission's assurance that it "remains committed to devoting significant resources to ensure its internal data security procedures are aligned with, or surpass, industry best practices, as they develop over time."[33]

2. Schedule of Portfolio Investments – Recommendations to Adopt a Simplified Schedule (Not Accepted)

The Commission proposed to adopt, as part of Revised Form CPO-PQR, a requirement to provide for each pool operated by the CPO (an "operated pool") a PSOI in the form previously required by Question 6 of Schedule B, for mid-sized and large CPOs, and currently required by NFA Form PQR for all reporting CPOs. In the Proposing Release, the Commission asked for comment on the scope of information required by the PSOI, and in particular on whether the PSOI should be amended to align with the simpler schedule that appeared in NFA Form PQR in 2010 (the "**2010 PSOI**"), but that was replaced with the current PSOI in 2012 when Form CPO-PQR was adopted. The 2010 PSOI, among other differences, was significantly less granular in terms of asset classes required to be reported than the current PSOI and had a reporting threshold of 10% (only investments in a particular asset class that equal or exceed 10% of the pool's net asset value were required to be reported), as opposed to the 5% reporting threshold on the current PSOI.

Commenters generally did not object to the inclusion of a PSOI in the Revised Form. However, many commenters, including the NFA, recommended adopting a simpler form that would align with the 2010 PSOI in lieu of the current more detailed version. These commenters urged that the detailed information required by the current PSOI is no longer necessary in the broader context of the Revised Form. For example, the NFA (among others) stated that a more streamlined schedule would significantly alleviate filing burdens on CPOs without negatively impacting the usefulness of the information that is collected. In particular, the NFA stated that it does not need the more granular information in the PSOI and that this granularity has not, in its experience, improved its analysis, in part because few CPOs actually report balances on a significant number of the detailed line items set forth in the current schedule.[34]

While acknowledging these arguments, the Commission declined to make the recommended change at this time and, as proposed, retained the current PSOI in the Revised Form. The Commission concluded that substituting the 2010 NFA PSOI, or even adopting a 10% threshold on its own, would result in a material loss of information collected with respect to multiple asset classes, including those under the Commission's primary jurisdictional mandate, and that such a reduction of the information collected at this point would be premature.[35] In explaining this conclusion, the Commission made the following points, which demonstrate a broad interest in the market activities of asset managers registered as CPOs that goes beyond their commodity interest transactions alone:

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[32] The Adopting Release states that the Commission is currently in full compliance with all of the relevant statutes relating to information security and protection and that the Commission's Office of Inspector General, which audits the agency's security program annually, had identified no material weaknesses and made no significant findings in its 2019 audit. *Id.* at 71,779. In addition, the most recent U.S. Department of Homeland Security semi-annual assessment of the Commission's security program for compliance with the Cybersecurity Framework ("**CSF**"), as required by the Office of Management and Budget, resulted in resulted in ratings of ''managed and measurable'' in all five functions of the CSF. *Id.*

[33] *Id.*

[34] *Id.* at 71,776.

[35] The Adopting Release included a detailed analysis of data from past Form CPO-PQR filings, and in particular, an analysis of the impact of raising the threshold from 5% to 10%. This included a review of the first level of subcategory data within the seven headings of asset classes from the 2019 year-end Form CPO–PQR filings, which led to the conclusion that "22% of the total filed PSOIs reported an asset balance that would be lost to the Commission," if the threshold were raised, and that roughly half of the reported balances that would be lost were in either alternative investments or derivatives – asset classes in which the Commission retains a significant regulatory interest. *Id.* at 71,777.

