

**MEMO# 35868**

September 30, 2024

# **CFTC Adopts Revisions to the CPO and CTA Regulation 4.7 Exemption Without the Proposed Minimum Disclosure Requirements**

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TO: ICI Members

Registered Fund CPO Advisory Committee SUBJECTS: CPO/CTA

Derivatives RE: CFTC Adopts Revisions to the CPO and CTA Regulation 4.7 Exemption Without the Proposed Minimum Disclosure Requirements

On September 18, 2024, the CFTC adopted a final rule that amends CFTC Regulation 4.7, a provision that provides exemptions from certain compliance requirements for commodity pool operators (CPOs) with respect commodity pool offerings to qualified eligible persons (QEPs) and for commodity trading advisors (CTAs) regarding trading programs advising QEPs.[\[1\]](#)

The Proposal would amend Regulation 4.7 in two primary ways:

- (1) Doubling the "Portfolio Requirement" monetary thresholds within the "QEP" definition to account for the effects of inflation; and
- (2) Codifying routinely issued exemptive relief allowing CPOs of "Funds of Funds"[\[2\]](#) that rely on Regulation 4.7 to choose to distribute monthly account statements within 45 days of the month-end.

The final adopting release does not contain the minimum QEP disclosure requirements, which were part of the proposing release issued in October 2023.[\[3\]](#) The minimum QEP disclosure requirements were the most controversial part of the proposal and received heavy industry push back as the impacts on advisers to private funds would have been substantial. While the proposed CPO minimum QEP disclosure requirements did not appear to substantially impact funds registered as investment companies with the Securities Exchange Commission under the Investment Company Act of 1940, the proposed CTA minimum QEP disclosure requirements would have substantially impacted advisers to registered investment companies. In response, ICI submitted a letter advocating for a

significant curtail of any application of the proposed Regulation 4.7 CTA minimum QEP disclosure requirements.[\[4\]](#)

While the CFTC did not adopt any minimum QEP disclosure requirements, for CPOs or CTAs relying on Regulation 4.7, the CFTC stated that is continually evaluating regulatory alternatives and may adopt changes in the future. A summary of the remainder of the adopting release is as follows.

### **Updating Financial Thresholds in the "Portfolio Requirement" of the "Qualified Eligible Person" Definition**

The proposing release recognized that Regulation 4.7(a) bifurcates the definition of QEP into two different categories: 1) those that do not need to meet the "Portfolio Requirement" to be a QEP and 2) those that do. Acknowledging that the Portfolio Requirement has remained unchanged since 1992, the CFTC proposed to update the financial amounts to reflect inflation. The "Securities Portfolio Test" would be doubled to \$4,000,000 and the "Initial Margin and Premium Test" would be doubled to \$400,000. After consideration of comments and additional analysis, the CFTC adopted the proposed increases.[\[5\]](#) The CFTC will continue to permit persons to meet the Portfolio Requirement through a combination of the two, as is currently allowed.[\[6\]](#)

Addressing commenter concerns, the CFTC restated its recognition that these increases will likely result in a certain portion of currently qualifying QEPs no longer meeting the Portfolio Requirement.[\[7\]](#) Regulation 4.7(a)(3) provides that CPOs must assess a person's QEP status, including satisfaction of the Portfolio Requirement, at the time of sale of any pool participation unit, and that CTAs must make a similar assessment at the time that a person opens an exempt account. The adopted amendments maintain this "time of assessment" aspect so that the new thresholds would only apply to new sales of pool participation units or new accounts and not cause advisory relationship terminations or forced divestitures.[\[8\]](#)

### **Permitting Monthly Account Statements for Pools Under Regulation 4.7 Consistent with CFTC Exemptive Letters**

CPOs relying on Regulation 4.7 currently are required to distribute account statements to pool participants no less frequently than quarterly, within 30 days after the end of the reporting period.[\[9\]](#) Regulation 4.7 CPOs of pools that are Funds of Funds are often unable to comply with this quarterly account statement schedule because they cannot control the timing of when they receive the financial information of the underlying funds. The CFTC has routinely granted exemptive letter requests permitting these Regulation 4.7 CPOs to distribute monthly, rather than quarterly, account statements for their pools that are Funds of Funds within 45 days of the month-end. Receiving only positive feedback, the CFTC adopted its proposal to codify this exemptive relief by amending Regulation 4.7 to provide that the CPO of a Fund of Funds may choose instead to prepare and distribute to its pool participants' statements on a monthly basis within 45 days of the month-end, provided that the CPO notifies its QEP pool participants so that they are aware of the account statement distribution schedule.[\[10\]](#)

### **Effective and Compliance Dates**

The adopted amendments go into effect on November 25, 2024, but the CFTC is adopting distinct compliance dates for both components.[\[11\]](#) Recognizing that 4.7 CPOs and CTAs only need to update their QEP evaluation processes on a forward-looking basis, the compliance date for the increase to Portfolio Requirement thresholds is March 26, 2025.[\[12\]](#) Regulation 4.7(b)(3)(iv), which permits alternative monthly account statement schedules,

comes into compliance the same day as the effective date for the adopted amendments, November 25, 2024.<sup>[13]</sup>

Kevin Ercoline  
Assistant General Counsel

#### Notes

<sup>[1]</sup> Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools Operated: 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, 89 Fed. Reg. 78793 (Sept. 26, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-09-26/pdf/2024-21682.pdf>.

<sup>[2]</sup> As defined in the adopting release, "Funds of Funds" means pools that invest in unrelated funds, pools, or other collective investment vehicles.

<sup>[3]</sup> 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>.

<sup>[4]</sup> Letter from Sarah A. Bessin, Deputy General Counsel, and Kevin Ercoline, Assistant General Counsel, ICI, to Christopher Kirkpatrick, Secretary, CFTC (Jan. 17, 2024), available at <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=35157>.

<sup>[5]</sup> 89 Fed. Reg. at 78799.

<sup>[6]</sup> Id.

<sup>[7]</sup> Id. at 78803

<sup>[8]</sup> Id. at 78802.

<sup>[9]</sup> Of note, as it relates to registered funds using a CFC, the CFTC has stated that it views the CFC and registered fund relationship as akin to a master-feeder structure for the purposes of complying with Part 4 of the CFTC's regulations and therefore the CPO of the CFC is exempt from providing the required documents to the registered fund. See CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions - CPO/CTA: Amendments to Compliance Obligations (Aug. 14, 2012), [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/faq\\_cpocta.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/faq_cpocta.pdf).

<sup>[10]</sup> 89 Fed. Reg. at 78802.

<sup>[11]</sup> Id. at 78793

<sup>[12]</sup> Id.

<sup>[13]</sup> Id.

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