

MEMO# 35540

December 12, 2023

ICI Submits Comment Letter on CFTC Proposed Revisions to the Regulation 4.7 Exemption for CPOs and CTAs

[35540]

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TO: ICI Members

Registered Fund CPO Advisory Committee SUBJECTS: Alternative Investments

Compliance

CPO/CTA

Derivatives

Disclosure

Investment Advisers

Recordkeeping RE: ICI Submits Comment Letter on CFTC Proposed Revisions to the Regulation 4.7 Exemption for CPOs and CTAs

On December 11, 2023, Investment Company Institute (ICI) submitted comments to the Commodity Futures Trading Commission (CFTC) regarding its proposed amendments to Regulation 4.7 (the "Proposal").[\[1\]](#) While the Proposal contained several proposed amendments that would affect commodity pool operators (CPOs) and commodity trading advisors (CTAs) operating pools and trading programs, respectively, under Regulation 4.7 ("Regulation 4.7 CPOs and CTAs"), it was the proposed minimum disclosure requirements for Regulation 4.7 CTAs that would most affect ICI members and that ICI focused its comments on.[\[2\]](#)

CTAs to investment companies registered with the SEC ("registered funds") and offshore regulated funds registered with a foreign regulator, such as UCITSs ("offshore funds"), typically rely on Regulation 4.7 for compliance relief when no CTA exemption or exclusion is available, but the full protections of the Commodity Exchange Act (CEA) are not necessary. This most often occurs when the fund requires a CPO and CTA and the CPO and CTA are not the same entity. Requiring these Regulation 4.7 CTAs to provide minimum disclosure in situations where the CFTC has already concluded disclosure is unnecessary, if the CPO and CTA were the same entity, will result in unnecessary costs and burdens without any corresponding benefit. To better achieve the CFTC's stated policy objectives and avoid unnecessary costs, if the CFTC proceeds with the Proposal, ICI recommended a narrowed application of the proposed minimum disclosure requirements with respect to clients of

Regulation 4.7 CTAs.

Our letter is organized as follows:

- Section 1 provides background information on when CTAs for registered and offshore funds may rely on Regulation 4.7 and why it is critical that the CFTC preserve this availability for CTA regulatory relief.
- Section 2 discusses the unnecessary costs and burdens, without any corresponding benefit to clients, if the CFTC adopts minimum disclosures for Regulation 4.7 CTAs without appropriately tailoring any final requirement.
- Section 3 recommends that the proposed minimum disclosure requirements for Regulation 4.7 CTAs only be required, if at all, with respect to clients that are natural persons who are residents of the United States. This result would achieve the CFTC's stated policy objectives of ensuring that investors (with a US nexus) that may not have the leverage to demand certain disclosure are provided minimum disclosures. Alternatively, if the CFTC determines not to take this approach, Section 3 recommends that the CFTC limit any final minimum disclosure requirements to Regulation 4.7 CTA clients that do not otherwise have a registered, exempt, or excluded CPO (i.e. are not pools). This approach also would more appropriately align the costs of the proposed minimum disclosures with potential benefits while preserving the ability of CTAs, as outlined in Section 1, to rely on Regulation 4.7 for compliance relief where there is specific CPO compliance or registration relief but no corresponding CTA relief.[\[3\]](#)

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Notes

[\[1\]](#) Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools: Updating the 'Qualified Eligible Person' Definition; Adding Minimum Disclosure Requirements for Pools and Trading Programs; Permitting Monthly Account Statements for Funds of Funds; Technical Amendments, 88 Fed. Reg. 70852 (Oct. 12, 2023), available at <https://www.cftc.gov/sites/default/files/2023/10/2023-22324a.pdf>.

[\[2\]](#) With respect to CPOs relying on Regulation 4.7 for compliance relief, the most common use of Regulation 4.7 by investment advisers, as CPOs, to investment companies registered with the Securities and Exchange Commission (SEC) is with respect to wholly-owned subsidiaries (known as controlled foreign corporations or CFCs) through which the investment company trades in commodity interests due to tax regulations. The proposed minimum disclosure requirements would not apply to the CPO of a CFC. See CFTC Regulations 4.21(a)(2), 4.22(a)(4), and 4.22(c)(8) (excluding from disclosure document delivery and certain reporting requirements "a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of" the offered pool); CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions - CPO/CTA: Amendments to Compliance Obligations (Aug. 14, 2012), available at

https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/faq_cp_octa.pdf ("CFCs should be treated as master funds for purposes of complying with Part 4 of the Commission's regulations. Therefore, as master funds, the CFCs would be exempt from providing disclosure documents and financial statements to investors under common control.").

[3] Whichever alternative the CFTC may adopt, ICI urged the CFTC to apply a de minimis threshold before requiring minimum disclosures, similar to the threshold in Regulation 4.14(a)(8), which may be claimed on a pool-by-pool basis pursuant to Regulation 4.14(c) with respect to qualifying CTAs to certain commodity pools but is generally unavailable for separate accounts, such as those for natural persons or university endowments. Providing a de minimis threshold ensures that only those investors that would most benefit from any potential final minimum required disclosures (i.e. those investors following a commodity investment strategy and not an investment strategy with incidental commodity interest trading) will receive such disclosures.

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