- Events in the bond and energy markets, both recently and in its past experience, have reinforced the Commission's understanding of the interconnectedness of financial markets and emphasized the importance of understanding how CPOs are positioned vis-à-vis their counterparties and the economy as a whole.[36]

- Substituting the 2010 NFA PSOI, in particular the proposed 10% threshold, would result in a material loss of information from reporting CPOs on their operated pools' alternative investment or derivatives positions, which are the primary focus of the Commission's jurisdiction (for example, the 2010 PSOI lacks specific line items for crude oil, natural gas, and some precious metals like gold, all of which have been subject to significant volatility).[37]

- The resulting diminished dataset would provide the Commission an insufficient view into the actual holdings of operated commodity pools in markets subject to the Commission's oversight, which, in turn, potentially undermines the Commission's assessment of the risk posed by CPOs and their operated pools within the commodity interest markets and their vulnerabilities when faced with challenging market conditions.[38]

- This information is currently essential to the Commission's ability to identify CPOs and pools with whom the Commission should engage more deeply depending on market events, especially in times of unpredictable market volatility.[39]

However, in recognition of the fact that commodity interest markets and the Commission's data collection capabilities change over time, the Adopting Release instructed Commission staff to evaluate the ongoing utility of the PSOI information in the Revised Form within 18–24 months following the Final Rule's Compliance Date. In connection with this review, the staff was instructed to (a) compare the current PSOI with the 2010 PSOI; (b) develop recommendations or a proposed rulemaking for the Commission's further review to effectuate the staff's findings; (c) continue to explore the use of data available from existing sources of transaction and position data (from exchanges and swap data repositories) compared to the information received from Revised Form CPO–PQR, as it relates to robust oversight of CPOs and commodity pools; and (d) continue engaging with their counterparts at the SEC regarding potential modifications to Form PF (the joint SEC and CFTC form for private fund managers) to inform consideration of further revisions to Revised Form CPO–PQR.[40]

Finally, in response to the NFA's expressed view that the more limited dataset collected on the 2010 PSOI would be sufficient for both the NFA's and the Commission's purposes, the Commission noted that the direct oversight of reporting CPOs and their operated pools is only one of the uses of the data collected by the Revised Form's PSOI:

> This information is also useful to the Commission in developing its understanding of the commodity interest markets more broadly, including how various asset classes are being utilized by reporting CPOs and their operated pools. Although there may be certain subcategories of asset classes that have not had many, if any, responses over the past six reporting periods, that does not mean that such subcategories of asset classes may not become more widely used in the future or that a pool's exposure to asset classes that are currently less widely utilized would not be useful in overseeing the operations of reporting CPOs and their pools going forward.[41]

3. Pool Brokers – Recommendation to Limit the Definition of "Broker" to Brokers in Commodity Interest Transactions (Not Accepted)

As proposed and ultimately as adopted, the Revised Form, like the previous Form, requires detailed information about each operated pool's brokers, defined in the Form as any entity that provides clearing, prime brokerage, or similar

[36] *Id.* at 71,776.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.* at 71,777.

services to the pool. The required information includes the name, address, telephone number, and NFA ID number for each broker, the starting date of the relationship with the broker, and the identification of services performed (clearing services, prime brokerage services, custodian services, and other (if other is checked, the nature of the services must be identified)).[42]

Two commenters requested the Commission to clarify that the term broker, for purposes of the Revised Form, refers only to commodity-related brokers, and that information about non-commodity brokers (in particular securities brokers) need not be reported. The comments supporting this request explained that CPOs may have many relationships with executing brokers for non-commodity interest transactions and that reporting all non-commodity interest brokers is burdensome, without serving the Commission's regulatory interests in overseeing the commodity interest markets.

The Commission declined to provide the requested interpretation. The Adopting Release states that the Commission "has consistently understood the term 'broker,' in the context of Form CPO–PQR, to include more than just those service providers engaging in the commodity interest markets, and has not limited the definition of the term 'broker,' as used either in the current form or the Revised Form, in any manner."[43] Accordingly, "reporting CPOs currently filing the form should identify any broker used in any transactions for any pool not operated pursuant to an exemption or exclusion during the reporting period."[44] The Commission's rationale, like its explanation for maintaining the current PSOI, focuses on the Commission's general regulatory interest in, and concern with, collecting data on CPO and pool activity outside of commodity interests alone, with respect to its effective oversight of reporting CPOs and their operated Pools.

