COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AE98

Compliance Requirements for Commodity Pool Operators on Form CPO–PQR

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (CFTC or Commission) is adopting amendments (the Final Rule) to Commission regulations on additional reporting by commodity pool operators (CPOs) and commodity trading advisors and to Form CPO–PQR (also, the form). The Commission is: Eliminating existing Schedules B and C of Form CPO–PQR, except for the Pool Schedule of Investments; amending the information requirements and instructions to request Legal Entity Identifiers (LEIs) for CPOs and their operated pools that have them, and to delete questions regarding pool auditors and marketers; and making certain other changes due to the rescission of Schedules B and C, including the elimination of all existing reporting thresholds. Pursuant to the Final Rule, all reporting CPOs will be required to file the revised Form CPO–PQR (Revised Form CPO–PQR, or the Revised Form) quarterly. The Final Rule also amends Commission regulations to permit reporting CPOs to file NFA Form PQR, a comparable form required by the National Futures Association (NFA), in lieu of filing the Commission's Revised Form. Conversely, Form PF will no longer be accepted in lieu of the Revised Form, though it will remain a Commission form.

DATES: *Effective Date:* The effective date for the Final Rule, including the adoption of the Revised Form, is December 10, 2020.

Compliance Date: All reporting CPOs will be required to file the Revised Form with respect to their operated pools for the first calendar quarter of 2021, which ends on March 31, 2021. The deadline for filing the Revised Form for that reporting period is sixty days after the quarter-end, or May 30, 2021.

FOR FURTHER INFORMATION CONTACT: Joshua B. Sterling, Director, at 202–418–6700 or *jsterling@cftc.gov;* Amanda Lesher Olear, Deputy Director, at 202–418–5283 or *aolear@cftc.gov;* Pamela M. Geraghty, Associate Director, at 202–418–5634 or *pgeraghty@cftc.gov;* Elizabeth Groover, Special Counsel, at (202) 418–5985 or *egroover@cftc.gov;* or Christopher Cummings, Special Counsel, at (202) 418–5445 or *ccummings@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street NW, Washington, DC 20581.

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I. Introduction and Background

Section 1a(11) of the Commodity Exchange Act (CEA or the Act) [1] defines the term ''commodity pool operator,'' as any person [2] engaged in a business that is of the nature of a commodity pool, investment trust, syndicate, or similar form of enterprise, and who, with respect to that commodity pool, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in commodity interests.[3] CEA section 4m(1) generally requires each person who satisfies the CPO definition to register as such with the Commission.[4] CEA section 4n(3)(A) requires registered CPOs to maintain books and records and file such reports in such form and manner as may be prescribed by the Commission.[5]

Following the enactment in 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [6] and subsequent joint adoption with the Securities and Exchange Commission (SEC) of Form PF (Joint Form PF) for advisers to large private funds,[7] the CFTC adopted a new reporting requirement for CPOs through Commission regulation at § 4.27, which, among other things, requires certain CPOs to report periodically on Form CPO–PQR.[8] The Commission proposed this new reporting requirement after reevaluating its regulatory approach to CPOs due to the 2008 financial crisis and the purposes and goals of the Dodd-Frank Act in light of the then-current economic environment. Amendments to the CPO regulatory program adopted at that time, including Form CPO–PQR and § 4.27, were intended to: (1) Align the Commission's regulatory structure for CPOs with the purposes of the Dodd-Frank Act; (2) encourage more congruent and consistent regulation by Federal financial regulatory agencies of similarly-situated entities, such as dually registered CPOs required to file Joint Form PF; (3) improve accountability and increase transparency of the activities of CPOs and the commodity pools that they operate or advise; and (4) facilitate a data collection that would potentially assist the Financial Stability Oversight

[1] 7 U.S.C. 1a(11). The Act is found at 7 U.S.C. 1, *et seq.* (2018), and is accessible through the Commission's website, *https://www.cftc.gov.*

[2] 7 U.S.C. 1a(38); 17 CFR 1.3, ''person'' (defining ''person'' to include individuals, associations, partnerships, corporations, and trusts). The Commission's regulations are found at 17 CFR ch. I (2020), and are accessible through the Commission's website, *https://www.cftc.gov.*

[3] 7 U.S.C. 1a(11); *see also* 17 CFR 1.3, ''commodity pool operator.''

[4] 7 U.S.C. 6m(1).

[5] 7 U.S.C. 6n(3)(A). Registered CPOs have regulatory reporting obligations with respect to their operated pools. *See, e.g.,* 17 CFR 4.22.

[6] Public Law 111–203, 124 Stat. 1376 (2010).

[7] Section 202(a)(29) of the Investment Advisers Act of 1940 (Advisers Act) defines the term ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.'' Advisers Act Section 202(a)(29), 15 U.S.C. 80ab–2(a)(29).

[8] Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252 (Feb. 24, 2012) (Form CPO–PQR Final Rule); 17 CFR part 4, app. A; 17 CFR 4.27.

Counsel (FSOC).[9] To that end, the requirements of Form CPO–PQR were modeled closely after those of Joint Form PF.[10]

In adopting Form CPO–PQR, the Commission indicated that the collected data would be used for several broad purposes, including: (1) Increasing the Commission's understanding of its registrant population; (2) assessing the market risk associated with pooled investment vehicles under its jurisdiction; and (3) monitoring for systemic risk.[11] 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.[12] In proposing the majority of the more pool-specific questions in the form, in particular, the Commission believed the incoming data would assist it in monitoring commodity pools in such a way as to allow the Commission to identify trends over time, including a pool's exposure to asset classes, the composition and liquidity of a commodity pool's portfolio, and a pool's susceptibility to failure in times of stress.[13] Although the Commission recognized that the requested data may have some limitations, it believed that, in light of the 2008 financial crisis and the sources of risk delineated in the Dodd-Frank Act with respect to private funds, the detailed, pool-specific information to be collected by Form CPO–PQR was both necessary and appropriately balanced to assess the risks posed by a single pool, or a CPO's operations as a whole.[14]

On April 16, 2020, the Commission unanimously approved, and, on May 4, 2020, subsequently published in the **Federal Register**, a notice of proposed rulemaking (Proposal or NPRM) that proposed to amend both Commission § 4.27 and Form CPO–PQR.[15] In the Proposal, the Commission stated that, after seven years of experience with the form, the Commission was reassessing the form's scope and alignment with the Commission's current regulatory priorities.[16] The Commission explained that its ability to make full use of the more detailed information collected under the form has not met the Commission's initial expectations.[17] The Commission emphasized that, since the form's adoption, it has devoted substantial resources to developing other data streams and regulatory initiatives, which are designed to enhance the Commission's ability to broadly surveil financial markets for risk posed by *all* manner of market participants, including CPOs and their operated pools.[18]

Thus, as further explained in the discussion that follows, the Commission has concluded that the form should be revised to better facilitate the Commission's oversight of CPOs and their operated pools, as well as its coordination of other Commission data streams and regulatory initiatives, while reducing the overall reporting burdens for CPOs required to file the Revised Form.

A. Overview of Form CPO–PQR, as Originally Adopted

Pursuant to § 4.27, any CPO registered or required to be registered with the Commission is a ''reporting person,'' except for a CPO that operates only pools for which it maintains an exclusion from the CPO definition available under § 4.5, and/or an exemption from CPO registration available under § 4.13.[19] The amount of information that a reporting CPO has been required to disclose on the form varies depending on the size of the operator and the quantity and size of the operated pools.[20]

The form, as adopted in 2012, identifies three classes of filers: Large CPOs, Mid-Sized CPOs, and Small CPOs. The thresholds for determining Large and Mid-Sized CPO status, and thus their reporting obligations, generally align with those in Joint Form PF.[21] A Large CPO is a CPO that had at least $1.5 billion in aggregated pool assets under management (AUM)[22] as of the close of business on any day during the reporting period; a Mid-Sized CPO is a CPO that had at least $150 million, but less than $1.5 billion, in aggregated pool AUM as of the close of business on any day during the reporting period.[23] Although not defined in the form, ''Small CPO,'' as used herein, refers to a CPO that had less than $150 million in aggregated pool AUM during the reporting period. The reporting period for Large CPOs is any of the individual calendar quarters (ending March 31, June 30, September 30, and December 31), whereas, for Small and Mid-Sized CPOs, the reporting period is the calendar year.[24]

Prior to the Final Rule amendments adopted herein, Form CPO–PQR consisted of three schedules: Schedules A, B, and C.[25] Schedule A requires reporting CPOs to disclose basic identifying information about the CPO (Part 1) and about each of the CPO's pools and the service providers they use (Part 2).[26] Consistent with the ''Reporting Period'' definitions described above, Large CPOs submit Schedule A on a quarterly basis, whereas all other reporting CPOs submit it annually.[27] Schedule B requires additional detailed information for each pool operated by Mid-Sized and Large CPOs, in particular regarding each operated pool's investment strategy, borrowings and types of creditors, counterparty credit exposure, trading and clearing mechanisms, value of aggregated derivative positions, and

[9] Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 76 FR 7976, 7978 (Feb. 11, 2011) (Form CPO–PQR Proposal).

[10] *Id.* (''The Commission proposes [Form CPO–PQR] to solicit information that is generally identical to that sought through Form PF''). Commission regulation at § 4.27 further permits the filing of Joint Form PF in lieu of Commission filing requirements (*i.e.,* Form CPO–PQR) for CPOs that are dually registered with the SEC as investment advisers. 17 CFR 4.27(d).

[11] Form CPO–PQR Final Rule, 77 FR 11253–54 (Feb. 24, 2012).

[12] *Id.* at 77 FR 11266–67 (Feb. 24, 2012).

[13] Form CPO–PQR Proposal, 76 FR at 7981 (Feb. 11, 2011).

[14] *Id.*

[15] Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO–PQR, 85 FR 26378 (May 4, 2020) (2020 CPO–PQR NPRM).

[16] 2020 CPO–PQR NPRM, 85 FR at 26380 (May 4, 2020).

[17] *Id.*

[18] *Id.*

[19] 17 CFR 4.27(b)(1)(i); *see also* 17 CFR 4.27(b)(2)(i) (establishing that CPOs operating only pools for which they claim relief under 17 CFR 4.5 or 4.13 are not considered ''reporting persons'' for purposes of the Form CPO–PQR filing requirement).

[20] *See generally* 17 CFR part 4 app. A, ''Reporting Instructions.''

[21] *See generally* Instructions to Form PF, available at *http://www.sec.gov/about/forms/formpf.pdf.* Private fund investment advisers with ''regulatory AUM,'' as that term is defined in Joint Form PF, of at least $150 million are required to file Section 1 of Joint Form PF; private fund investment advisers with regulatory AUM equal to or exceeding $1.5 billion are required to file Sections 1 and 2 of Joint Form PF. *Id.*

[22] As used in the form, AUM refers to the amount of all assets that are under the control of the CPO. 17 CFR part 4, app. A, ''Definitions of Terms'' (providing specific definitions for terminology used in the form, including AUM). The ''Definitions of Terms'' section of the form is renamed by this Final Rule ''Defined Terms'' in the Revised Form.

[23] *Id.*

[24] *Id.* (defining ''Reporting Period''). The form additionally defines, ''Reporting Date,'' as the last calendar day of the Reporting Period for which this Form CPO–PQR is required to be completed and filed,'' *e.g.,* ''the Reporting Date for the first calendar quarter of a year is March 31. *Id.* For Mid-Sized and Small CPOs, their Reporting Date would therefore be December 31. *Id.*

[25] 17 CFR part 4, app. A, ''Reporting Instructions.''

[26] *Id.* at ''Reporting Instructions,'' no. 2.

[27] *Id.*

schedule of investments.[28] Large CPOs also submit Schedule B on a quarterly basis; Mid-Sized CPOs are required to complete and submit Schedule B annually.[29]

Schedule C requires further detailed information about the pools operated by Large CPOs on an aggregate and pool-by-pool basis. Part 1 of Schedule C requires aggregate information for all pools operated by a Large CPO, including (1) a geographical breakdown of the pools' investment on an aggregated basis, and (2) the turnover rate of the aggregate portfolio of pools.[30] Part 2 of Schedule C requires certain detailed information for each ''Large Pool'' the Large CPO operates,[31] where a ''Large Pool'' is a commodity pool that has a net asset value (NAV)[32] individually, or in combination with any parallel pool structure,[33] of at least $500 million as of the close of business on any day during the reporting period.[34] Specifically, Part 2 requires information with respect to each Large Pool the Large CPO operates during the given reporting period; this section of the form elicits information regarding the Large Pool's: (1) Identity; (2) liquidity; (3) counterparty credit exposure; (4) risk metrics; (5) borrowing; (6) derivative positions and posted collateral; (7) financing liquidity; (8) participant information; and (9) the duration of its fixed income assets.[35] Large CPOs complete and file Schedule C on a quarterly basis: This filing includes Part 1 of Schedule C, as well as a separate Part 2 for each Large Pool that a Large CPO operates during the reporting period.[36] If a CPO is also registered with the SEC as an investment adviser, and is therefore required to file Joint Form PF regarding its advisory services to private funds,[37] the CPO is deemed to have satisfied its Schedule B and C filing requirements, provided that the CPO completes and files the referenced sections of Joint Form PF with respect to the pool(s) operated during the reporting period.[38]

In addition to Joint Form PF and Form CPO–PQR, in 2010, NFA adopted and implemented its own NFA Form PQR to elicit data in support of NFA's risk-based examination program for its CPO membership.[39] Pursuant to NFA Compliance Rule 2–46, all CPO NFA members, which includes all CPOs registered with the Commission, must file NFA Form PQR on a quarterly basis with respect to all of their operated pools.[40] NFA accepts the filing of Form CPO–PQR (but not Joint Form PF) in lieu of filing NFA Form PQR for any quarter in which a Form CPO–PQR filing is required under § 4.27.[41] Consequently, dually registered CPO-investment advisers that file Joint Form PF in lieu of a Form CPO–PQR filing, consistent with § 4.27(d), as it reads prior to these Final Rule amendments, are also required to file NFA Form PQR with NFA quarterly.

B. The Proposal

As noted above, the Commission published the NPRM on May 4, 2020, proposing substantial revisions to Form CPO–PQR, as well as several amendments to § 4.27.[42] Specifically, the Commission proposed to eliminate the requirement to complete and submit Schedules B or C of the form, with the exception of the Pool Schedule of Investments (PSOI) (currently, question 6 of Schedule B). The Commission proposed to retain the questions set forth in current Schedule A with certain amendments, notably the addition of questions regarding LEIs, and the deletion of questions regarding pool marketers and auditors.[43] Thus, the Commission proposed the Revised Form consisting of a revised Schedule A, plus the PSOI and the instructions and definitions in the current form that remain relevant.[44] The Proposal required all reporting CPOs to file the Revised Form on a quarterly basis, regardless of AUM or size of operations, and such reporting CPOs would be permitted to file NFA Form PQR in lieu of the Revised Form.[45] The Proposal included an amendment to § 4.27(d) that would eliminate the substituted compliance currently available for dually registered CPO-investment advisers required to file Joint Form PF with respect to their operated private funds, while retaining Joint Form PF as a Commission form. The comment period for the Proposal expired on June 15, 2020, and the Commission received ten relevant[46] comment letters: Two from individuals; one from a registered futures association; and seven from industry professional and trade associations.[47]

[28] 17 CFR part 4, app. A, Sched. B, ''Detailed Information About the Pools Operated by Mid-Sized CPOs and Large CPOs.''

[29] 17 CFR part 4, app. A, ''Reporting Instructions,'' no. 2.

[30] 17 CFR part 4, app. A, Sched. C, pt. 1.

[31] 17 CFR part 4, app. A, Sched. C, pt. 2, ''Information About the Large Pools of Large CPOs.''

[32] As used in Form CPO–PQR, the term ''net asset value'' has the same meaning as in § 4.10(b). *See* 17 CFR 4.10(b) (defining ''net asset value'' as total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest transaction accounted for at a fair market value).

[33] As used in the form, the term ''parallel pool structure'' means any structure in which one or more Pools pursues substantially the same investment objective and strategy and invests side by side in substantially the same assets as another Pool. 17 CFR part 4, app. A, ''Definitions of Terms.''

[34] 17 CFR part 4, app. A, Sched. C, pt. 2, ''Information About the Large Pools of Large CPOs.''

[35] *Id.*

[36] 17 CFR part 4, app. A, ''Reporting Instructions,'' no. 2.

[37] As used in the form, the term ''private fund'' has the same meaning as the definition of ''private fund'' in Joint Form PF. 17 CFR part 4, app. A, ''Definitions of Terms.''

