Commodity Futures Trading Commission
Office of Public Affairs
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581
www.cftc.gov

Q & A – Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators

What is the goal of the proposed rulemaking?

The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing amendments to its regulations regarding requirements applicable to certain investment companies registered under the Investment Company Act of 1940 ("registered investment companies") whose advisors would be subject to registration as commodity pool operators due to changes to § 4.5 that the Commission is adopting by finalizing Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance. The goal of these proposed amendments is to facilitate the compliance required of these entities.

Why are these changes being made?

A number of comments received regarding the changes to § 4.5 suggested that sponsors of investment companies registered with the Securities and Exchange Commission ("SEC") which would also be required to register as CPOs under § 4.5 may be subject to duplicative, inconsistent, and possibly conflicting disclosure and reporting requirements.

Who will be affected by these changes?

These changes will affect those investment companies that are registered under the Investment Company Act of 1940, with units of participation offered and sold pursuant to an effective registration statement under the Securities Act of 1933, and whose advisors would be subject to registration as a CPO due to changes to § 4.5.

What will change for those affected?

The Commission is proposing to amend § 4.12(c) such that the CPO of any pool whose units of participation will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933 may claim the relief from the delivery and acknowledgement requirements under § 4.21, certain periodic financial reporting obligations under § 4.22, and the requirement that records be maintained at the CPO's main office under § 4.23, available under § 4.12(c) with respect to that pool.

Specifically, the Proposal addresses the following areas:

- The timing of the delivery of disclosure requirements;
- The requirement that a sponsor receive a signed acknowledgement of such disclosure requirements;
- The frequency of required updates for such disclosure requirement;
- The timing of financial reporting to participants;
- The requirement that a CPO maintain its books and records on site;
- The required disclosure of fees;

- The required disclosure of past performance;
- The inclusion of mandatory certification language; and
- The SEC-permitted use of a summary prospectus

What questions are being asked of the public?

The Commission seeks comment on the following:

- Do any provisions of part 4 in addition to those identified in the proposal need to be harmonized?
- Should the Commission consider adopting a family offices exemption from CPO registration akin to the exemption adopted by the SEC?
- What are the factors that weigh in favor or against such an exemption?
- Do the proposed harmonization provisions for break-even analysis and performance disclosure strike the appropriate balance between achieving the Commission's objective of providing material information to pool participants, and reducing duplicative or conflicting disclosure?
- Should the Commission consider harmonizing its account statement reporting requirement with the SEC's semiannual reporting requirement?
- Should the Commission consider harmonizing its past performance reporting requirements with the SEC requirements?
- Are there other approaches to harmonizing these requirements that the Commission should consider?
- Should the Commission consider applying any of the harmonization provisions to operators of pools that are not registered investment companies?
- Are there potential costs associated with these harmonizing rules that the Commission has not considered?
- Are there benefits to market participants, the public, or futures markets that the Commission should consider?