Accordingly, the Commission concluded that limiting the brokers reported solely to those used in connection with commodity interest transactions (a) would not be conducive to its effective oversight, (b) would be a significant departure from its clear past positions and interpretations of the Form, and (c) would result in internal inconsistency in the Revised Form, where some aspects of the data collection would be limited to commodity interests, whereas others would not.[45]

4. Parallel Managed Accounts – Recommendation to Eliminate All Related Instructions and References (Accepted)

As proposed, Revised Form CPO-PQR would have carried forward from the previous Form two instructions (Instructions 3 and 5) relating to "Parallel Managed Accounts," defined as "any managed account or other pool of assets that the CPO operates that pursues substantially the same investment objective and strategy and invests side-by-side in substantially the same assets as the identified Pool." Commenters recommended removing these instructions and all references to Parallel Managed Accounts because they would either be irrelevant to completing the Revised Form or would collect data in a manner inconsistent with its purposes.

As pointed out by commenters, the function of Instruction 5 was to require aggregation of Parallel Managed Account assets with related pools for purposes of determining the appropriate reporting threshold and relating filing requirements. This instruction would no longer be relevant under the Revised Form, which would eliminate the reporting thresholds.

Commenters also urged that Instruction 3, which provided that assets in Parallel Managed Accounts should be treated as assets of the pools with which they are aggregated for pool reporting persons, would lead to the collection of information that would be both burdensome for CPOs to provide and counterproductive to the Commission's goal of integrated and more coordinated data collection. Inclusion of Parallel Managed Account assets in the pool-specific data collected on Form CPO-PQR would lead to skewed pool data that would be difficult to interpret and not comparable to pool-specific

[42] *See* Question 5 of the Revised Form (Pool Brokers).
[43] Adopting Release at 71,781 (footnote omitted).
[44] *Id.*
[45] The Commission's explanation for its decision to require data on a pool's non-commodity interest brokers, which is somewhat surprisingly emphatic, goes on at some length and notes that (a) Form CPO–PQR, as a general matter, has consistently requested information on all enumerated service providers used by a reporting CPO for its operated pool(s), regardless of the asset class or markets involved; (b) this is consistent with other aspects of the form and the Revised Form, *e.g.*, the PSOI, which are not limited to collecting data solely on the commodity interest transactions of a reporting CPO and its operated pools; and (c) the trading activity or investments of pools in asset classes other than commodity interests may impact the viability of that pool and/or the overall operations of its CPO (a fact highlighted by "the recent unprecedented market movements and difficulties resulting from the Covid–19 pandemic and its broad negative effects on the U.S. and global economies"). *Id.* at 71,781 – 82.

data collected by other means under the same LEIs, which do not include Parallel Managed Account data.

The Commission agreed with these comments. The Revised Form, as adopted, eliminates Instruction 5 and removes from Instruction 3, which addresses other matters as well, that part of the Instruction that referred to Parallel Managed Accounts.[46]

5. Master-Feeder Arrangements – Recommendation to Permit Consolidated Reporting (Not Accepted)

The Revised Form, as proposed, would have carried forward an instruction in the previous Form requiring each pool in a Master-Feeder Arrangement to report as a separate pool. A "Master-Feeder Arrangement" is defined in the Form as "an arrangement which one or more funds ('Feeder Funds') invest all or substantially all of their assets in a single fund ('Master Fund')."

Commenters recommended that the Commission revise the instruction to permit the filing of Master-Feeder Arrangements collectively as one pool, rather than requiring separate pool reporting for each constituent pool. The current requirement, which the Commission had proposed to retain, would require the CPO, absent an exception, to file a separate schedule for each pool. Commenters urged that this can (a) lead to duplicative filing for some firms and (b) require firms to generate and report data that would be of no use to the Commission. For example, firms may calculate performance only at the Feeder Fund level, which reflects the deduction of fees, and not at the Master Fund level, which would generally not reflect all fees. Conversely, there may only be trading activity at the Master Fund level and not the Feeder Funds. This disparity currently clouds the effectiveness and usefulness of the data submitted to the Commission for pools within a master-feeder arrangement.[47]

To address this issue, it was suggested that the Commission adopt the approach taken by Form PF, which allows firms reporting on individual funds to provide information regarding Master-Feeder Arrangements either in the aggregate (on a consolidated basis) or separately. That approach would serve to streamline the information the Commission receives and better link the data received from Form CPO-PQR with other available data sources.