[38] 17 CFR part 4, app. A, ''Reporting Instructions,'' no. 2.

[39] NFA Compliance Rule 2–46 (2017), *available at https://www.nfa.futures.org/rulebook/rules.aspx?RuleID=RULE%202-46&Section=4* (noting this rule was initially adopted effective March 31, 2010, and subsequently amended in 2013, 2016, and most recently, 2017). Commission regulations require each person registered as a CPO to become and remain a member of at least one registered futures association, of which there is currently one, *i.e.,* NFA. 17 CFR 170.17.

[40] NFA Compliance Rule 2–46(a). CFTC staff has previously advised that reporting CPOs should exclude all pools operated subject to relief provided in either 17 CFR 4.5 or 4.13 from their Form CPO–PQR filings, including with respect to any applicable reporting threshold calculations. CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO–PQR (Nov. 5, 2015), *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/faq_cpocta.pdf* (2015 CPO–PQR FAQs). NFA Form PQR similarly focuses its data collection efforts on the listed pools of registered CPO Members. NFA may, however, use NFA Form PQR to collect information beyond that collected by the Commission's Revised Form. *See, e.g.,* NFA Compliance Rule 2–46(b). Nothing in the Commission's Proposal or the Final Rule restricts NFA's ability to require reporting beyond that required by the Commission, provided that such NFA requirements are consistent with the CEA and Commission regulations promulgated thereunder. *See* 7 U.S.C. 17(j).

[41] NFA Compliance Rule 2–46(b).

[42] 2020 CPO–PQR NPRM.

[43] 2020 CPO–PQR NPRM, 85 FR at 26381, 26383 (May 4, 2020).

[44] 2020 CPO–PQR NPRM, 85 FR at 26381 (May 4, 2020).

[45] 2020 CPO–PQR NPRM, 85 FR at 26381 and 26389 (May 4, 2020) (proposing to amend § 4.27(c)(1) by adding substituted compliance for this filing requirement with respect to NFA Form PQR).

[46] The Commission received a total of 14 comment letters, four of which were either spam or otherwise not substantively relevant to the Proposal in any respect.

[47] Comments were submitted by Mr. Chris Barnard (Barnard) (May 8, 2020); NFA (June 10, 2020); the Alternative Investment Management Association (AIMA) (June 11, 2020); the Depository Trust and Clearing Corporation (DTCC) (June 15, 2020); the Global Legal Entity Identifier Foundation (GLEIF) (June 15, 2020); the Managed Funds Association (MFA) (June 15, 2020); the Investment Adviser Association (IAA) (June 15, 2020); the Securities Industry and Financial Market Association Asset Management Group (SIFMA AMG) (June 15, 2020); Ms. Talece Y. Hunter (Hunter) (June 15, 2020); and the Investment Company Institute (ICI) (June 15, 2020). The complete comment file for the 2020 CPO–PQR NPRM can be found on the Commission's website. Comments for Proposed Rule 85 FR 26378 (May 4, 2020), available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?3098.*

II. Final Rule

A. General Comments and Adopting the Revised Form

The comments that the Commission received were, in general, strongly supportive of the Proposal.[48] Commenters largely agreed with the proposed amendments and viewed the proposal of the Revised Form as a ''helpful improvement to the current system.'' [49] Multiple commenters stated that the Proposal, if adopted, would simplify CPO reporting requirements, significantly reduce filers' reporting burdens, increase the regulatory integrity and utility of the data collected by the Revised 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.[50] Similarly, NFA stated its support of ''the Commission's efforts to streamline and simplify the reporting requirements for CPOs,'' and its belief that ''the [P]roposal will satisfy the Commission's goal of reducing reporting requirements in a manner that continues to facilitate effective oversight of CPOs and the pools they operate.'' [51]

Although MFA stated its preference for a consolidated form for both SEC and CFTC filings with respect to pooled investment vehicles and their operators or advisers, MFA nonetheless expressed its strong support for the Proposal's Revised Form.[52] Similarly, SIFMA AMG stated that the Proposal is well-aligned with the Commission's intended purpose for it, and subject to recommended revisions, strongly recommended it be adopted.[53] Encouraged by the Commission's proposed amendments eliminating significant pool-specific sections of the form, AIMA requested that the Commission consider further reducing the scope of the Revised Form, if at all possible.[54]

After considering the public comments received, the Commission has determined to adopt the Revised Form and the amendments to § 4.27, largely as proposed, in furtherance of its regulatory goals with respect to registered CPOs and their operated pools,[55] for the reasons it explained in the Proposal.[56] Today's Final Rule 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.

B. The Elimination of Schedules B and C From the Revised Form

In proposing to eliminate a majority of the pool-specific reporting requirements in Schedules B and C of Form CPO–PQR, the Commission observed that, challenges with the data collected in Schedules B and C, combined with the resource constraints of broader Commission priorities, have frustrated the Commission's ability to fully realize its vision for this data collection.[57] As described above, the eliminated data elements in Schedules B and C include detailed pool-specific information, asset liquidity and concentration of positions, clearing relationships, risk metrics, financing, and investor composition.[58] In explaining the proposed rescission of Schedules B and C, the Commission stated that its ability to identify trends across CPOs or pools using Form CPO–PQR data has been substantially challenged, due to the post hoc nature of the previous filings and the substantial amount of flexibility the Commission permitted for CPOs completing the form.[59] In the Proposal, the Commission noted that certain of its alternate data streams provide a more timely, standardized, and reliable view into relevant market activity than that provided under Form CPO–PQR, which make them much easier to combine into a holistic surveillance program.[60]

The proposed removal of Schedules B and C was broadly supported by commenters.[61] For instance, IAA supported the Commission's efforts to streamline the process, stating, ''We appreciate the CFTC tailoring the regulatory reporting requirements for CPOs to limit data collection that the Commission will make use of[,] and eliminating the more detailed information in Form CPO–PQR that has not been helpful for the CFTC's oversight purposes.'' [62] Furthermore, ICI concurred with the Commission that the agency's limited resources should not be spent on trying to make use of the ''voluminous and very specific pool-level data sought in Schedules B and C.'' [63] Expressing support for the elimination of Schedules B and C, as well as the retention of a revised PSOI for each pool, SIFMA AMG praised the Commission for recognizing ''lessons learned'' from seven years of experience with the form and the data it has elicited.[64] SIFMA AMG described the Proposal as a demonstration of the CFTC's consideration of the utility of the data currently collected by the form, and balancing that against the successful use of other Commission data streams, which were developed after the form was initially adopted.[65] In addition, SIFMA AMG strongly supported the adoption of a streamlined Revised Form for all CPOs and their pools, thereby eliminating the CPO and pool threshold calculations that dictated the scope and burden of each CPO's Form CPO–PQR filing.[66]

Due to the logistical and timing difficulties the Commission explained in detail in the NPRM,[67] the Commission has determined to forego the collection of the detailed information requested by Schedules B and C of Form CPO–PQR, in part, because the Commission was not able to fully incorporate the resulting data set into its oversight program for registered CPOs and their operated pools. The Commission acknowledges the strong support from commenters with respect to this particular amendment, and believes that, in conjunction with other amendments explained below, the Commission will receive more complete and usable data regarding reporting CPOs' pool operations due to the more targeted data collected in the Revised Form. Accordingly, Schedules B and C, along with all references to the thresholds associated therewith, have been removed in their entirety from the Revised Form adopted by the Final Rule.

[48] *See, e.g.,* DTCC, at 2.

[49] ICI, at 4 (noting that ''the Proposal would significantly reduce the reporting burdens to which registered fund CPOs are currently subject'').

[50] Hunter, at 1; AIMA, at 2; SIFMA AMG, at 2; Barnard, at 1.

[51] NFA, at 1.

[52] MFA, at 1–2.

[53] SIFMA AMG, at 2.

[54] AIMA, at 2–3 (stating also that AIMA welcomed the Proposal, instead of ''incremental and non-transformative change,'' and was ''in favour of making better use of data obtained through other reporting obligations'').

[55] Consistent with past Commission staff guidance, ''operated pools,'' as used in this document, means those pools for which a CPO is required to be registered with the Commission.

[56] 2020 CPO–PQR Proposal, 85 FR at 26381–84 (May 4, 2020).

[57] 2020 CPO–PQR NPRM, 85 FR at 26381 (May 4, 2020).

[58] 2020 CPO–PQR NPRM, 85 FR at 26380 (May 4, 2020).

[59] 2020 CPO–PQR NPRM, 85 FR at 26381 (May 4, 2020).

[60] 2020 CPO–PQR NPRM, 85 FR at 26382 (May 4, 2020).

[61] E.g., IAA, at 3–4; NFA, at 1–2.

[62] IAA, at 4.

[63] ICI, at 6.

[64] SIFMA AMG, at 4.

[65] SIFMA AMG, at 4–5.

[66] SIFMA AMG, at 6 (noting that these threshold calculations for CPO and pool size have proved difficult to practically apply and calculate).

[67] 2020 CPO–PQR NPRM, 85 FR at 26381 (May 4, 2020).

C. Adoption of the Proposed Schedule of Investments in the Revised Form

One of the specific questions posed by the Commission in the Proposal was: Should the Commission consider amending the Schedule of Investments to align with the simpler schedule that appeared in NFA Form PQR in 2010?[68] The Commission received several comments on the content of the proposed PSOI, including multiple recommendations that the Commission adopt a schedule in the Revised Form that aligned with the former Schedule of Investments originally adopted by NFA in 2010 for its NFA Form PQR (2010 Schedule of Investments).[69] The 2010 Schedule of Investments is less detailed than the PSOI currently in use by both Form CPO–PQR and NFA Form PQR.[70]

Several of the commenters argued that the detailed information required by the proposed PSOI is no longer necessary in the broader context of the Revised Form. For instance, NFA, in a comment that was supported by both MFA and ICI, supported aligning with the 2010 Schedule of Investments because a ''more streamlined schedule will significantly alleviate filing burdens on CPOs without negatively impacting the usefulness of the information that is collected.'' [71] NFA explained that it does not need the more granular information in the PSOI, and that this granularity has not, in NFA's experience, improved their analysis, in part, because ''very few CPOs include balances on a significant number of line items set forth in the current schedule.'' [72] IAA also expressed its support, stating that the specific data fields in the PSOI should be aligned with that of NFA Form PQR.[73]

The Commission acknowledges and understands commenters' arguments supporting a more narrowly focused PSOI in the Revised Form. Nevertheless, the Commission has determined not to make material revisions at this time. 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.[74] Moreover, incorporating a PSOI that is aligned with the 2010 Schedule of Investments, particularly the 10% asset threshold discussed below, in the Revised Form results 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 instance, the Commission notes that the 2010 Schedule of Investments lacks specific line items for crude oil, natural gas, and some precious metals like gold, all of which have been subject to significant volatility.[75]

At this time, the Commission believes that reducing the amount of information collected with respect to multiple asset classes, particularly those that are under the Commission's primary jurisdictional mandate,[76] is premature. 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. 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. Therefore, the Commission has decided to collect the more detailed PSOI, as it continues to reassess its data needs in this space.

In the Commission's experience, commodity interest markets change over time, as do the Commission's own technological applications, surveillance capabilities, and access to real-time data streams, and thus, require the ongoing, careful review of the appropriateness of existing regulatory approaches. Accordingly, the Commission hereby instructs its staff to evaluate the ongoing utility of the PSOI information in the Revised Form, including comparing it to the 2010 Schedule of Investments, within 18–24 months following the Final Rule's Compliance Date. As part of its review, Commission staff should consider whether or not it is appropriate to adopt the 2010 Schedule of Investments, in light of such utility. After completing this review, and taking into consideration the Commission's current regulatory needs, the Commission expects its staff to develop recommendations or a proposed rulemaking for the Commission's further review to effectuate staff's findings.

In addition, as part of this review, Commission staff should continue to explore the use of data available from designated contract markets, swap execution facilities, and swap data repositories—*i.e.,* existing sources of transaction and position data—and its application to effecting robust oversight of CPOs and commodity pools, as compared to the information received from Revised Form CPO–PQR. In addition, the Commission expects its staff to continue engaging with their counterparts at the SEC during this 18–24 month period regarding potential modifications to Joint Form PF, which should inform further revisions to Revised Form CPO–PQR.

Consistent with the views expressed by other commenters, NFA stated its belief that the more limited dataset collected on the 2010 Schedule of

[68] 2020 CPO–PQR NPRM, 85 FR at 26384 (May 4, 2020).

[69] IAA, at 4; ICI, at 6; NFA, at 1–2; MFA, at 3.

[70] *See infra* pt. II.G.i for additional discussion on permissible substituted compliance for § 4.27 with respect to NFA Form PQR.

[71] NFA, at 2 (discussing how the 2010 Schedule of Investments elicits the information necessary for NFA's risk assessment purposes). *See also* ICI, at 4; MFA, at 4. ICI further emphasized that the overall success of the Proposal's revisions to Form CPO–PQR will depend on whether the resulting dataset is appropriately calibrated to the Commission's regulatory interests and limited to data the Commission will employ in regulating CPOs and their commodity pools. ICI, at 4.

[72] NFA, at 2 (concluding that its 2010 Schedule of Investments ''elicits the information necessary for both the CFTC's and NFA's needs'').

[73] IAA, at 5. MFA also supported this alignment and strongly advocates for consistency between the Schedules of Investment in the Revised Form and NFA Form PQR. MFA, at 3–4.

[74] ''Options trading firm blows up amid natural gas volatility,'' Financial Times (Nov. 19, 2018), *available at https://ft.com/content/b7c525f6-ec44/11e8/89c8/d36339d835c0;* ''The Shine Is Off,'' Slate (June 9, 2013), *available at https://www.slate.com/business/2013/06/gold-bubble-paranoid-investors-pushed-gold-to-1900-an-ounce-in-2011-but-the-bubble-has-burst;* ''Bond investors say some energy companies 'will not survive' oil rout slamming markets,'' Market Watch (Mar. 10, 2020), *available at https://www.marketwatch.com/story/bond-investors-say-some-energy-companies-will-not-survive-oil-rout-slamming-markets-2020-03-09;* ''Global stocks, oil prices, and government bonds tumble,'' Financial Times (Mar. 18, 2020), *available at https://www.ft.com/content/1b1b47d4-68bd-11ea-a3c9/1fe6fedcca75;* ''Oil plunges into negative territory for the first time ever as demand evaporates,'' Business Insider (Apr. 20, 2020), *available at https://markets.businessinsider.com/commodities/news/us-crude-oil-wti-falls-to-21-year-low-1029106364#.*

[75] *Id.*

[76] ''Gold prices settle at 1-week low as U.S. stock market tumbles,'' MarketWatch (Sept. 3, 2020), *available at https://www.marketwatch.com/story/gold-heads-for-back-to-back-loss-amid-vaccine-hope-us-dollar-strength-2020-09-03;* ''Oil sinks with equities on wavering hopes for demand pickup,'' Bloomberg (Sept. 3, 2020, updated Sept. 4, 2020), *available at https://www.bloomberg.com/news/articles/2020-09-03/oil-extends-biggest-weekly-drop-since-june-as-demand-woes-return;* ''U.S. oil prices settle at lowest in nearly a month as supplies, output log sharp but temporary hurricane-related drop,'' Market Watch (Sept. 2, 2020), *available at https://www.marketwatch.com/story/oil-prices-lifted-by-lackluster-bounce-in-opec-crude-output-inventory-fall-2020/09/02;* ''Oil prices continue to slide as U.S. data feeds fuel demand worry,'' Reuters (Sept. 2, 2020), *available at https://www.reuters.com/article/us-global-oil/oil-prices-continue-to-slide-as-us-data-feeds-fuel-demand-worry-idUSKBN25U04D.*

Investments would be sufficient for both NFA's and the Commission's purposes.[77] The Commission notes, however, that 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. Eliminating questions due solely to a lack of past responses seems to presume that the operations and pool trading activity of reporting CPOs will remain static going forward. The Commission knows from its direct regulatory experience in overseeing CPOs that such a presumption is false because these registrants and their pools exhibit high levels of variability and dynamism in their investment strategies.