The Commission declined to make the recommended change at this time. While stating that commenters had "raise[d] an interesting question" as to the proper filing requirements for Master-Feeder Arrangements, the Commission noted that, under the rubric of "Master-Feeder Arrangement," the Form's definition encompasses a wide variety of structures, with variations ranging from funds with wholly-owned subsidiaries, to funds with multiple levels of intermediary funds between the feeder and master funds, to the more traditional structures where two or more feeder funds invest substantially all of their assets into a commonly owned master fund.[48] Given the range of fund structures affected, the Commission concluded that adequate consideration of the consolidated filing approach for all such fund structures would require additional analysis and determination of appropriate parameters for such an approach.[49] Accordingly, the Commission instructed its staff to engage in such an analysis.

6. Underlying Fund Assets – Recommendation to Eliminate Option of Disregarding Assets of Underlying Funds for Certain Purposes (Not Accepted; Clarification of Requirement to Include Underlying Fund Assets in the PSOI)

The Revised Form, as proposed, would have carried forward Instruction 4 of the prior Form, which provided that for a pool investing in other pools (*e.g.*, a fund of funds), the CPO "may disregard any Pool's equity investments in other

[46] Elimination of references to Parallel Managed Accounts in the final Amendments, as recommended by commenters, was a very welcome change from the Proposal. As noted in the SIFMA AMG comment letter, under the prior Form, the instructions relating to Parallel Managed Accounts had, from the inception of the Form, been a source of substantial interpretive difficulty and confusion. In the 2015 Form CPO-PQR FAQs, more responses were devoted to responding to questions on this concept than perhaps any other item on the Form.
[47] *See* SIFMA AMG Comment Letter.
[48] Adopting Release at 71,780.
[49] *Id.*

Pools," provided that the CPO must do so consistently. As proposed, this instruction further provided that a CPO that disregards such assets may still report performance of the entire pool, including such assets, for purposes of reporting pool monthly rates of return (Question 9 of the proposed Revised Form) and must include disregarded assets in responding to Question 8 (Pool's Statement of Changes Concerning Assets under Management).[50]

Comments on the instruction permitting the CPO to disregard equity investments in other pools were mixed. The NFA requested that the Commission consider eliminating this option because the NFA would like these assets included. The NFA stated this reporting would help the NFA "identify pool assets that may also be reported by another pool or fund."[51] By contrast, another commenter disagreed with any recommendation to eliminate Instruction 4 because it would be a significant change in how CPOs currently report on the form. Accordingly, such a change should be considered, if at all, as part of a formal rulemaking, with notice and comment.[52]

The Commission declined to eliminate the option to disregard investments in underlying pools provided by Instruction 4. While recognizing that the NFA made a compelling argument regarding its anticipated use of information regarding pools' investments in other pools, the Commission determined "to continue to provide CPOs with the discretion to include or exclude such investments, provided that their treatment is consistent throughout the Revised Form."[53] The Commission acknowledged the other commenter's view that such a modification would be a significant change in how CPOs of pools that invest in other pools "engage with the form" and could thus be quite burdensome to CPOs that would be reporting such information for the first time.

In response to the NFA's concern that information about investments in underlying pools would be useful to them, the Commission noted that Question 8 of the Revised Form (Pool's Statement of Changes Concerning Assets under Management, formerly Question 10) would retain the CPO's obligation to include such investments in the reported pool's assets under management ("**AUM**") and net asset value ("**NAV**").[54] Furthermore, the Revised Form would require the enumeration of underlying fund investments in the PSOI.[55] To make this clear, Instruction 4 in the Revised Form includes an explicit instruction that investments in underlying funds should not be disregarded for purposes of the PSOI.[56] These two reporting requirements, in the Commission's belief, would provide adequate information about a pool's investments in other pools for the Commission to oversee their activities, pending the Commission's development of abilities to integrate its data regarding CPOs and their operated pools.[57]

The Adopting Release emphasizes the importance of including underlying funds in the PSOI under the Revised Form. First, requiring these investments to be listed in the PSOI is necessary for the Commission to make full use of

[50] Note that the permission to disregard assets in underlying pools does not apply to pools that invest substantially all of their assets in the equity of pools for which the CPO of the investing pool is not the CPO. For these pools, Instruction 4 includes a separate paragraph, which provides that the CPO of the investing pool must complete the Form CPO-PQR and include all assets of the underlying pools for which it is not the CPO. This part of Instruction 4 has not been changed, other to omit previous references to Schedule A.