D. Retaining the Five Percent Threshold for Reportable Assets

Aligning the Revised Form's PSOI with the 2010 Schedule of Investments would include increasing the threshold for reportable assets of a pool from 5% of a pool's NAV to 10%, which multiple commenters specifically addressed and supported.[78] As discussed above, MFA also requested the Commission align its PSOI with NFA's 2010 Schedule of Investments, and increase the reportable asset threshold from 5% to 10%.[79] SIFMA AMG stated that revising the PSOI in this manner would greatly reduce or eliminate the burden on CPOs to provide information on pool assets or investments that are, ''either nominal or so minimal they do not affect the daily risk of a CPO.'' [80] As an alternative to adopting the 2010 Schedule of Investments, SIFMA AMG also would support a more holistic analysis by the Commission of the proposed PSOI: rather than simply doubling the percentage threshold for reportable assets, SIFMA AMG argued that the Commission should carefully review the proposed PSOI, weigh the utility of the asset sub-categories, and eliminate those deemed to be unnecessary or not implicating the Commission's regulatory interests.[81]

Upon consideration of the comments, and consistent with the overall PSOI analysis above, the Commission is declining to increase the threshold for a pool's reportable assets from 5% to 10% at this time. The Commission has reviewed data from past Form CPO–PQR filings, and concludes that, if it were to raise the threshold from 5% to 10%, the Commission would lose a material portion of the data that it has been receiving regarding pool positions in derivatives and alternative investments. Specifically, the Commission reviewed the first level of subcategory data within the seven headings of asset classes from the 2019 year-end Form CPO–PQR filings. There was a total of 5,574 PSOIs filed, with 1,240 of those filings reporting at least one balance that was between 5% and 10% of NAV, which means that 22% of the total filed PSOIs reported an asset balance that would be lost to the Commission, if the Commission increased the reporting threshold to 10%.

Looking at the data further, the Commission found that, of those 1,240 PSOIs reporting at least one asset between 5 and 10% of a pool's NAV, 660 of them reported balances in either alternative investments or derivatives—asset classes in which the Commission retains a significant regulatory interest. Those 660 PSOIs constitute 53% of all PSOIs reporting an asset as 5–10% of the pool's NAV, and amount to approximately 12% of the total PSOI population. Losing data on 12% of its total PSOI filings by reporting CPOs regarding alternative investment or derivatives positions, which are the primary focus of the Commission's jurisdiction, is a material loss, because it would provide the Commission with an incomplete picture of the actual holdings of a pool in markets subject to the Commission's oversight, which could undermine the Commission's assessment of the market risk posed by CPOs and their operated pools.[82] This is of particular importance to the Commission given the recent unprecedented market conditions discussed above. Accordingly, the Revised Form adopted herein retains the 5% asset reporting threshold, and the Commission reiterates its direction to Commission staff to evaluate the ongoing utility of the PSOI information in the Revised Form, within 18–24 months of the Compliance Date for the Final Rule.

E. Adding LEI Fields to the Revised Form

The Commission also proposed adding fields to the Revised Form requesting LEIs for reporting CPOs and their operated pools that are otherwise required to have them, due to their activity in the swaps market.[83] The Commission emphasized in the Proposal that the inclusion of existing LEIs within the smaller dataset on Revised Form CPO–PQR should enable the Commission to more efficiently and accurately synthesize the various Commission data streams on an entity-by-entity basis and may permit better use of other data to illuminate the risk inherent in pools and pool families.[84] Specifically, the NPRM queried, Should the Commission include LEIs on Revised Form CPO–PQR? Why or why not? [85]

Commenters supported the inclusion of LEIs because of their low cost, ability to facilitate standardization across multiple data streams and generally enhance reporting, and ''their risk management capabilities.'' [86] SIFMA AMG also supported the addition of questions on LEIs, stating that it understood that ''[requiring LEIs in the Revised Form CPO–PQR] is the key to integrating the information collected in multiple data streams,'' and would make information collected by the

[77] NFA, at 2.

[78] IAA, at 5; MFA, at 4; SIFMA, at 14.

[79] MFA, at 4.

[80] SIFMA AMG, at 14.

[81] SIFMA AMG, at 14 (describing such an analysis as ''weighing the difficulty of certain CPOs to provide data for the more granular sub-categories compared with the usefulness of such data for the Commission, with a focus on categories of assets where the Commission does not have a specific regulatory interest or otherwise would have limited use for such detail''). *See also* IAA, at 5 (questioning the relevance and necessity of certain line items in the proposed PSOI); MFA, at 6–14 (providing line edits to the proposed PSOI, and recommending the deletion of multiple asset classes).

[82] In concluding that losing Form CPO–PQR data for 22% of its total filing population was material, staff was guided by the SEC's Staff Accounting Bulletin 99, which addresses accounting materiality thresholds. Materiality, SEC Staff Accounting Bulletin No. 99, 64 FR 45150 (Aug. 19, 1999), *available at https://www.sec.gov/interps/account/sab99.htm.*

[83] 2020 CPO–PQR NPRM, 85 FR at 26378 (May 4, 2020).

[84] 2020 CPO–PQR NPRM, 85 FR at 26383 (May 4, 2020) (anticipating that the inclusion of LEIs would greatly facilitate the aggregation of data from commodity pools under different levels of common control).

[85] 2020 CPO–PQR NPRM, 85 FR at 26384 (May 4, 2020).

[86] DTCC, at 2; SIFMA AMG, at 6; GLEIF, at 1. *See also* Hunter, at 1, and Barnard, at 1. GLEIF noted further that standardizing the LEI requirement would also contribute to the harmonization of rules and standards across regulatory regimes. GLEIF, at 2.

Revised Form ''much easier to combine into a holistic surveillance program'' for registered CPOs and their operated pools.[87] Citing a list of benefits associated with LEIs, GLEIF and DTCC advocated for further expanding the LEI requirement to all reporting CPOs and pools, instead of only requiring them from entities that currently have them.[88]

GLEIF also requested the Commission consider two specific recommendations regarding LEIs: (1) Adopting a requirement that only LEIs that are maintained and duly renewed would satisfy this reporting obligation in the Revised Form; and (2) requiring LEIs for *all* reporting entities submitting the Revised Form, as well as for a reporting CPO's miscellaneous service providers, like a third-party administrator, broker, trading manager, and/or custodian.[89] DTCC argued that expanding the LEI requirement to cover all reporting CPOs and all of their operated pools would allow the Commission to obtain a more complete picture of pool activity across all derivatives transactions, rather than just with respect to swaps.[90] DTCC also provided specific cost estimates for LEI acquisition, renewal, and maintenance, positing that these costs would not be a significant burden on CPOs. Moreover, DTCC argued that expanding the requirement could instead ease CPOs' reporting burden, ''through the standardization of a common identifier,'' *i.e.,* an LEI for each reporting entity and each operated pool, and further facilitate the synthesis of CPO and pool data.[91]

MFA suggested that the Commission collect LEI data separately from the Revised Form for purposes of protecting highly confidential information in these filings from potential cyber breaches.[92] Specifically, 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.[93] According to MFA, registered CPOs should be permitted to file their LEIs for the Revised Form in a separate submission, such that the LEIs and identifying information of the CPO and its pools are separated from the confidential information the Revised Form otherwise collects.[94]

The Commission is adopting this provision as proposed. The LEI fields included in the Revised Form 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.[95] 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.[96] The Commission's regulations currently only require entities to obtain LEIs if they are engaged in swaps transactions. Specifically, the Commission's regulations regarding swap data reporting, which were amended in September 2020, require CPOs or commodity pools that are counterparties to swaps to use LEIs in all swap data recordkeeping and reporting.[97] The Commission would therefore expect that any CPO or commodity pool entering into swap transactions would have an LEI. Conversely, if a reporting CPO and its pools do not engage in swap transactions, they would not be required to have LEIs. Moreover, futures market participants are not required to have LEIs generally, and as such, LEIs are not collected by the designated contract markets or derivatives clearing organizations with respect to futures transactions. Therefore, imposing such a requirement on reporting CPOs and their pools that do not engage in swaps would not assist the Commission in utilizing the other data streams available to it regarding futures trading activity.

Additionally, allowing only those LEIs that are maintained and duly renewed to satisfy the reporting requirement in the Revised Form runs counter to the Commission's stated purpose of the Revised Form. Currently, swap dealers and other registered entities[98] are the only Commission registrants required to *maintain and renew* their LEIs.[99] Notably, CPOs and their operated pools are not among those entities. Additionally, because CPOs and their operated pools are *not* required to obtain, maintain, or renew LEIs to participate in the futures market, the Commission believes that imposing such a requirement solely for Form CPO–PQR reporting purposes would not, at this time, advance the Commission's goal of monitoring CPOs and their operated pools for market and systemic risk.

The Commission notes that this approach to LEIs in the Final Rule does not preclude expanding the LEI requirement in the Revised Form in the future. As noted herein, and in the Proposal, the Final Rule is intended to leverage the other data developed by the Commission as they currently exist. The Commission currently does not require LEIs to participate in the commodity interest markets beyond the swaps market; however, in the future, the LEI requirement could be expanded to other commodity interest asset classes. If that should happen, reporting CPOs and their pools would be required to report those LEIs on the Revised Form as well. As LEIs become more ubiquitous in the market, and as more CPOs obtain and use them in operating their pools, the Commission anticipates that there will be a corresponding increase of reported LEIs on the Revised Form.

With respect to commenters' concerns about cybersecurity, determining the feasibility of filing LEI information separately from the Revised Form would hinder the Commission's ability to adopt the Final Rule in a timely manner. The Commission believes that such delay serves neither its own regulatory interests nor the interests of Commission registrants required to file Form CPO–PQR. In arriving at this conclusion, the Commission weighed the benefits of adopting Revised Form CPO–PQR sooner, including the opportunity to begin fully incorporating the Revised Form's dataset into the Commission's oversight program for registered CPOs and their operated pools, as well as operational efficiencies for the Revised Form's filers, against whether the Commission should modify how data on the Revised Form is

[87] SIFMA AMG, at 2.

[88] GLEIF, at 1 (stating that the Proposal's current LEI requirement would not allow the Commission to aggregate all derivatives transactions by pools under common control); DTCC, at 2.

[89] GLEIF, at 1.

[90] DTCC, at 2.

[91] DTCC, at 2–3 (discussing the average costs associated with obtaining and maintaining an LEI: average cost for an LEI is $111, and the renewal fee is $91; the annual one-time cost for all CPOs without an LEI would total $64,828; the annual renewal fee combined for all 1326 registered CPOs would total $120,666). Neither DTCC nor GLEIF provided any cost estimates with respect to expanding the LEI requirement to all operated pools or to all of a reporting CPO's service providers.

[92] MFA, at 3.

[93] MFA, at 3.

[94] *Id.*

[95] 2020 CPO–PQR NPRM, at 85 FR 26382 (May 4, 2020).

[96] *See infra* Form CPO–PQR, ''Reporting Instructions,'' no. 9.

[97] Swap Data Recordkeeping and Reporting Requirements, approved by the Commission on September 17, 2020. Publication in the **Federal Register** is pending.

[98] 17 CFR 1.3, ''registered entity'' (including, inter alia, designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories, in the ''registered entity'' definition).

[99] Swap Data Recordkeeping and Reporting Requirements, approved by the Commission on September 17, 2020. Publication in the **Federal Register** is pending.

collected. That analysis also included an assessment of the state of the Commission's current data security protocols.

With respect to the Commission's data security protocols, it is currently in full compliance with all of the relevant statutes relating to information security and protection.[100] The Commission's Office of Inspector General (OIG) audits the agency's security program annually, and as of the 2019 audit, OIG identified no material weaknesses and made no significant findings. Moreover, the OIG rated the Commission's security program as ''effective.'' [101] In addition to the OIG review, the U.S. Department of Homeland Security (DHS) also assesses the Commission on a semiannual basis, and DHS' most recent assessment of the CFTC's security program for compliance with the Cybersecurity Framework (CSF), as required by the Office of Management and Budget, resulted in ratings of ''managed and measurable'' in all five functions of the CSF.[102]

In the Commission's opinion, delaying the adoption of the Final Rule and of Revised Form CPO–PQR, specifically in order to separately collect a filing CPO's LEIs, would lead to an undesirable regulatory outcome. This approach would delay the adoption of Revised Form CPO–PQR significantly, if not indefinitely, thereby depriving filing CPOs of much-anticipated compliance relief, for the purpose of addressing arguably unwarranted (given the recent objective and favorable evaluations of this agency's information security and data protection protocols cited above) data security concerns only applicable to a limited portion of the Form CPO–PQR filing population. The Commission finds that the outcome of this approach would undermine and run counter to the Commission's stated purposes in the Proposal, *i.e.,* revising Form CPO–PQR in a way that supports the Commission's ability to exercise its oversight of CPOs and their operated pools, while reducing reporting burdens for market participants.[103] Taking all of this into account, the Commission concludes that adopting Revised Form CPO–PQR at this time, absent any significant modification as to how the information, including LEIs, is submitted, is appropriate. In conjunction with Commission staff's review of the Revised Form's PSOI within 18–24 months of this Final Rule's Compliance Date, the Commission further directs its staff to determine the feasibility, necessity, and advisability of separating a CPO's LEIs from the rest of Revised Form CPO–PQR in that same time frame. Lastly, the Commission 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.

F. The Revised Form's Definitions, Instructions, and Questions

As discussed above, the Commission also proposed several amendments to the Instructions of the Revised Form.[104] For instance, the Commission proposed to require all reporting CPOs to file the Revised Form quarterly by redefining ''Reporting Period,'' to mean a calendar quarter.[105] Additionally, the Commission proposed significant changes to Instructions 2 and 3, in connection with deleting Form CPO–PQR's Schedules B and C, as well as the elimination of terms related to the various thresholds used for those schedules, *i.e.,* Mid-Sized CPO, Large CPO, and Large Pool.[106] The Commission further queried in the Proposal: Are there ways the Commission could further clarify and refine the reporting instructions for completing Revised Form CPO–PQR in order to provide CPOs with greater certainty that they are completing the form correctly? [107]

i. Quarterly Filing Schedule for All CPOs Completing the Revised Form

The simplified, uniform, quarterly filing schedule proposed for the Revised Form with respect to all reporting CPOs and their operated pools received broad support from commenters. NFA generally expressed strong support for the Commission's efforts to streamline and simplify the reporting regime for reporting CPOs, including the quarterly filing schedule, and stated its belief that, ''the proposal will satisfy the Commission's goal of reducing reporting requirements in a manner that continues to facilitate effective oversight of CPOs and the pools that they operate.'' [108] SIFMA AMG also expressed its support to increase the filing frequency of the Revised Form for all reporting CPOs because of the simplified filing schedule across all CPOs, regardless of size, and the consistency in filing schedules between the Revised Form and NFA Form PQR.[109]

In adopting the changes as proposed, the Commission still favors employing a simpler, more uniform filing requirement for all reporting CPOs. This straightforward filing structure and schedule should facilitate compliance and reporting under § 4.27, thereby enhancing the efficacy of the Commission's oversight of reporting CPOs and their operated pools.

ii. Instructions 3 and 5

Instruction 3 on Form CPO–PQR was carried over, in relevant part, to the Proposal's Revised Form and states: The CPO May Be Required to Aggregate Information Concerning Certain Types of Pools. For the parts of Form CPO–PQR that request information about individual Pools, you must report aggregate information for Parallel Managed Accounts and Master Feeder Arrangements as if each were an individual Pool, but not Parallel Pools. Assets held in Parallel Managed Accounts should be treated as assets of the Pools with which they are aggregated.[110] Paragraphs in Instruction 3 of the existing form describing how to determine if a CPO is a Mid-Sized or Large CPO required to complete Schedules B or C, or if a pool is a Large Pool for purposes of completing Schedule C, were proposed to be deleted from the Revised Form.[111] In the Proposal, the Commission also retained

[100] *See, e.g.,* the Federal Information Security Modernization Act of 2014, 44 U.S.C 3551, *et seq.* (Dec. 18, 2014).

[101] ''Office of the Inspector General Semiannual Report to Congress: October 1, 2019-March 31, 2020,'' CFTC Office of the Inspector General, p. 8 (Mar. 31, 2020), *available at https://www.cftc.gov/media/3946/oig_reporttocongress033120/download.*

[102] ''Federal Information Security Modernization Act of 2014 Annual Report to Congress: Fiscal Year 2019,'' Office of Management and Budget. Although DHS has not yet published the Fiscal Year 2019 report to its website, the Commission notes that it received similar ratings in fiscal year 2018. *See* ''Federal Information Security Modernization Act of 2014 Annual Report to Congress: Fiscal Year 2018,'' Office of Management and Budget, p. 49 (Aug. 23, 2019), *available at https://www.whitehouse.gov/wp-content/uploads/2019/08/FISMA/2018/Report-FINAL-to-post.pdf.* The CSF, developed by the National Institute of Standards and Technology, includes five function areas: ''Identify, Protect, Detect, Respond, and Recover.'' *Id.* at 17. A finding of ''managed and measurable,'' is the fourth highest of five levels and means, ''[q]uantitative and qualitative measures on the effectiveness of policies, procedures, and strategies are collected across the organization and used to assess them and make necessary changes.'' Id. at 31. Per the IG Reporting Metrics, a finding of ''managed and measurable'' ''is considered to be effective at the domain, function, and overall level[s].'' *Id.* at 32.