[51] NFA Comment Letter at 3; *see also* Adopting Release at 71,780.

[52] *See* IAA Comment Letter at 6 n.28.

[53] Adopting Release at 71,781.

[54] *Id.* ("[T]he Commission believes that retaining the obligation to include such investments in the reported pool's AUM and NAV (Question 8 of the Revised Form), as well as requiring the investments to be enumerated in the PSOI, as discussed below, provides adequate information about a pool's investments in other pools for the Commission to oversee their activities, while the Commission continues to develop its abilities to integrate its data regarding reporting CPOs and their operated pools").

[55] New Instruction 4 states that "Notwithstanding the foregoing, you must include disregarded assets in responding to Questions 8 and 11 in this Form." Question 11 is the PSOI. The previous Instruction 4 included a similar sentence that referred to Question 8 but did not mention the PSOI.

[56] There is some ambiguity in the Adopting Release as to whether the Commission views the express requirement to include underlying fund investments in the PSOI as a clarification or a change. As noted above, the previous Instruction 4 permitted CPOs to disregard equity investments in underlying funds as long they did so consistently, with certain express exceptions that did not mention the PSOI. Arguably, that could have been read to mean that a CPO that disregarded underlying fund investments generally would also do so for the PSOI. On the other hand, the PSOI itself, which has not changed in the Revised Form, includes a section captioned "Funds," which itemizes a range of different types of funds (*e.g.*, U.S. and foreign mutual funds, NFA listed funds, hedge funds, equity funds, money market funds, and private funds, REITs, and other private funds). The Commission's view appears to be that the "plain language" of the PSOI, independently of Instruction 4 and the requirement to disregard these investments consistently, has always called for disclosure of investments in underlying funds, and that the change to Instruction 4 is intended to make this explicit, and thus eliminate any potential for ambiguity.

[57] Adopting Release at 71,781.

the information provided on Question 8 of the Revised Form, for which such investments must also be included. As explained in the Adopting Release, without this detail in the PSOI, it would be very difficult to determine the asset classes influencing the movement in a pool's AUM and NAV from one reporting period to the next.[58] Second, given the elimination of Schedules B and C in the Revised Form, which previously had provided the bulk of pool-specific data, the PSOI's value and status have changed, and it is now "the key collection of information through which the Commission can analyze the market activities and risks of CPOs and their operated pools."[59] Therefore, the Revised Form retains the current general treatment of investments in other pools currently set forth in Instruction 4, with the additional clarification that they are included in the PSOI. As summarized in the Adopting Release, "[t]herefore, due to the change of importance and status of the PSOI, along with its plain language, which includes line items for various classes of funds, such as mutual funds, private funds, and money market funds, reporting CPOs must disclose their pools' investments in other funds as part of the PSOI."[60]

7. Rescission of Ability to File Form PF as Substituted Compliance for Filing Form CPO-PQR – Recommendation to Retain or Expand Use of Form PF as Substituted Compliance (Not Accepted).

As part of the Proposal, the Commission proposed to amend Rule 4.27(d) to rescind provisions of the Rule that permitted dual SEC and CFTC registrants required to file Form PF for their private fund pools to rely on Form PF as substituted compliance for filing Schedules B and C of Form CPO-PQR.[61] In its prior form, Rule 4.27(d) also permitted such dual registrants to include in their required Form PF, on a voluntary basis, information about their operated non-private fund pools, as substituted compliance for filing Schedules B and C of Form CPO-PQR for those non-private fund pools as well. The Proposing Release noted that many dually registered CPOs currently take advantage of this provision and include information about their non-private fund pools on Form PF instead of filing Schedules B and C for these pools.

The rationale given in the Proposing Release for rescinding the substituted compliance provision in Rule 4.27(d) focused on the voluntary component – the ability of a dual registrant to include non-private fund pools on Form PF. In the Commission's view, such a provision, following revision of the Form as proposed, (a) would be redundant in light of the proposal to accept NFA Form PQR and (b) would be inconsistent with the purpose of the Proposal, which was to allow the Commission to enhance its use of its own internal data streams to effectuate an efficient and effective oversight program of CPOs and their operated pools, given that the Revised Form would no longer be closely aligned in content or filing frequency with Form PF.[62] The Commission emphasized that it was not proposing to alter the status of Form PF as a joint SEC and CFTC form, or the requirement that dually-registered CPOs and CTAs continue to file Form PF with the SEC for private funds covered by the form.

In connection with this aspect of the Proposal, the Commission requested comment on a number of matters relating to Form PF, including (a) whether the Commission should rescind Form CPO-PQR in its entirety and instead require all CPOs to file all or part of Form PF with the NFA and (b) whether if filing Form PF for non-private fund pools were no longer accepted as substituted compliance for filing Form CPO-PQR for those pools, CPOs that currently do include such pools on Form PF would stop doing so.

Comments responding to these questions on Form PF expressed a range of views. None of the comments supported replacing Form CPO-PQR in its entirety with all or part of Form PF, and two commenters expressly opposed such a change on the grounds that the additional information required by Form PF would both be unnecessary and impose additional burdens on CPOs that do not currently file Form PF.[63] One commenter supported provisions that would permit dually registered CPOs to file Form PF in satisfaction of both CFTC Rule 4.27 and NFA Rule 2-46, as such provisions

[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] Note that while Rule 4.27(d) appeared to provide for substituted compliance for Form CPO-PQR in its entirety, instructions on the Form itself, as well as the 2012 Adopting Release, made clear that substituted compliance by Filing Form PF applied only to Schedules B and C of Form CPO-PQR, not Schedule A. *See* 2012 Adopting Release, *supra* note 21, at 11,267.
[62] While neither the Proposing Release nor the Adopting Release mentions it, it is not clear eliminating these substituted compliance provisions would have a practical impact on compliance with Form CPO-PQR following adoption of the Revised Form since the Revised Form eliminated Schedules B and C.
[63] ICI Comment Letter at 5; NFA Comment Letter at 2 – 3.

would reduce reporting burdens while still ensuring that the NFA has necessary information from a supervisory perspective.[64] Another commenter recommended that the Commission permit substituted compliance with respect to Form PF on a voluntary basis.[65]

With respect to whether CPOs that currently include non-private fund pools on Form PF would continue to do so if the substituted compliance provision were rescinded, the one commenter that addressed this issue appeared to believe that such inclusion would continue only if it were accepted as substituted compliance for both Revised Form CPO-PQR and NFA Form PQR.[66] Another commenter urged that even if less data would be reported on Form PF, that should not be the driving factor in the Commission's policy decision; rather, the Commission should be focused on whether the Revised Form elicits the information the Commission needs and will use in pursuit of its regulatory mission with respect to CPOs and their operated pools.[67]

The Commission adopted the amendments to Rule 4.27 as proposed, for the reasons stated in the Proposing Release. As further explained in the Adopting Release, the original Rule 4.27(d), which provided the substituted compliance mechanism with respect to Joint Form PF, is no longer appropriate because: (a) the Revised Form will differ from Joint Form PF, both in substance and filing schedule; and (b) continuing to accept Form PF in lieu of the Revised Form would frustrate an intended and clearly stated purpose of the Proposal, *i.e.*, to enhance and better coordinate the Commission's own internal data streams to more efficiently and effectively oversee its registered CPOs and their operated pools.