[103] 2020 CPO–PQR NPRM, 85 FR at 26380 (May 4, 2020).

[104] 2020 CPO–PQR NPRM, 85 FR at 26378 (May 4, 2020).

[105] 2020 CPO–PQR NPRM, 85 FR at 26396 (May 4, 2020).

[106] 2020 CPO–PQR NPRM, 85 FR at 26391 (May 4, 2020).

[107] 2020 CPO–PQR NPRM, 85 FR at 26384 (May 4, 2020).

[108] NFA, at 1.

[109] SIFMA AMG, at 4.

[110] 2020 CPO–PQR NPRM, 85 FR at 26391 (May 4, 2020) (proposing Instruction 3 of the Revised Form).

[111] 2020 CPO–PQR NPRM, 85 FR at 26391 (May 4, 2020).

Instruction 5, which read as follows: I am required to aggregate funds or accounts to determine whether I meet a reporting threshold, or I am electing to aggregate funds for reporting purposes. How do I ''aggregate'' funds or accounts for these purposes? [112] Instruction 5 then provided substantive examples on how to aggregate funds as if they were one pool with respect to parallel managed accounts (PMAs) and/or Master-Feeder Arrangements.[113]

NFA responded to the Commission's question on additional clarifications to the Revised Form's instructions, stating that, if the Revised Form is adopted as proposed, the reporting requirements for CPOs will no longer be dependent on reporting thresholds, and therefore, a detailed instruction on PMAs is not necessary.[114] NFA recommended accordingly that the Commission ''consider whether these instructions and the related definitional terms should be eliminated.'' [115] SIFMA AMG also stated that the purpose of aggregating pool assets would no longer be relevant under the Revised Form, and it would be unclear what these instructions mean under the Revised Form, absent those reporting thresholds.[116] Therefore, SIFMA AMG also requested the Commission remove Instructions 3 and 5 related to PMAs, given the proposed deletion of Schedules B and C and the associated thresholds for CPOs and pools. SIFMA AMG, like NFA, believed that the concept of PMAs and pool asset aggregation, as a whole, is no longer relevant to completing the Revised Form.[117] SIFMA AMG also recommended the Commission revise the Revised Form further to permit the filing of Master-Feeder Arrangements as one pool, rather than requiring each fund to report separately.[118] Finally, SIFMA AMG suggested the Commission adopt the approach taken in Joint Form PF with respect to Master-Feeder Arrangements, specifically in Joint Form PF Instruction 5.[119]

The Commission generally agrees with commenters with respect to PMAs and the remaining references to reporting thresholds in the proposed Revised Form. Consequently, the Commission believes that much of the language in these instructions should be deleted for internal consistency in the Revised Form. Therefore, the Commission is revising Instruction 3 to remove all references to PMAs and Parallel Pools, focusing solely on reporting information concerning pools in a Master-Feeder Arrangement. Thus, Instruction 3 in the Revised Form only addresses how Master-Feeder Arrangements should be reported.[120]

With respect to the treatment of Master-Feeder Arrangements under the Revised Form, commenters raise an interesting question as to the proper requirements to impose on structures meeting the form's definition of a Master-Feeder Arrangement. Specifically, the form provides that a Master-Feeder Arrangement is ''an arrangement in which one or more funds (''Feeder Funds'') invest all or substantially all of their assets in a single fund (''Master Fund'').'' [121] This definition encompasses many variations of fund complexes 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. The Commission believes that, to adequately consider the propriety of permitting all such fund structures to consolidate their filings on the Revised Form, additional analysis is required to determine the appropriate parameters to impose on such relief. Therefore, the Commission declines to change the reporting approach for Master-Feeder Arrangements at this time and instead, instructs staff to engage in such an analysis to determine what modifications may be needed to provide for consolidated reporting where appropriate.

Upon consideration of the comments, the Commission is deleting Instruction 5 in its entirety because this instruction was originally included to explain how a reporting CPO should determine if it is a Large, Mid-Sized, or Small CPO, and what the resulting scope of its filing should be, *i.e.,* whether Schedules B or C (or both) were required. Accordingly, because Instruction 5 is no longer applicable, the Commission has removed it from the Revised Form.

iii. Instruction 4

The Proposal also retained Instruction 4, which provided the following: I advise a Pool that invests in other Pools or funds (*e.g.,* a ''fund of funds''). How should I treat these investments for purposes of Form CPO–PQR? [122] The Instruction states, in pertinent part, that for purposes of this Form CPO–PQR, you may disregard any Pool's equity investments in other Pools.[123] NFA requested that the Commission ''consider eliminating the guidance in Instruction 4 regarding the 'investments in other Pools generally' heading'' because that guidance allows a CPO to disregard a pool's equity investments in other pools, and NFA would like these assets included.[124] This reporting helps NFA ''identify pool assets that may also be reported by another pool or fund.'' [125] However, IAA disagreed ''with any recommendation to eliminate Instruction 4,'' because IAA would consider that ''a significant change in how CPOs currently report on the form.'' [126] Consequently, IAA stated that this particular change should be considered, if at all, ''as part of a formal rulemaking, with notice and comment.'' [127]

Instruction 4, in the original form, was generally intended to provide clear instruction that investments in other pools should not be included in a specific reporting CPO's or operated pool's applicable reporting threshold. For example, a pool's fund-of-funds investments, in which the reporting CPO may have little to no control over the management or performance of those assets, should not cause a pool to be considered a ''Large Pool,'' which would require additional, highly detailed reporting with respect to that pool. Similarly, a reporting CPO should not also have been categorized as a Large or Mid-Sized CPO, with consequences to the scope and breadth of their filings, solely due to the fact that its aggregated pool AUM included

[112] 2020 CPO–PQR NPRM, 85 FR at 26392 (May 4, 2020) (proposing Instruction 5 of the Revised Form).

[113] *Id.*

[114] NFA, at 3.

[115] *Id.*

[116] SIFMA AMG, at 8–9 (stating its belief that these instructions were borrowed from Joint Form PF and the main function of this instruction is to aggregate pool assets of a CPO, for the purpose of determining whether a firm is a Large, Mid-Sized, or Small CPO, and whether a pool is a Large Pool).

[117] *Id.*

[118] *Id.* at 9.

[119] SIFMA AMG, at 11–13 (explaining further that, ''[t]o align with the Commission's proposal to require pool LEIs on the CPO–PQR, we are suggesting that should a single filing be permitted for Master-Feeder Arrangements, a CPO should provide the LEI of a Master Fund'').

[120] *See infra* Revised Form CPO–PQR, ''Reporting Instructions,'' no. 3.

[121] 17 CFR part 4, app. A, ''Definitions of Terms,'' ''Master-Feeder Arrangement.''

[122] 2020 CPO–PQR NPRM, 85 FR at 26391–92 (May 4, 2020) (proposing to retain Instruction 4 in the Revised Form).

[123] *Id.*

[124] NFA, at 3.

[125] *Id.* (emphasizing that NFA would like to see these ''other pool investments'' reflected in multiple answers in the Revised Form, in particular to Questions 2 and 8 on assets under management, Question 9 for the calculation of monthly rates of return, and the PSOI in Question 11 on investments in other funds).

[126] IAA, at 6, n.28.

[127] IAA, at 6.

investments in other pools that it does not operate.

Although NFA presents a compelling argument regarding its anticipated use of information regarding pools' investments in other pools, the Commission has 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. The Commission understands from IAA that this would be a significant change in how CPOs of pools that invest in other pools engage with the form and could be quite burdensome for CPOs that may be reporting such information for the first time. Moreover, the 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. Therefore, consistent with Instruction 4 as originally adopted, the Commission will continue to require that such investments be included in a reporting CPO's response to Question 10 in the current form, which solicits information regarding the pool's statement of changes concerning AUM, and which has been redesignated as Question 8 in the Revised Form, as well as in the PSOI in the Revised Form, but will not otherwise require such CPO to include a pool's investments in other pools in its responses to the Revised Form.

The Final Rule's revisions to Instruction 4 also require the reporting CPO to include such investments in other pools in the PSOI. In the Proposal, the Commission amended the form by removing detailed pool information set out in Schedules B and C, but retained the PSOI, which has now become the only section on Revised Form CPO–PQR that provides detailed pool investment information. In the original form, the PSOI supplemented the rest of the information provided; going forward, with the amendments removing Schedules B and C, the PSOI's value and status has changed, as 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. Therefore, 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. The Commission further believes that requiring these investments to be listed in the PSOI is necessary for it to make full use of the information provided on Question 8 in the Revised Form, for which such investments must also be included. 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. 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.

With respect to pools that invest substantially all of their assets in other pools, their investments in other pools were required to be included in the reporting CPO's responses to Schedule A of Form CPO–PQR. Because under the Revised Form, Schedule A comprises the entirety of the Revised Form, with the exception of the addition of the PSOI, the Commission is revising Instruction 4 to provide that such other pool investments must be reported on in the Revised Form.

iv. Definition of ''Broker''

Like the original iteration of the form, the Proposal defined ''broker'' as any entity that provides clearing, prime brokerage, or similar services to the Pool.[128] IAA recommended that the Commission clarify whether a ''broker'' in the Revised Form refers to only commodity-related brokers, or includes non-commodity brokers.[129] IAA further explained that CPOs may have many relationships with executing brokers for non-commodity interest transactions, and absent a clarification of this definition, this prompt would constitute a substantial burden for CPOs to include all brokers in the Revised Form.[130] Finally, IAA queried what regulatory interest or benefit the Commission would gain from a broad definition of ''broker,'' and concluded that, ''we do not believe this information is necessary to implement [Revised] Form CPO–PQR or to assist the CFTC in its oversight of the commodities markets.'' [131] ICI also supported clarifying the ''broker'' definition in this manner, and limiting the responses to the Revised Form ''to brokers that a CPO uses with respect to commodity interest transactions,'' because, ICI explained, such an approach would be consistent with the Proposal's stated purpose of refining reporting, ''in order to better monitor the commodity interest markets.'' [132]

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,[133] and has not limited the definition of the term ''broker,'' as used either in the current form or the Revised Form, in any manner. Moreover, 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.[134] Consistent with this position, which is supported by the plain meaning of the Form CPO–PQR's definition of ''broker,'' 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. This is also 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.

The Commission notes elsewhere in this release that 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.[135] This fact has been 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. Therefore, the Commission finds that collecting data on CPO and pool activity outside of commodity interests is also of general

[128] 2020 CPO–PQR NPRM, 85 FR at 26394 (May 4, 2020).

[129] IAA, at 5.

[130] *Id.* (stating that large numbers of non-commodity interest transactions and differences in brokerage firm names could make answering this question completely particularly difficult for CPOs that have hundreds of relationships with approved brokers for their non-commodity interest trading).

[131] IAA, at 6. IAA further stated its expectation that, should the Commission clarify the ''broker'' definition to refer only to brokers involved in commodity interest transactions, then NFA would likewise adopt an identical interpretation for NFA Form PQR. *Id.*

[132] ICI, at 5.

[133] *See* 17 CFR part 4, app. A, ''Definitions of Terms,'' ''broker'' (defining ''broker'' as ''an entity that provides clearing, prime brokerage or similar services to the Pool'').

[134] *See, e.g.,* 2015 CPO–PQR FAQs, in which Commission staff further echoed this broad understanding of ''broker'' in its discussion of pool custodians, marketers, and underwriters.

[135] *See supra* II.C.

regulatory interest and concern to the Commission with respect to its effective oversight of reporting CPOs and their operated pools. The Commission has concluded that limiting the brokers reported solely to those used in connection with commodity interest transactions would not be conducive to its effective oversight, would be a significant departure from its clear past positions and interpretations of the form, and further, 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. Therefore, after considering the comments, the Commission is not changing the scope of the definition of the term ''brokers,'' and confirms, in the context of the Revised Form as adopted, that the term is not limited to those brokers used in connection with commodity interest transactions.

v. Elimination of Questions Regarding Auditors and Marketers

The Proposal also would remove questions regarding a CPO's auditors and marketers employed for its operated pools because the Commission and NFA have access to this information through other regulatory sources, ''which the Commission preliminarily believes obviates the need for obtaining this information through Revised Form CPO–PQR.'' [136] SIFMA AMG specifically supported the removal of these questions, stating this proposed deletion is especially appropriate where the information is already required elsewhere by other regulations or filings, and is therefore, easily accessible to the CFTC and NFA.[137] With respect to questions regarding a CPO's auditors or marketers, the Commission is adopting the Revised Form as proposed, omitting those questions, for the reasons articulated in the Proposal.

vi. FAQs and Glossary

The Revised Form includes a list of ''Defined Terms,'' which was entitled ''Definitions of Terms'' in its prior iteration. In 2015, Commission staff published responses to frequently asked questions (the 2015 CPO–PQR FAQs, or FAQs) providing detailed answers to questions from CPOs attempting to complete Form CPO–PQR.[138] SIFMA AMG requested that the Commission align the 2015 CPO–PQR FAQs with the Revised Form, such that these items can be clarified and updated for completeness and accuracy.[139] IAA recommended that the Commission improve the clarity of the FAQs by removing language that would not apply to the Revised Form, specifically referencing PMAs, parallel pool structures, and aggregating funds for reporting threshold purposes.[140] MFA suggested the Commission amend the instructions in the Revised Form to ''incorporate relevant, substantive FAQs into the instructions of Form CPO–PQR.'' [141] Furthermore, SIFMA AMG requested an additional change to the FAQs to create a complete Glossary of Terms for use by filers of the Revised Form.[142]

The Commission understands commenters' concerns that the form will be significantly revised by the Final Rule, resulting in large portions of the 2015 CPO–PQR FAQs becoming obsolete or inaccurate, absent commensurate revisions. Therefore, while reviewing comments and developing the Revised Form for the Commission's consideration, Commission staff has also reviewed the 2015 CPO–PQR FAQs in light of the revisions adopted herein. The Commission expects staff to complete this review and to publish updated FAQs regarding the Revised Form, as soon as practicable, following the adoption of the Final Rule.

The Commission is also making some technical changes to regulatory citations and cross-references in the Revised Form, and further clarifying its definitions and instructions to facilitate completion of the Revised Form. The technical clarifications include revising the definition of ''GAAP'' in the Revised Form to reflect the ability of reporting CPOs to use certain ''alternative accounting principles, standards, or practices'' currently permitted under § 4.27(c)(2), which is redesignated by the Final Rule as § 4.27(c)(4). The Commission is also reorganizing the Revised Form, so that the Defined Terms precede its Instructions, which the Commission hopes will facilitate understanding of the Revised Form.

G. Substituted Compliance

The Proposal also included amendments to § 4.27 that would allow CPOs to file NFA Form PQR in lieu of filing the Revised Form with the Commission,[143] and eliminate the ability of dually registered CPO-investment advisers filing Joint Form PF to file such form in lieu of the Revised Form.[144]

i. NFA Form PQR

In general, commenters supported the proposed amendment permitting CPOs to file NFA Form PQR in lieu of the Revised Form for the purpose of improving filing efficiencies.[145] IAA commended the Commission ''for offering CPOs additional filing efficiencies without compromising the Commission's ability to obtain affected data.'' [146] IAA further recommended that the Commission add a specific instruction to the Revised Form to reflect this allowing the filing of NFA Form PQR as substituted compliance.[147] IAA stated that by explaining this substituted compliance for NFA Form PQR within the Revised Form's instructions, the Commission would ''assist CPOs that frequently review the instructions for the form in addition to or instead of the text of the rule to ensure the filing is accurate and complete.'' [148] Additionally, as noted with respect to the proposed uniform, quarterly filing schedule above, SIFMA AMG expressed its strong support for a single filing schedule across the Revised Form and NFA Form PQR, as well as for the adoption of substituted compliance with respect to NFA Form PQR.[149]

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 Commission recognizes, however, that absent a condition requiring NFA Form PQR to be substantively consistent with Form CPO–PQR on an ongoing basis, it is possible for the two forms to diverge

[136] 2020 CPO–PQR NPRM, 85 FR at 26383 (May 4, 2020).

[137] SIFMA AMG, at 7.

[138] 2015 CPO–PQR FAQs.

[139] SIFMA AMG, at 17 (recommending further the creation of a centralized ''Glossary of Terms'' for use by filers of the Revised Form and/or NFA Form PQR). Currently, SIFMA AMG states that some definitions may be found in NFA Form PQR, while others are solely in the Revised Form, and still other definitions or information solely published in the FAQs. SIFMA AMG would like to see this information centralized and easily accessible for CPOs filing the Revised Form. *Id.*

[140] IAA, at 6.

[141] MFA, at 3. MFA stated that otherwise, Commission staff would need to separately issue FAQs with respect to the adopted Revised Form to replace the existing 2015 CPO–PQR FAQs, which MFA views as less effective than centralizing and incorporating FAQs and instruction examples in the Revised Form. *Id.* at 4.

[142] SIFMA AMG, at 17.

[143] 2020 CPO–PQR NPRM, 85 FR at 26378 (May 4, 2020).

[144] 2020 CPO–PQR NPRM, 85 FR at 26378 (May 4, 2020) (citing the lack of similarities between Joint Form PF and the Proposal's Revised Form).

[145] Barnard, at 1–2; Hunter, at 1; IAA, at 4.

[146] IAA, at 4.

[147] IAA, at 6 (requesting that ''the instruction state that a CPO 'required to file NFA Form PQR with the NFA for the reporting period may make the NFA filing in lieu of the Form CPO–PQR report required under Rule 4.27(c)'''').

[148] IAA, at 6.

[149] SIFMA AMG, at 15–16.

over time while still being eligible for substituted compliance, and that this could undermine the Commission's collection of vital information regarding reporting CPOs and their operated pools. Therefore, the Commission will review any proposed changes to NFA Form PQR consistent with the procedure set forth in CEA section 17(j).[150] This will ensure the continued alignment of the forms. Because any alterations to NFA Form PQR would be accomplished through amendments to NFA membership rules, which are subject to review by Commission staff and either notice to, or review by, the Commission, ongoing monitoring of the continued substantive consistency of the forms should be easily implemented through this existing process.

Therefore, the Commission is adopting, as proposed, the amendments to § 4.27(c)(2) clearly establishing substituted compliance for the Revised Form with respect to NFA Form PQR. Finally, upon consideration of the comments, the Commission is adding a new Instruction 2 in the Revised Form that explicitly states that to the extent a CPO has timely filed the National Futures Association's Form PQR, such filing shall be deemed to satisfy this Form CPO–PQR.[151]

ii. Joint Form PF

The decision to rescind substituted compliance with respect to Joint Form PF elicited differing opinions from commenters. For instance, NFA did not support the alternative of filing all or part of Joint Form PF, in lieu of the Revised Form, because Joint Form PF is at least as burdensome as the Commission's form, and further, it includes ''significantly more information than NFA needs.'' [152] ICI also disagreed with replacing the form with all or part of Joint Form PF because that would impose additional burdens on dually registered CPOs, who are not currently required to file Joint Form PF for their registered funds, and therefore, would be required to adapt their current systems and processes to Joint Form PF.[153]

Conversely, AIMA requested that the Commission and NFA allow dually registered CPOs to file Joint Form PF in satisfaction of the reporting obligations in § 4.27 and NFA Compliance Rule 2–46, because this approach would reduce the reporting burden, ''while still assuring NFA has the necessary information from a supervisory perspective.'' [154] Rather than eliminate § 4.27(d) entirely, SIFMA AMG requested that the Commission preserve substituted compliance with respect to Joint Form PF on a voluntary basis because some of its members believe there would be efficiencies in allowing Joint Form PF to be filed for both private fund and non-private fund pools.[155]

The Commission specifically asked in the Proposal, For CPOs dually-registered with the CFTC and the SEC, if Form CPO–PQR is amended as proposed, would you cease reporting data for these pools on Joint Form PF?'' [156] AIMA responded that these CPOs are likely to continue including them rather than incurring the costs of a separate filing obligation, if ''the inclusion of such non-private fund pools on Form PF can be treated as satisfaction of separate Form CPO–PQR and NFA Form PQR filing obligations, and those pools have been included in the Form PF previously.'' [157] ICI argued that, although adopting the Proposal may mean less data with respect to commodity pools would be reported on Joint Form PF, that prospect, in general, should not be the driving factor in this policy decision—rather, the Commission should focus on whether the Revised Form elicits the information it needs and will use in pursuit of its regulatory mission with respect to CPOs and their pools.[158] SIFMA AMG noted, however, that it generally supports the elimination of detailed reporting requirements for CPOs, and it does not believe there would be regulatory harm, if information is no longer being provided on Joint Form PF with respect to non-private fund pools.[159]

After considering the comments received, the Commission is adopting the amendments to § 4.27, eliminating the substituted compliance for a dually registered CPO-investment adviser completing Joint Form PF in lieu of the Revised Form, as proposed for the reasons stated in the Proposal.[160] The original § 4.27(d), which provided that substituted compliance mechanism with respect to Joint Form PF, is no longer appropriate because: (1) The Revised Form will differ from Joint Form PF, both in substance and filing schedule; and (2) continuing to accept Joint Form PF in lieu of the Revised Form would frustrate an intended and clearly stated purpose of the Proposal, *i.e.,* is to enhance and better coordinate the Commission's own internal data streams to more efficiently and effectively oversee its registered, reporting CPOs and their operated pools.

iii. Substituted Compliance for CPOs of Registered Investment Companies

ICI also commented particularly on the burdens imposed by the proposed amendments on CPOs of registered investment companies (RICs). Specifically, ICI requested that, to eliminate duplicative reporting between the SEC and CFTC regimes applicable to the operations of RICs, the Commission consider adopting a substituted compliance approach with respect to periodic reporting by CPOs of RICs, similar to its 2013 rulemaking to harmonize RIC and CPO/pool regulatory requirements.[161] Although the Commission noted in the Proposal that RICs are subject to comprehensive regulation by the SEC, it did not discuss the possibility of deferring to the SEC with respect to collecting information from CPOs of RICs. Under these circumstances, the Commission would be unable to address the issue of providing additional substituted compliance to CPOs of RICs without re-proposing and reopening the comment period for the NPRM.[162]

Moreover, the Commission believes that the suggested approach by ICI would simply not be practical. As explained by ICI, RICs file numerous

[150] 7 U.S.C. 21(j).

[151] *See infra* Revised Form CPO–PQR, ''Reporting Instructions,'' no. 2.

[152] NFA, at 2 (stating there is no need to ensure similar reporting obligations between the SEC and CFTC, where ''the Commission believes it will have sufficient tools with [the Revised Form] and other data streams to effectively oversee registered CPOs and the commodity interest markets''). NFA noted further that, even if the CFTC were to rescind Form CPO–PQR in favor of Joint Form PF, NFA would still require its CPO Members to file NFA Form PQR, ''which is tailored to NFA's needs and is not a significant burden on Members to complete.'' *Id.*

[153] ICI, at 5 (agreeing that ''the proposed changes to Form CPO–PQR, relative to the alternatives, would permit the Commission to discharge its regulatory duties with respect to CPOs and their operated pools that might have the greatest impact on market and systemic risk, while easing reporting obligations on a significant number of CPOs'').

[154] AIMA, at 2.

[155] SIFMA AMG, at 16.

[156] 2020 CPO–PQR NPRM, 85 FR at 26384 (May 4, 2020).

[157] AIMA, at 2 (noting that if the Commission decides against allowing Joint Form PF as substituted compliance for § 4.27, ''it is likely that non-private fund commodity pools will no longer be included in Form PF to reduce the filing burden as far as possible'').

[158] ICI, at 5–6.

[159] SIFMA AMG, at 16.

[160] 2020 CPO–PQR NPRM, 85 FR at 26383 (May 4, 2020).

[161] ICI, at 2–3, n.6. ICI suggested that the CFTC use the SEC filings and reports already filed by CPO/IAs of RICs, which require disclosure of LEIs, to glean data on the commodity interest activities of these operators and pools. *Id. See also* Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 78 FR 52308 (Aug. 22, 2013).

[162] 5 U.S.C. 553(c).

regulatory filings, [163] each of which are designed for a particular purpose by the SEC. Incorporating those filings into the Commission's filing regime via substituted compliance would be difficult to accomplish and would require the devotion of significant time and resources by both the Commission and NFA. None of these filings, however, is a direct analog to the Revised Form, which adds to the complexity of any undertaking to create a substituted compliance regime with respect to those filings. Finally, the Commission has identified limited benefit in providing such relief, if it were possible, because such CPOs would remain subject to NFA's independent reporting requirement in NFA Form PQR. Therefore, the Commission declines to provide additional substituted compliance for CPOs of RICs in the amendments to § 4.27 adopted by the Final Rule.

H. Compliance Date

MFA requested that the Commission consider providing registered CPOs with six months from the adoption of a Final Rule with respect to Form CPO–PQR to permit reporting CPOs to make ''coding and software changes'' to accommodate Revised Form CPO–PQR's requirements.[164] The Commission has determined not to require filing of reports on the Revised Form for the reporting period ending December 31, 2020. However, to the extent reporting CPOs are required to file NFA Form PQR for the reporting period ending December 31, 2020, that filing must still be submitted in accordance with applicable NFA membership rules. Therefore, reporting CPOs will be required to submit the Revised Form sixty days after the first 2021 reporting period ends on March 31, 2021, making initial compliance with the Revised Form due on May 30, 2021. The Commission has determined that this schedule allows for adequate time for CPOs and NFA to prepare their systems and procedures with respect to the Revised Form.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. Each Federal agency is required to conduct an initial and final regulatory flexibility analysis for each rule of general applicability for which the agency issues a general notice of proposed rulemaking.[165]

The Final Rule adopted by the Commission will affect only persons registered or required to be registered as CPOs. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the requirements of the RFA.[166] With respect to CPOs, the Commission previously has determined that a CPO is a small entity for purposes of the RFA, if it meets the criteria for an exemption from registration under § 4.13(a)(2).[167] Because the Final Rule generally applies to persons registered or required to be registered as CPOs with the Commission, the RFA is not applicable to the Final Rule.[168]

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

i. Overview

The Paperwork Reduction Act (PRA) imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[169] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (OMB). The amendments set forth in the Proposal would result in a collection of information within the meaning of the PRA, as discussed below. The Commission therefore submitted the Proposal to OMB for review. The Proposal also invited the public and other Federal agencies to comment on any aspect of the proposed information collection requirements discussed therein; [170] however, no such comments were received.

The Final Rule affects a single collection of information for which the Commission has previously received a control number from OMB. This collection of information is, ''Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB control number 3038–0005'' (Collection 3038–0005). Collection 3038–0005 primarily accounts for the burden associated with part 4 of the Commission's regulations that concern compliance obligations generally applicable to CPOs and commodity trading advisors (CTAs), as well as certain enumerated exemptions from registration as such, exclusions from those definitions, and available relief from compliance with certain regulatory requirements.

As discussed above, the Final Rule includes substantive changes to the current form, such as (1) amending Schedule A, (which, together with the PSOI that is currently part of Schedule B, will constitute the entirety of the Revised Form), to add a requirement to disclose the LEIs (if any) for each reporting CPO and operated pool; (2) moving Schedule B's ''Schedule of Investments'' section to Schedule A; and (3) rescinding the remainder of the current form's current Schedules B and C. Additionally, § 4.27(c)(2) will now permit the filing of NFA Form PQR with NFA in lieu of reporting CPOs filing the Revised Form with the Commission. Therefore, the Commission is amending Collection 3038–0005 to be consistent with the finalized restructuring of the Revised Form. Specifically, the Commission is amending the collection to reflect the expected adjustment in burden hours for registered CPOs filing the Revised Form for their operated pools, and also to include in the collection, a reporting CPO's ability to file NFA Form PQR in lieu of filing the Revised Form, provided that it is determined to be substantively consistent with the Revised Form.

This Final Rule is not expected to impose any significant new burdens on CPOs, but rather will constitute a

[163] ICI, at 2, n.7. These reports include N–PORT and N–CEN and address information about the RIC's portfolio, investment policies and practices, and other information. *Id.*

[164] MFA, at 4.

[165] 5 U.S.C. 601 *et seq.*

[166] *See, e.g.,* Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18620 (Apr. 30, 1982).

[167] *Id.* at 47 FR 18619–20 (Apr. 30, 1982). Commission regulation at § 4.13(a)(2) exempts a person from registration as a CPO when: (1) None of the pools operated by that person has more than 15 participants at any time, and (2) when excluding certain sources of funding, the total gross capital contributions the person receives for units of participation in all of the pools it operates or intends to operate do not, in the aggregate, exceed $400,000. 17 CFR 4.13(a)(2).

[168] Moreover, § 4.27(b)(2)(i) specifically excludes from the obligation to file Form CPO–PQR any CPO that operates only pools for which it maintains . . . an exemption from registration as a commodity pool operator as provided in § 4.13.

[169] 44 U.S.C. 3501, *et seq.*

[170] 2020 CPO–PQR NPRM, 85 FR at 26386 (May 4, 2020).

substantial reduction in reporting burden for most impacted registrants. Approximately half of all registered CPOs are currently considered Mid-Sized CPOs or Large CPOs under the existing form and filing regime. Due to the Final Rule and its significant revisions to the form, these reporting CPOs will be required to answer far fewer questions, when compared to the historical Form CPO–PQR's requirements.[171] CPOs classified as Small CPOs may experience a slight increase in burden, due to an increase in the frequency of reporting to a quarterly basis rather than annually, and the addition of the PSOI to the Revised Form for all reporting CPOs. The Commission believes, however, that for many of these CPOs, this burden increase will practically be slight or very technical in nature, because all reporting CPOs currently complete NFA Form PQR, which also includes a schedule of investments identical to the Revised Form's PSOI, on a quarterly basis pursuant to NFA membership rules. The Commission anticipates that going forward, pursuant to amended § 4.27(c)(2), reporting CPOs, regardless of their size or classification under the original form, will complete and file NFA Form PQR in lieu of the Revised Form, which will further allow them to maximize efficiency by fulfilling both NFA and CFTC reporting requirements with one filing.[172]

Therefore, the Commission infers that the Final Rule and the Revised Form will generally prove to be less burdensome for reporting CPOs, or at least, will not create any new net burdens for them. As a result, the Commission is amending Collection 3038–0005, as proposed, to reflect the elimination of reporting thresholds and classifications of CPO by size, as well as the multiple Schedules in the original form; to account for the uniform quarterly filing schedule adopted for all reporting CPOs for their operated pools; and to adopt an overall estimated burden for all filings that includes the retained questions from Schedule A, as well as the adopted PSOI (from original Schedule B) discussed above. Although the Final Rule results in an increase in the burden hours associated with completing the Revised Form, the Commission anticipates that, in practice, reporting CPOs will either experience no change in their burden, or some decrease in burden. As discussed above, the Commission has determined to accept the filing of NFA Form PQR in lieu of filing the Revised Form. Because any data on NFA Form PQR submitted as substituted compliance for required § 4.27 reporting would thereby become data collected by the Commission, the burden associated with NFA Form PQR must also be included in a collection of information with an OMB control number. Therefore, the Commission is amending the current burden associated with OMB Control Number 3038–0005 to also reflect the burden resulting from NFA Form PQR, which the Commission estimates to be substantively identical to that derived from the Revised Form.[173]

Despite the fact that the Commission will accept the filing of NFA Form PQR in lieu of a filing on the Revised Form, the Commission has determined that it should retain its own form for data collection purposes and to ensure that it retains the ability to perform its regulatory duties and satisfy its data needs regarding CPOs in the future on a unilateral basis, if necessary. Moreover, the Commission anticipates that it will incorporate the information collected on the Revised Form more consistently with its other data streams. To that end, retaining its own form independent of NFA confirms and preserves the Commission's independent and primary role in developing its regulatory and compliance program with respect to registered CPOs and their pools generally, notwithstanding its history of delegating certain registration and compliance functions to NFA. Furthermore, retaining the Revised Form should ensure that the public is able to exercise its rights to receive notice and provide comment as to the content and structure of the Revised Form, as required by the Administrative Procedure Act, and consistent with prior practice for the original form.[174] Therefore, the Commission concludes that the final Revised Form announced today in the Final Rule is not unnecessarily duplicative to information otherwise reasonably accessible to the Commission.

ii. Revisions to the Collection of Information: OMB Control Number 3038–0005

Collection 3038–0005 is currently in force with its control number having been provided by OMB, and it was renewed recently on January 30, 2019.[175] As stated above, Collection 3038–0005 governs responses made pursuant to part 4 of the Commission's regulations, pertaining to the operations of CPOs and CTAs, including the required responses of registered CPOs on Form CPO–PQR pursuant to § 4.27. Generally, the Commission is adjusting, as discussed below, the information collection to reflect an increase in the burden hours associated with the collection of information in the Revised Form. The Commission anticipates, however, that (1) CPOs currently categorized as either Mid-Sized or Large CPOs are expected to experience a substantial reduction in burden relative to the current filing requirements under § 4.27 and Form CPO–PQR; and (2) CPOs considered Small CPOs under the current filing requirements will experience no practical or substantial increase in burden because, like all other registered CPOs, they are currently required to file NFA Form PQR, which already includes a schedule of investments identical to the Revised Form's PSOI, on a quarterly basis, and such Small CPOs, as well as all other reporting CPOs, will be permitted to file NFA Form PQR in lieu of filing the Revised Form.