8. Substituted Compliance for CPOs of SEC-Registered Investment Companies (Not Accepted).

One commenter requested that the Commission consider adopting a substituted compliance approach to periodic reporting by CPOs of SEC-registered investment companies ("**RICs**"), based on the comprehensive reporting and other regulatory requirements to which RICs are already subject under the SEC's regulatory regime.[68] Such an approach, which would eliminate burdensome and duplicative reporting requirements, would be similar to the Commission's 2013 "harmonization" rulemaking with respect to a number of other RIC and CPO/pool regulatory requirements.[69]

The Commission declined to adopt a substituted compliance approach for RIC CPOs under Rule 4.27. The Adopting Release gives three reasons for this decision. First, while the Proposing Release noted that RICs are subject to comprehensive regulation by the SEC, it did not discuss the possibility of deferring to the SEC with respect to data collection for RIC CPOs. Accordingly, the Commission would be unable to address the issue of substituted compliance for RIC CPOs under Rule 4.27 without reproposing and reopening the comment period for the Proposal. Second, the Commission stated that the suggested substituted compliance approach would not be practical. RICs report on a number of SEC regulatory filings, each of which is designed by the SEC for a particular purpose, and none of which is a direct analog to Form CPO-PQR. For this reason, incorporating the SEC filings into the Commission's filing regime would be difficult and time-consuming. Finally, the Commission saw little benefit in such a substituted compliance approach because RIC CPOs would remain subject to the NFA's reporting requirements.[70]

VI. Food for Thought

The Adopting Release describes an ongoing review of the Commission's data collection capabilities and responsibilities with respect to CPOs, the pools they operate, and the markets in general, and expresses a broad-ranging interest in the role of CPOs and these pools in the financial system. The Amendments were adopted before the November 2020 election. It remains to be seen whether and to what extent the regulatory philosophy of a newly constituted Commission may affect these ongoing developments and the future of CPO regulation and data collection. Still, Commission rulemakings in this area and extensive Commission pronouncements on CPO

[64] AIMA Comment Letter at 2, 3.
[65] SIFMA AMG Comment Letter at 15 – 16.
[66] AIMA Comment Letter at 3.
[67] ICI Comment Letter at 5 – 6.
[68] *Id.* at 3 – 4.
[69] *See* Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators, 78 Fed. Reg. 52,308 (Aug. 22, 2013).
[70] Adopting Release at 71,783 – 84.

regulation are infrequent enough that the Adopting Release can be expected to be a significant source of guidance for CPOs for some time to come, as well as a roadmap for areas amenable to further industry engagement.

In this connection, a few points are especially worth considering.

First, as described above, the Adopting Release instructs the Commission's staff to continue its review of Form CPO-PQR, and especially the PSOI, as an effective and useful data collection method. For firms that have significant remaining concerns with the Form, this review could serve as a platform for engaging with the staff for further change.

Second, there was a discussion at the open meeting about a new data-gathering tool, not specifically geared toward CPOs, that the staff had demoed for the Commissioners. If the Commission is developing significant additional data collection requirements, these could impose new burdens on CPOs that may outweigh the gains from the Amendments. It may be worth following these developments as they apply to CPOs, in order to assess, and ensure that the staff is aware of, how general data collection efforts may affect CPOs in particular.

Finally, while the result of the Amendments is positive, both the Adopting Release and statements at the open meeting demonstrate a robust continuing regulatory interest in CPOs and pools as playing a significant role in the financial system and the markets in general, and that goes beyond the commodity interest activities of these pools. From the perspective of dually regulated asset managers and funds – CPOs and pools that are comprehensively regulated by the SEC as registered investment managers and investment companies – these statements were, for the most part, unaccompanied by the recognition of the extent to which such existing SEC regulation significantly limits any risks to the financial system posed by the activities of dual registrants. Moreover, as discussed above, in declining to adopt a specific recommendation for harmonization of CPO and RIC reporting requirements, the Commission acknowledged the burdens of dual regulation but focused on the difficulties that would be involved in reducing such burdens and did not indicate substantial interest in expending resources necessary to resolve those difficulties. Accordingly, while advocacy efforts urging the importance of harmonized regulation and substituted compliance will continue to be highly relevant to the ongoing developments described above, the extent of the Commission's receptivity to such recommendations remains uncertain.

For more information, contact:

Ruth S. Epstein
Partner
202.292.4522
repstein@stradley.com

Peter Hong
Partner
202.419.8429
phong@stradley.com

John M. Baker
Counsel
202.419.8413
jbaker@stradley.com

Stephen LaChine
Associate
202.419.8429
slachine@stradley.com

Shawn A. Hendricks
Associate
215.564.8778
shendricks@stradley.com