The currently approved total burden associated with Collection 3038–0005, in the aggregate, is as follows:

Estimated number of respondents: 45,097.

Annual responses for all respondents: 118,824.

Estimated average hours per response: 3.16.[176]

Annual reporting burden: 375,484.

The portion of the aggregate burden that is derived from the current Form CPO–PQR filing requirements is as follows:

Schedule A (for non-Large CPOs and Large CPOs filing Joint Form PF):

Estimated number of respondents: 1,450.

Annual responses for all respondents: 1,450.

Estimated average hours per response: 6.

Annual reporting burden: 8,700.

Schedule A (for Large CPOs not filing Joint Form PF):

Estimated number of respondents: 250.

[171] *See, e.g., supra* pt. II.B (discussing the elimination of Schedules B and C from the Revised Form).

[172] *See infra* § 4.27(c)(2), as amended by this Final Rule (permitting the filing of NFA Form PQR in lieu of filing the Revised Form with the Commission).

[173] As stated in the Proposal, ''the PRA estimates . . . assume that all registered CPOs will either file Revised Form CPO–PQR on a quarterly basis, or NFA Form PQR, but in no event will a CPO be required to file both.'' 2020 CPO–PQR NPRM, 85 FR at 26386 (May 4, 2020).

[174] APA, 5 U.S.C. 553(c).

[175] *See* Notice of Office of Management and Budget Action, OMB Control No. 3038–0005, *available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201701-3038-005.*

[176] The Commission rounded the average hours per response to the second decimal place for ease of presentation.

Annual responses for all respondents: 1,000.

Estimated average hours per response: 6.

Annual reporting burden: 6,000.

Schedule B (for Mid-Sized CPOs):

Estimated number of respondents: 400.

Annual responses for all respondents: 400.

Estimated average hours per response: 4.

Annual reporting burden: 1,600.

Schedule B (for Large CPOs not filing Joint Form PF):

Estimated number of respondents: 250.

Annual responses for all respondents: 1,000.

Estimated average hours per response: 4.

Annual reporting burden: 4,000.

Schedule C (for Large CPOs not filing Joint Form PF):

Estimated number of respondents: 250.

Annual responses for all respondents: 1,000.

Estimated average hours per response: 18.

Annual reporting burden: 18,000.

The burden associated with NFA Form PQR was proposed as follows:

Estimated number of respondents: 1,700.

Annual responses by each respondent: 6,800.

Estimated average hours per response: 8.

Annual reporting burden: 54,400.

Total annual reporting burden for all CPOs for current Form CPO–PQR and NFA

Form PQR: 86,900.

The Commission will no longer be estimating burden hours according to each individual Schedule of the form, because, pursuant to the Final Rule, the Revised Form will not have schedules. Therefore, the Commission is amending the collection for Form CPO–PQR compliance to be a single burden-hours estimate for each reporting CPO completing the Revised Form in its entirety.[177] As noted above, the Commission is also requiring that the Revised Form be filed quarterly by each reporting CPO, regardless of the size of their operations, which would result in four (4) annual responses by each respondent. Further, in the Commission's experience, the PSOI comprised a considerable portion of the burden hours previously associated with completing Schedule B, depending on the complexity of a reporting CPO's operations and the number of pools it operated. Thus, the Commission is estimating average hours per response in such a way as to ensure that burden continues to be counted. As noted above, although the estimated hours per response is expected to increase due to the retention of the PSOI and the filing frequency increasing to quarterly for many reporting CPOs, CPOs should not practically experience an increase in burden. The Commission comes to this conclusion because all reporting CPOs are already required to provide a schedule of investments identical to the PSOI, as part of their existing NFA Form PQR filings, which NFA membership rules require on a quarterly basis, and because the Commission expects that those CPOs will continue to make such filings to take advantage of the substituted compliance for NFA Form PQR with respect to the Revised Form, as adopted by the Final Rule.

Therefore, the Commission estimates the burden to registered CPOs for completing the Revised Form and NFA Form PQR, because of the option to file this form in lieu of the Revised Form, to be as follows:

For the Revised Form and NFA Form PQR for All Registered CPOs:

Estimated number of respondents: 1,700.

Annual responses by each respondent: 6,800.

Estimated average hours per response: 8.

Annual reporting burden: 54,400.

The new total burden associated with Collection 3038–0005, in the aggregate, reflecting the adjustment in burden associated with § 4.27 and the Revised Form, is as follows:

Estimated number of respondents: 43,062.

Annual responses for all respondents: 113,980.

Estimated average hours per response: 3.25.

Annual reporting burden: 370,467.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its discretionary actions before promulgating a regulation under the CEA or issuing certain orders.[178] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of swaps markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the CEA section 15(a) considerations.

As discussed above, the Commission is finalizing amendments to Form CPO–PQR that would significantly reduce the amount of reporting required thereunder. Specifically, the Final Rule: (1) Eliminates the pool-specific reporting requirements in existing Schedules B and C of Form CPO–PQR, other than the PSOI (question 6 of Schedule B); (2) amends the information in existing Schedule A of the form to request LEIs for CPOs and their operated pools and to eliminate questions regarding the pool's auditors and marketers; (3) requires all reporting CPOs to submit all information retained in the Revised Form on a quarterly basis; and (4) allows CPOs to file NFA Form PQR in lieu of filing the Revised Form, provided that NFA amends NFA Form PQR to include LEIs. In the sections that follow, the Commission considers the various costs and benefits associated with each aspect of the Final Rule. The baseline against which these costs and benefits are compared is the regulatory status quo, represented by Form CPO–PQR as codified in appendix A to part 4 prior to these amendments.

The consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with some leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the discussion of costs and benefits below refers to the effects of this proposal on all activity subject to the proposed and amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[179] Some CPOs are located outside of the United States.

[177] Additionally, the Commission will be accepting the filing of NFA Form PQR in lieu of the Revised Form, which the Commission has designed purposefully to be very similar. *See supra* pt. II.G.i. The Commission reiterates that these PRA estimates assume that all registered CPOs will either file the Revised Form on a quarterly basis, or NFA Form PQR, but in no event will a CPO be required to file both.

[178] 7 U.S.C. 19(a).

[179] 7 U.S.C. 2(i).

i. The Elimination of Pool-Specific Reporting Requirements in Schedules B and C

The Commission is adopting as final amendments that eliminate the pool-specific reporting requirements in existing Schedules B and C of Form CPO–PQR, other than the PSOI (question 6 of Schedule B). The Commission acknowledges that this change could result in less information available to the Commission and, potentially, to FSOC. The detailed and specific information requested in Schedules B and C of Form CPO–PQR is not available to the Commission through any of its other data streams and, if put to its full use, would allow for monitoring of CPOs and their operated pools in a way that could help identify trends and points of stress. The challenges associated with the Form CPO–PQR dataset are a primary reason for the Commission's decision to discontinue its collection of this information, including challenges posed by the degree of flexibility afforded CPOs in reporting this information, and the fact that this information is only reported to the Commission on a quarterly basis, at its most frequent. Given these limitations associated with the data collected, the Commission has determined to prioritize its limited resources to pursue other key regulatory initiatives.

However, considering the alternate data streams currently available to the Commission, the Commission should nevertheless be able to effectively oversee registered CPOs and their operated pools, and potentially do so in a more efficient and effective manner, by adopting the Revised Form as proposed, with some additional clarifications to the Instructions and Defined Terms. Furthermore, due in part to the identified data quality issues, the Commission has not provided FSOC with any Form CPO–PQR data to date. The Commission acknowledges, though, that FSOC would now receive less data from the Commission, as a result of changes made by the Final Rule, as some CPOs that are filing CFTC-only pool information through Joint Form PF may stop. Nonetheless, the Commission does not believe that FSOC's monitoring abilities would be materially or negatively affected, compared to the status quo, by the Commission's rescission of most of Schedules B and C in Form CPO–PQR, as the Commission has not provided FSOC with any data.

The Commission anticipates that eliminating these pool-specific reporting requirements will also reduce the ongoing variable compliance costs for those CPOs considered Mid-Sized CPOs or Large CPOs, and which may move between those filing categories with some regularity, under the status quo. Consequently, those reporting CPOs would no longer need to devote their resources to compiling, analyzing, and reporting this data, which may have had limited utility with respect to their day-to-day operations, to the Commission. Additionally, reporting CPOs in general will no longer be required to monitor their AUMs for the specific purpose of determining their filing obligations because, pursuant to the Final Rule, there is now a single filing requirement for all reporting CPOs. It is possible that the resulting cost savings may allow those CPOs to devote their resources to other compliance or operational initiatives, or to potentially pass those cost savings on to pool participants through reduced fees. These cost savings will likely be reduced, however, for any CPO that is dually registered with the SEC and required to file Joint Form PF because that form requires reporting of information substantially similar to that required in the eliminated Schedules B and C, and the Final Rule does not alter any such CPO's Joint Form PF filing obligations. Finally, the Commission recognizes that the Final Rule also does not alleviate any of the fixed or long-term costs reporting CPOs may have already incurred in developing systems and procedures designed to meet the reporting requirements of the original form, including Schedules B and C.

ii. The Revised Form

This Final Rule adopts the Revised Form, which retains questions from existing Schedule A of Form CPO–PQR, and also adds questions to request LEIs for CPOs and their operated pools. The Commission anticipates that adding these LEI questions will allow it to integrate the data collected by the Revised Form with the Commission's other more current data streams. Leveraging these other data sources in combination with filings of the Revised Form will enable the Commission to continue its oversight and monitoring of counterparty and liquidity risk for some of the largest pools within the Commission's jurisdiction. The Commission thereby concludes that the Final Rule will allow it to focus on areas relevant for assessing and monitoring market and systemic risk, while eliminating the reporting burden associated with Schedules B and C, particularly with respect to pools that would be considered Large Pools.

The addition of these LEI fields may minimally increase the cost for reporting CPOs and their operated pools that engage in swaps with respect to the initial filing of the Revised Form, as LEIs do not change over time, potentially allowing fields for those questions to be prepopulated in subsequent filings. The Commission observes further that neither the Revised Form nor § 4.27 independently creates an affirmative requirement for CPOs to obtain LEIs for themselves and their operated pools, and that CPOs engaging in swaps already have LEIs for themselves and/or their pools. Additionally, the Commission has declined in the Final Rule to require the renewal or maintenance of LEIs for purposes of meeting this Revised Form requirement.[180] Accordingly, the Commission finds that there is likely no additional cost to consider for a reporting CPO related to LEIs beyond the minimal one-time expenditure for the initial Revised Form filing that includes LEIs.

The Final Rule also eliminates from the Revised Form questions regarding the pool's auditors and marketers. The Commission has determined that these amendments will result in reduced costs for reporting CPOs without affecting the scope of information available to the Commission, as the Commission already receives information regarding CPO's accountants and has alternate means of obtaining information about a pool's marketers. For example, persons soliciting for pool participation units are typically either associated persons of the CPO or registered representatives of a broker-dealer. Such persons are already subject to regulation by either the Commission and NFA, or the SEC and FINRA, and therefore readily identifiable by the Commission outside of Form CPO–PQR.

Currently, all CPOs other than Large CPOs submit the information required by the existing form's Schedule A annually. Increasing the frequency with which this information is reported will assist the Commission in its efforts to integrate the Revised Form with the Commission's other timelier data sources, which the Commission believes will improve the overall efficacy of its monitoring and oversight of CPOs and their operated pools. Although this amendment will result in an increased regulatory cost for CPOs considered to be Small and Mid-Sized CPOs under the existing form, when compared to the regulatory status quo, the Commission concludes that the costs actually realized by these CPOs will not be as significant, as they are already reporting

[180] *See supra* pt. II.E.

this information on a quarterly basis via NFA Form PQR, as required by NFA.

Under the current form, only Mid-Sized and Large CPOs are required to submit a PSOI, and Mid-Sized CPOs submit that information annually. The Revised Form, as adopted by the Final Rule, will require all CPOs to submit that information quarterly. The Commission believes that receiving this information from all reporting CPOs more frequently will, when combined with the new questions regarding LEIs, further enhance its ability to integrate the data collected by the Revised Form with other data streams and to identify trends on a timelier basis. As a result, the Commission concludes that adopting a quarterly filing schedule for all CPOs reporting on the Revised Form will ultimately support its goal of effectively monitoring CPOs and their operated pools for market and systemic risk, while also simplifying the reporting requirements applicable to registered CPOs.

The Commission realizes that requiring all information on the Revised Form, including a PSOI for each operated pool, from all reporting CPOs on a quarterly basis will result in an increased regulatory cost, when compared to the regulatory status quo, particularly for CPOs that would be considered Small and Mid-Sized CPOs under the existing filing regime. For instance, CPOs previously considered Small CPOs may be required to develop the procedures and systems necessary to meet the additional reporting obligations for the Revised Form's PSOI, and CPOs previously considered either Small CPOs or Mid-Sized CPOs will be required by the Final Rule to report that information to the Commission on a quarterly basis. The Commission emphasizes, however, that all registered CPOs, regardless of the size of their operations or AUM, are currently required to report the PSOI on a quarterly basis via NFA Form PQR, as required by NFA membership rules, meaning the actual costs as realized by these CPOs as a result of the Final Rule should not be as significant, given the Commission's goal of aligning the Revised Form with NFA Form PQR.

The Final Rule also amends § 4.27(c) such that it allows reporting CPOs to file NFA Form PQR in lieu of filing the Revised Form, provided that NFA amends NFA Form PQR to include questions regarding LEIs. Under NFA's membership rules, all CPOs regardless of size are currently required to file NFA Form PQR on a quarterly basis. This provision will help CPOs maintain their current filing costs without affecting the scope of information available to the Commission under the Revised Form.

As mentioned above, the Commission acknowledges that, through adopting this revision to § 4.27(d), the Final Rule could result in less data being collected on Joint Form PF, as compared to the current status quo. Many dually registered CPOs currently include commodity pools that are not private funds in data that they report on Joint Form PF, in lieu of filing Form CPO–PQR for such pools, in reliance on § 4.27(d). As a result of the Final Rule's revisions to § 4.27(d), these CPO-investment advisers could decide to stop including these pools in their Joint Form PF filings. The Commission concludes though that this loss of data to the SEC and FSOC will not meaningfully impact the efficacy and intent of Joint Form PF in furthering the oversight of the private fund industry, given that it would only result in the loss of data with respect to non-private fund pools; the Commission acknowledges, however, that FSOC may lose data for a specific type of private fund asset class, specifically, managed futures.[181]

Additionally, all CPOs will be required to make a certain amount of alterations to their reporting systems to accommodate the changes adopted herein, even if it is just to deactivate certain data elements that are no longer required and to add the questions regarding LEIs. The Commission anticipates that any such costs will generally be one-time expenditures, and moreover, should not be extensive, given the Commission's efforts in the Final Rule to align the Revised Form with NFA Form PQR, to the greatest extent possible.

iii. Alternatives

In lieu of amending Form CPO–PQR as proposed, the Commission also considered two alternative approaches in the Proposal, and requested comments and data on how those potential alternatives might impact the estimated costs and benefits to market participants and the public.[182] The first alternative considered by the Commission was requiring all CPOs, regardless of whether they are dually registered, to file Joint Form PF. ICI commented that this alternative would likely result in increased costs for registered fund CPOs, noting that, although CPOs of RICs are regulated by both the Commission and the SEC, such CPOs are not currently required to file Joint Form PF.[183] The Commission agrees that this alternative would likely increase the reporting burdens and costs for CPOs not so dually registered, as well as for CPOs that are dually registered, yet do not currently file Joint Form PF; under this alternative, those CPOs would incur increased reporting burdens and costs without providing information directly to the Commission that will be integrated with its other data sources to develop its internal oversight initiatives over CPOs and their operated pools.

The second alternative described in the Proposal that the Commission considered was to devote resources to rectifying the challenges with the data reported under the current form, and amend it to require greater consistency and frequency of reporting of the data fields eliminated by the Final Rule. However, the Commission stated in the Proposal its preliminarily belief that its limited resources could be better directed in line with its regulatory priorities, and that its objectives with respect to oversight of reporting CPOs and their operated pools could be effectively and potentially, more efficiently, achieved through integration with existing data streams.[184] ICI supported this preliminary conclusion by the Commission and argued that a ''more targeted data set is most useful for initial monitoring purposes.'' [185] After considering the alternatives and the responsive comments, the Commission concludes that the changes to the form and § 4.27 adopted by the Final Rule, relative to the alternatives, will facilitate the Commission's effective discharging of its regulatory duties in a manner that simultaneously has the greatest impact on market and systemic risk and eases reporting obligations on a significant number of reporting CPOs with respect to their operated pools.

iv. Section 15(a) Factors

a. Protection of Market Participants and the Public

The Commission believes that the Final Rule will enhance the ability of the Commission to protect derivatives

[181] ICI commented that it did not believe that the Commission should focus on any perceived data needs of the FSOC in determining the scope and focus of Form CPO–PQR, but rather the Commission should act in whatever manner best supports its own regulatory interests in revising the form. ICI, at 5–6.

[182] 2020 CPO–PQR NPRM, 85 FR at 26388 (May 4, 2020).

[183] ICI, at 5 (noting additionally that CPOs of RICs would thus incur costs related to adapting their current systems and processes for the purpose of filing Joint Form PF instead).

[184] 2020 CPO–PQR NPRM, 85 FR at 26388 (May 4, 2020).

[185] ICI, at 6.

markets, its participants, and the public by allowing it to integrate the data collected by the Revised Form with other existing, more up-to-date data streams in a way that will allow the Commission to better exercise its oversight of registered CPOs and their operated pools. As discussed above, the Final Rule may result in a loss of data available to FSOC, which could limit FSOC's visibility into the activities of CPOs and their operated pools.

b. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission believes that the Final Rule will assist the Commission in its efforts to support market efficiency, competitiveness, and financial integrity. Under the Final Rule, reporting CPOs will continue to provide useful information about themselves and their operated pools to the Commission in a way that will permit the Commission to incorporate that data with its other data streams. The Commission believes that consolidating the data collected in this manner will improve its oversight of reporting CPOs, their operated pools, and how they affect the derivatives markets. Additionally, the Commission believes that the specific requirement that a reporting CPO prepare a PSOI on a quarterly basis for each of its operated pools may result in heightened diligence by such CPOs, with respect to their pools' ongoing operations, and may encourage particularly smaller CPOs to adopt more formalized controls for their businesses. The Commission believes that both of those results will generally enhance the confidence of other market participants in transacting with registered CPOs and their operated pools, and generally, support the efficiency, competitiveness, and financial integrity of the markets.

c. Price Discovery

The Commission has not identified any impact that the Final Rule would have on price discovery.

d. Sound Risk Management Practices

Although the Commission is no longer requiring reporting CPOs and their operated pools to report certain risk information on the Revised Form, the Commission recognizes that CPOs will likely, in general, continue to benefit from establishing and possessing systems that collect and review risk-related information, even if it is no longer reported. The Commission has not identified any other impact that the Final Rule would have on sound risk management practices.

e. Other Public Interest Considerations

The Commission did not identify any other public interest considerations that the Final Rule would have.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to ''take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation (including any exemption under CEA section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.'' [186]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested comment on whether the Proposal implicates any other specific public interest to be protected by the antitrust laws, but did not receive any comments on whether the Proposal was anticompetitive.

The Commission has considered the Final Rule to determine whether it is anticompetitive and has identified no anticompetitive effects. Because the Commission has determined the Final Rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission hereby amends 17 CFR part 4 as set forth below:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

■ 2. In § 4.27, revise paragraphs (c) and (d) to read as follows:

§ 4.27 Additional reporting by commodity pool operators and commodity trading advisors.

* * * * *

(c) *Reporting.* (1) Each reporting person shall file with the National Futures Association, a report with respect to the directed assets of each pool under the advisement of a commodity pool operator consistent with appendix A to this part, or a commodity trading advisor consistent with appendix C to this part.

(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.

(3) Nothing in this provision restricts the National Futures Association's ability to require reporting beyond that required by the Commission; *provided that,* such additional requirements are consistent with the Commodity Exchange Act and 17 CFR chapter I.

(4) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied. A reporting person operating a pool that meets the conditions specified in § 4.22(d)(2)(i) to present and compute the commodity pool's financial statements contained in the Annual Report other than in accordance with United States generally accepted accounting principles and has filed notice pursuant to § 4.22(d)(2)(iii) may also use the alternative accounting principles, standards, or practices identified in that notice in reporting information required to be reported pursuant to paragraph (c)(1) of this section.

(d) *Investment advisers to private funds.* 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. Dually registered commodity pool operators and commodity trading advisors that file Form PF with the Securities and Exchange Commission will be deemed to have filed Form PF with the Commission, for purposes of any enforcement action regarding any false or misleading statement of material fact in Form PF.

* * * * *

■ 3. Revise appendix A to part 4 to read as follows:

[186] 7 U.S.C. 19(b).

Appendix A to Part 4—Form CPO–PQR

BILLING CODE 6351–01–P

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

READ THE DEFINITIONS AND FILING INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: *https://www.nfa.futures.org*.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Defined Terms section.

GENERAL

Read the Instructions and Questions Carefully.

Please read the instructions and the questions in this Form CPO-PQR carefully.

In this Form CPO-PQR, "you" means the CPO.

Call the CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

DEFINED TERMS

Affiliated Entity: The term "Affiliated Entity" means any entity is an affiliate of another entity. An entity is an affiliate of another entity if the entity directly or indirectly controls, is controlled by or is under common control with the other entity.

Assets Under Management or AUM: The term "Assets Under Management" or "AUM" means the amount of all assets that are under the control of the CPO.

BP: The term "BP" means basis points.

Broker: The term "Broker" means any entity that provides clearing, prime brokerage or similar services to the Pool.

CDS: The term "CDS" means credit default swap.

CCP: The term "CCP" means a central counterparty or central clearing house, such as, but not limited to: CC&G, CME Clearing, The Depository Trust & Clearing Corporation (including FICC, NSCC and Euro CCP), EMCF, Eurex Clearing, Fedwire, ICE Clear Europe, ICE Clear U.S., ICE Trust, LCH Clearnet Limited, LCH Clearnet SA, Options Clearing Corporation, and SIX x-clear.

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" means the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Pool Operator or CPO: The term "commodity pool operator" or "CPO" has the same meaning as "commodity pool operator" defined in section 1a(11) of the Commodity Exchange Act, except that, for purposes of this Form CPO-PQR, the term does not include a CPO that is registered, but operates only Pools for which it maintains an exclusion from the definition of the term "commodity pool operator" in 17 CFR 4.5 and/or an exemption from CPO registration in 17 CFR 4.13. See 17 CFR 4.27(b)(2)(i).

Commodity Trading Advisor or CTA: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading advisor" as defined in section 1a(12) of the Commodity Exchange Act.

Feeder Fund: *See* Master-Feeder Arrangement.

Financial Institution: The term "financial institution" means any of the following: (i) a bank or savings association, in each case as defined in the Federal Deposit Insurance Act; (ii) a bank holding company or financial holding company, in each case as defined in the Bank Holding Company Act of 1956; (iii) a savings and loan holding company, as defined in the Home Owners' Loan Act; (iv) a Federal credit union, State credit union or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act; (v) a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971; or (vi) an entity chartered or otherwise organized outside the United States that engages in banking activities.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

Form CPO-PQR: The term "Form CPO-PQR" means this Form CPO-PQR.

Form PF: The term "Form PF" refers to the Form PF.

GAAP: The term "GAAP" means U.S. Generally Accepted Accounting Principles or one of the alternative accounting principles, standards, or practices specified in 17 CFR 4.22(d)(2)(i). See 17 CFR 4.27(c)(4).

Investment Adviser: The term "Investment Adviser" has the same meaning as "investment adviser" as defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

Legal Entity Identifier or LEI: The term "Legal Entity Identifier" or LEI refers to the identification number required by Commission Regulation 45.6 in all recordkeeping and swap data reporting, and which is issued by an LEI utility pursuant to that regulation. See 17 CFR 45.6.

Master Fund: See Master-Feeder Arrangement.

Master-Feeder Arrangement: The phrase "Master-Feeder Arrangement" means an arrangement in which one or more funds ("Feeder Funds") invest all or substantially all of their assets in a single fund ("Master Fund"). A fund would also be a Feeder Fund investing in a Master Fund for the purposes of this definition, if it issued multiple classes or series of shares or interests, and each class (or series) invests substantially all of its assets in shares (or other interests in) a single underlying Master Fund.

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under section 17 of the Commodity Exchange Act.

Negative OTE: The term Negative OTE means negative open trade equity, or the amount of unrealized losses on open derivative positions.

Net Asset Value or NAV: The term "Net Asset Value" or "NAV" has the same meaning as "net asset value" as defined in 17 CFR 4.10(b).

Non-U.S. Financial Institution: A "non-U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered outside the United States; (ii) a subsidiary of a U.S. Financial Institution that is separately incorporated or otherwise organized outside the United States; or (iii) a branch or agency that resides in the United States but has a parent that is a Financial Institution chartered outside the United States.

OTC: The term "OTC" means over-the-counter.

Private Fund: The term "Private Fund" has the same meaning as "private fund" as defined in Form PF.

Positive OTE: The term "Positive OTE" means positive open trade equity, or the amount of unrealized gains on open derivative positions.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

Reporting Date: The term "Reporting Date" means the last calendar day of the Reporting Period for which this Form CPO-PQR is required to be completed and filed. For example, the Reporting Date for the first calendar quarter of a year is March 31; the Reporting Date for the second calendar quarter is June 30.

Reporting Period: The term "Reporting Period" means any of the individual calendar quarters (ending March 31, June 30, September 30, and December 31) for all CPOs.

Trading Manager: The term "Trading Manager" means any entity or individual with sole or partial authority to invest Pool assets or to allocate Pool assets to other managers or investee Pools (including cash management firms). CTAs and other CPOs can be Trading Managers; however, a CPO should not identify itself as a Trading Manager.

Secured Borrowing: The term "Secured Borrowing" means obligations for borrowed money in respect of which the borrower has posted collateral or other credit support. For purposes of this definition, repos are secured borrowings.

Securities and Exchange Commission or SEC: The term "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

Side Arrangements and Side Letters: The term "Side Arrangements" or the term "Side Letters" means any arrangement that is extended to less than 100% of the Pool's participants.

U.S. Financial Institution: The term "U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered in the United States (whether federally-chartered or state-chartered); (ii) a subsidiary of a Non-U.S. Financial Institution that is separately incorporated or otherwise organized in the United States; or (iii) a branch or agency that resides outside the United States but has a parent that is a Financial Institution chartered in the United States.

Unsecured Borrowing: The term "Unsecured Borrowing" means obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support.

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Instructions for Using Form CPO-PQR

REPORTING INSTRUCTIONS

1. All CPOs Are Required to Complete and File the Form CPO-PQR.

All CPOs are required to complete and file a Form CPO-PQR for each Reporting Period during which they satisfy the definition of CPO and operate at least one Pool. Further, if a Pool is operated by Co-CPOs and one of them is an Investment Adviser, the non-Investment Adviser CPO must file relevant section(s) even though a Form PF was filed for that Pool by the Investment Adviser-CPO.

All CPOs must complete and file Form CPO-PQR within 60 days of the close of the most recent Reporting Period. The information provided herein should be as of the Reporting Date, the last business day of the Reporting Period.

Part 1 of Form CPO-PQR surveys basic information about the reporting CPO. Part 2 of Form CPO-PQR asks for more specific information about each of the CPO's Pools, including questions about the Pool's key relationships and about the Pool's investment positions.

2. Relationship to the National Futures Association's NFA Form PQR

To the extent that a CPO has timely filed the National Futures Association's NFA Form PQR, such filing shall be deemed to satisfy this Form CPO-PQR. See 17 CFR 4.27(c)(2).

3. CPOs Are Required to Separately Report Information Concerning Pools in a Master-Feeder Arrangement.

For the parts of Form CPO-PQR that request information about individual Pools, you must report information for each of the Pools in a Master-Feeder Arrangement individually.

4. I advise a Pool that invests in other Pools or funds (e.g., a "fund of funds"). How should I treat these investments for purposes of Form CPO-PQR?

Investments in other Pools generally. For purposes of this Form CPO-PQR, you may disregard any Pool's equity investments in other Pools. However, if you disregard these investments, you must do so consistently. For Question 9, even if you disregard these assets, you may report the performance of the entire Pool and are not required to recalculate performance to exclude these investments. Do not disregard any liabilities, even if incurred in connection with these investments.

Pools that invest substantially all of their assets in other Pools or funds. If you are the CPO for a Pool that: (i) invests substantially all of its assets in the equity of Pools for which you are not the CPO; and (ii) aside from such Pool investments, holds only cash and cash equivalents and instruments acquired for the purpose of hedging currency exposure, you must still complete this Form CPO-PQR for that Pool and include all assets of that Pool.

Notwithstanding the foregoing, you must include disregarded assets in responding to Questions 8 and 11 in this Form CPO-PQR.

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Instructions for Using Form CPO-PQR

5. I advise a Pool that invests in entities that are not Pools, *or* are exempt. How should I treat these investments for purposes of Form CPO-PQR?

With respect to investments in entities that are not Pools or are exempt, these investments should be treated consistent with Instruction 4 above.

6. Form CPO-PQR Must Be Filed Electronically with NFA.

All CPOs must file Form CPO-PQR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CPO-PQR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to NFA staff. NFA's contact information is available on its website, *https://www.nfa.futures.org*.

7. All Figures Must Be Reported in U.S. Dollars.

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

8. Use of U.S. GAAP or Alternative Accounting Principles, Standards, or Practices.

All financial information in this Report must be presented and computed in accordance with GAAP consistently applied. See 17 CFR 4.27(c)(4).

9. Reporting of Legal Entity Identifiers (LEIs)

Form CPO-PQR includes questions asking CPOs for LEIs for the CPO and its operated Pools. 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.

10. Oath and Affirmation

This Form CPO-PQR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Form CPO-PQR is not accurate and complete.

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

INTRODUCTION

Every CPO is required to complete and file this Form CPO-PQR. This Form CPO-PQR must be completed for every Reporting Period during which the CPO operated at least one Pool. Part 1 of this Form asks for information about the CPO. Part 2 asks for information about each individual Pool that the CPO operated during the Reporting Period. CPOs must complete and file a separate Part 2 for each Pool they operated any time during the Reporting Period.

Unless otherwise specified in a particular question, all information provided in this Form CPO-PQR should be accurate as of the Reporting Date.

PART 1 · INFORMATION ABOUT THE CPO

1. CPO INFORMATION

Provide the following general information concerning the CPO:

a. CPO's Name:

b. CPO's NFA ID#:

c. CPO's LEI #:

d. Person to contact concerning this Form CPO-PQR:

e. CPO's chief compliance officer:

f. Total number of employees of the CPO:

g. Total number of equity holders of the CPO:

h. Total number of Pools operated by the CPO:

i. Telephone number and email for person identified in d. above

2. CPO ASSETS UNDER MANAGEMENT

Provide the following information concerning the amount of Assets Under Management by the CPO:

a. CPO's Total Assets Under Management:

b. CPO's Total Net Assets Under Management:

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO

REMINDER: The CPO must complete and file a separate Part 2 for each Pool that the CPO operated during the Reporting Period.

3. POOL INFORMATION

Provide the following general information concerning the Pool:

a. CPO's Name:

b. Pool's Name:

c. Pool's NFA ID#:

d. Pool's LEI #:

4. POOL THIRD PARTY ADMINISTRATORS

Provide the following information concerning the Pool's third party administrator(s):

a. Does the CPO use third party administrators for the Pool?

If "Yes," provide the following information for each third party administrator:

i. Name of the administrator:

ii. NFA ID# of administrator:

iii. Address of the administrator:

iv. Telephone number of the administrator:

v. Starting date of the relationship with the administrator:

vi. Services performed by the administrator:

Preparation of Pool financial statements:

Maintenance of the Pool's books and records:

Calculation of Pool's performance:

Other:

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

5. POOL BROKERS

Provide the following information concerning the Pool's Broker(s):

a. Does the CPO use Brokers for the Pool?

If "Yes," provide the following information for each Broker:

i. Name of the Broker:

ii. NFA ID# of Broker:

iii. Address of Broker

iv. Telephone number of the Broker:

v. Starting date of the relationship with the Broker:

vi. Services performed by the Broker:

Clearing services for the Pool:

Custodian services for some or all Pool assets:

Prime brokerage services for the Pool:

Other:

6. POOL TRADING MANAGERS

Provide the following information concerning the Pool's Trading Manager(s):

a. Has the CPO authorized Trading Managers to invest or allocate some or all of the Pool's Assets Under Management?

If "Yes," provide the following information for each Trading Manager:

i. Name of the Trading Manager:

ii. NFA ID# of the Trading Manager:

iii. Address of the Trading Manager:

iv. Telephone number of the Trading Manager:

v. Starting date of the relationship with the Trading Manager:

vi. What percentage of the Pool's Assets Under Management does the Trading Manager have authority to invest or allocate?

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CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

7. POOL CUSTODIANS

Provide the following information concerning the Pool's custodian(s):

a. Does the CPO use custodians to hold some or all of the Pool's Assets Under Management?

If "Yes," provide the following information for each custodian:

i. Name of the custodian:

ii. NFA ID# of the custodian:

iii. Address of the custodian:

iv. Telephone number of the custodian:

v. Starting date of the relationship with the custodian:

vi. What percentage of the Pool's Assets Under Management is held by the custodian?

8. POOL'S STATEMENT OF CHANGES CONCERNING ASSETS UNDER MANAGEMENT

Provide the following information concerning the Pool's activity during the Reporting Period. For the purposes of this question:

a. The Assets Under Management and Net Asset Value at the beginning of the Reporting Period are considered to be the same as the Assets Under Management and Net Asset Value at the end of the previous Reporting Period, in accordance with 17 CFR 4.25(a)(7)(A).

b. The additions to the Pool include all additions whether voluntary or involuntary in accordance with 17 CFR 4.25(a)(7)(B).

c. The withdrawals and redemptions from the Pool include all withdrawals or redemptions whether voluntary or not, in accordance with 17 CFR 4.25(a)(7)(C).

d. The Pool's Assets Under Management and Net Asset Value on the Reporting Date must be calculated by adding or subtracting from the Assets Under Management and Net Asset Value at the beginning of the Reporting Period, respectively, any additions, withdrawals, redemptions and net performance, as provided in 17 CFR 4.25(a)(7)(E).

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

i. Pool's Assets Under Management at the beginning of the Reporting Period:

ii. Pool's Net Asset Value at the beginning of the Reporting Period:

iii. Pool's net income during the Reporting Period:

iv. Additions to the Pool during the Reporting Period:

v. Withdrawals and Redemptions from the Pool during the Reporting Period:

vi. Pool's Assets Under Management on the Reporting Date:

vii. Pool's Net Asset Value on the Reporting Date:

viii. Pool's base currency:

9. POOL'S MONTHLY RATES OF RETURN

Provide the Pool's monthly rate of return for each month that the Pool has operated. The Pool's monthly rate of return should be calculated in accordance with 17 CFR 4.25(a)(7)(F). Provide the Pool's annual rate of return for the appropriate year in the row marked "Annual."

	2021	2020	2019	2018	2017	2016	2015
Jan.							
Feb.							
March							
April							
May							
June							
July							
August							
Sept.							
Oct.							
Nov.							
Dec.							
ANNUAL							

10. POOL SUBSCRIPTIONS AND REDEMPTIONS

Provide the following information concerning subscriptions to and redemptions from the Pool during the Reporting Period.

a. Has the Pool imposed a halt or any other material limitation on redemptions during the Reporting Period?

If "Yes," provide the following information:

i. On what date was the halt or material limitation imposed?

ii. If the halt or material limitation has been lifted, on what date was it lifted?

iii. What disclosure was provided to participants to notify them that the halt or material limitation was being imposed? What disclosure was provided to participants to notify them that the halt or material limitation was being lifted?

iv. On what date(s) was this disclosure provided?

11. POOL SCHEDULE OF INVESTMENTS

Provide the Pool's investments in each of the subcategories listed under the following seven headings: (1) Cash; (2) Equities; (3) Alternative Investments; (4) Fixed Income; (5) Derivatives; (6) Options; and (7) Funds. First, determine how the Pool's investments should be allocated among each of these seven categories. Once you have determined how the Pool's investments should be allocated, enter the dollar value of the Pool's total investment in each applicable category on the top, boldfaced line. For example, under the "Cash" heading, the Pool's total investment should be listed on the line reading "Total Cash." After the top, boldfaced line is completed, proceed to the subcategories. For each subcategory, determine whether the Pool has investments that equal or exceed 5% of the Pool's Net Asset Value. If so, provide the dollar value of each such investment in the appropriate subcategory. If the dollar value of any investment in a subcategory equals or exceeds 5% of the Pool's Net Asset Value, you must itemize the investments in that subcategory.

CASH

Total Cash

At Carrying Broker

At Bank

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CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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EQUITIES	Long	Short
Total Listed Equities		
Stocks		
a. Energy and Utilities		
b. Technology		
c. Media		
d. Telecommunication		
e. Healthcare		
f. Consumer Services		
g. Business Services		
h. Issued by Financial Institutions		
i. Consumer Goods		
j. Industrial Materials		
Exchange Traded Funds		
American Deposit Receipts		
Other		
Total Unlisted Equities		
Unlisted Equities Issued by Financial Institutions		

ALTERNATIVE INVESTMENTS	Long	Short
Total Alternative Investments		
Real Estate		
a. Commercial		
b. Residential		
Private Equity		
Venture Capital		
Forex		

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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Spot

a. Total Metals

i. Gold

b. Total Energy

i. Crude oil

ii. Natural gas

iii. Power

c. Other

Loans to Affiliates

Promissory Notes

Physicals

a. Total Metals

i. Gold

b. Agriculture

c. Total Energy

i. Crude oil

ii. Natural gas

iii. Power

Other

FIXED INCOME	Long	Short
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
i. Investment grade		
ii. Non-investment grade		
b. Municipal		

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

c. Government
    i. U.S. Treasury securities
    ii. Agency securities
    iii. Foreign (G10 countries)
    iv. Foreign (all other)
d. Gov't Sponsored
e. Convertible
    i. Investment grade
    ii. Non-investment grade

Certificates of Deposit

a. U.S.
b. Foreign

Asset Backed Securities

a. Mortgage Backed Securities
    i. Commercial Securitizations
        A. Senior or higher
        B. Mezzanine
        C. Junior/Equity
    ii. Commercial Resecuritizations
        A. Senior or higher
        B. Mezzanine
        C. Junior/Equity
    iii. Residential Securitizations
        A. Senior or higher
        B. Mezzanine
        C. Junior/Equity
    iv. Residential Resecuritizations
        A. Senior or higher
        B. Mezzanine
        C. Junior/Equity

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CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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v. Agency Securitizations
   A. Senior or higher
   B. Mezzanine
   C. Junior/Equity

vi. Agency Resecuritizations
   A. Senior or higher
   B. Mezzanine
   C. Junior/Equity

b. CDO Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

c. CDO Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

d. CLOs Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

e. CLO Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

f. Credit Card Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

g. Credit Card Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

h. Auto-Loan Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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i. Auto-Loan Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

j. Other
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

Repos

Reverse Repos

DERIVATIVES	Positive OTE	Negative OTE
Total Derivatives		
Futures		
a. Indices		
i. Equity		
ii. Commodity		
b. Metals		
i. Gold		
c. Agriculture		
d. Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Forwards		

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CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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Swaps

a. Interest Rate Swap

b. Equity/Index Swap

c. Dividend Swap

d. Currency Swap

e. Variance Swap

f. Credit Default Swap

i. Single name CDS

A. Related to Financial Institutions

ii. Index CDS

iii. Exotic CDS

g. OTC Swap

i. Related to Financial Institutions

h. Total Return Swap

i. Other

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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OPTIONS	Long Option Value	Short Option Value
Total Options		
Futures		
a. Indices		
i. Equity		
ii. Commodity		
b. Metals		
i. Gold		
c. Agriculture		
d. Energy		
i. Crude oil		
ii. Natural Gas		
iii. Power		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Stocks		
a. Related to Financial Institutions		
Customized/OTC		
Physicals		
a. Metals		
i. Gold		
b. Agriculture		
c. Currency		
d. Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
e. Other		

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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FUNDS **Long**

Total Funds

Mutual Fund
a. U.S.
b. Foreign

NFA Listed Fund

Hedge Fund

Equity Fund

Money Market Fund

Private Equity Fund

REIT

Other Private funds

Funds and accounts other than private funds (i.e., the remainder of your assets under management)

ITEMIZATION

a. If the dollar value of any investment in any subcategory under the heading "Equities," "Alternative Investments" or "Fixed Income" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	Cost	Fair Value	Year-to-Date Gain (Loss)

b. If the dollar value of any investment in any subcategory under the heading "Derivatives" or "Options" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	OTE	Counterparty	Year-to-Date Gain (Loss)

c. If the dollar value of any investment in any subcategory under the heading "Funds" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Fund Name	Fund Type	Fair Value	Year-to-Date Gain (Loss)

– This Completes Form CPO-PQR –

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Form CPO-PQR Template

OATH

BY FILING THIS REPORT, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CPO-PQR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CPO-PQR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CPO-PQR on behalf of the CPO:

Capacity in which the above is signing on behalf of the CPO:

BILLING CODE 6351–01–C

Issued in Washington, DC, on October 9, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Compliance Requirements for Commodity Pool Operators on Form CPO–PQR—Commission Voting Summary, Chairman's Statement, and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Supporting Statement of Chairman Heath P. Tarbert

When the Commission considered the proposed rule to amend the compliance requirements for commodity pool operators (CPOs) on Form CPO–PQR,[1] I observed that the esteemed 19th century mathematician Charles Babbage had asked ''if you put into the machine the wrong figures, will the right answers come out?'' [2] Baggage foresaw what would evolve in the 20th century as the ''garbage-in, garbage-out'' predicament—that is, the concept that flawed, or nonsense, input data produces nonsense output or ''garbage.''

Since becoming Chairman, I have prioritized improving the CFTC's approach to collecting data. As a federal agency, we must be selective about the data we collect, and then make sure we are actually making good use of the data for its intended purpose.[3] For example, we recently adopted three final rules to revise CFTC regulations for swap data reporting, dissemination, and public reporting requirements for market participants.[4] One purpose of those amendments was to simplify the swap data reporting process to ensure that market participants are not burdened with unclear or duplicative reporting obligations that do little to reduce market risk or facilitate price discovery.[5]

Today we are engaged in a similar exercise. The amendments to the compliance requirements for CPOs on Form CPO–PQR that we are considering reflect the CFTC's reassessment of the scope of the form and how it aligns with our current regulatory priorities. By refining our approach to data collection, the final rule—in conjunction with our current market surveillance efforts—will enhance the CFTC's ability to gain more timely insight into the activities of CPOs and their operated pools. At the same time, the final rule will reduce reporting burdens for market participants.

Background on Form CPO–PQR

Form CPO–PQR requests information regarding the operations of a CPO, and each pool that it operates, in varying degrees of frequency and complexity, depending upon the assets under management of both the CPO and the operated pool(s). When it adopted Form CPO–PQR in 2012, the Commission determined that form data would be used for several broad purposes, including:

- Increasing the CFTC's understanding of our registrant population;
- assessing the market risk associated with pooled investment vehicles under our jurisdiction; and
- monitoring for systemic risk.[6]

For the majority of pool-specific questions on Form CPO–PQR, the Commission believed the incoming data would assist the CFTC in monitoring commodity pools to identify trends over time. For example, the CFTC would get information regarding a pool's exposure to asset classes, the composition and liquidity of a pool's portfolio, and a pool's susceptibility to failure in times of stress.[7]

Shortcomings of Form CPO–PQR

Seven years of experience with Form CPO–PQR, however, have not borne out that vision. To begin with, in an effort to take into account the different ways CPOs maintain information, the Commission has allowed CPOs flexibility in how they calculate and present certain of the data elements. As a result, it has been challenging, to say the least, for the CFTC to identify trends across CPOs or pools using Form CPO–PQR data. In

[1] Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO–PQR, 86 FR 26378 (May 4, 2020).

[2] Statement of Chairman Heath P. Tarbert in Support of Revising Form CPO–PQR (Apr. 14, 2020), available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement041420b. See* Charles Baggage, Passages from the Life of a Philosopher (London 1864).

[3] *See* Statement of Chairman Heath P. Tarbert in Support of Revising Form CPO–PQR, *supra* note 2.

[4] CFTC Finalizes Rules to Improve Swap Data Reporting, Approves Other Measures at September 17 Open Meeting, available at: *https://www.cftc.gov/PressRoom/PressReleases/8247/20.*

[5] *See* Statement of Chairman Heath P. Tarbert in Support of Final Rules on Swap Data Reporting (Sep. 17, 2020), available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/tarbertstatement091720c.*

[6] *See* Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252 (Feb. 24, 2012).

[7] *See* Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 FR 7976, 7981 (Form CPO–PQR Proposal) (Feb. 11, 2011).

addition, taking into account the volume and complexity of the data it was requesting, the Commission decided not to require the data to be provided in real-time, but instead mandated only post hoc quarterly or annual filings.

As the CFTC staff has reviewed the data over the years, it has become apparent that the disparate, infrequent, and delayed nature of CPO reporting has made it difficult to assess the impact of CPOs and their operated pools on markets. This is largely because conditions and relative CPO risk profiles may have changed, potentially significantly, by the time Form CPO–PQR is filed with the CFTC.

Sound Regulation Means Collecting Only Information We Intend to Use

What we need is not over-regulation or even de-regulation, but rather sound regulation. In the midst of the coronavirus pandemic, when we are facing the greatest economic challenge since the 2008 financial crisis, and possibly since the Great Depression, the fact that we are asking market participants to put significant time and effort into providing us data that is difficult to integrate with the CFTC's other more timely and standardized data streams is not sound regulation. Frankly, it is wasteful and an example of ineffective government.

My colleague Commissioner Dan Berkovitz made the following observation in connection with a different rulemaking: ''In addition to obtaining accurate data, the Commission must also develop the tools and resources to analyze that data.'' [8] He is spot on. But I believe the converse is also true. We should not collect data we cannot use effectively. In the case of Form CPO–PQR, this means not requiring market participants to provide information that the CFTC has neither the resources nor the ability to analyze with our other data streams. Our credibility as a regulator is strengthened when we honestly admit that our regulations ask for data that we both have not used effectively and have no intention of using going forward. That is what we are doing today.

Alternative, and Sometimes Better, Sources of Data Are Available to the Commission

Form CPO–PQR is not our only source of data regarding commodity pools. The CFTC has devoted substantial resources to developing other data streams and regulatory initiatives designed to enhance our ability to surveil financial markets for risk posed by all manner of market participants, including CPOs and their operated pools.

These alternative data streams, which include extensive information related to trading, reporting, and clearing of swaps, are in some cases more useful or robust than information from Form CPO–PQR. Importantly, most of the transaction and position information the CFTC uses for our surveillance activities is available on a more timely and frequent basis than the data received on the current iteration of Form CPO–PQR. Furthermore, CFTC programs to conduct surveillance of exchanges, clearinghouses, and futures commission merchants already include CPOs and do not rely on the information contained in Schedules B and C of Form CPO–PQR.

Taken together, the CFTC's other existing data efforts have enhanced our ability to surveil financial markets, including with respect to the activities of CPOs and the pools they operate. In general, the CFTC's alternate data streams provide a more prompt, standardized, and reliable view into relevant market activity than that provided under Form CPO–PQR. As revised, data from Form CPO–PQR will more easily be integrated with these existing and more developed data streams. This will enable the CFTC to oversee and assess the impact of CPOs and their operated pools in a way that is both more effective for us and less burdensome for those we regulate.

In keeping with these principles—particularly the principle that we should not collect data we cannot use effectively—I note that as part of this rulemaking the Commission is instructing the staff to evaluate the ongoing utility of the Pool Schedule of Investments information in revised Form CPO–PQR. This will include comparing it to the 2010 Schedule of Investments. The review will be completed within 18–24 months following the date upon which persons are required to comply with the final rule and may result in further recommended actions. During the review period, the staff also may identify and extend targeted relief for data fields that the CFTC receives from other sources.

Legal Entity Identifiers Are Something We Need

The final rule does more than simply eliminate certain data collections. It also requires the collection of an additional piece of key information: Legal entity identifiers (LEIs) for CPOs and their operated pools. LEIs are critical to understanding the activities and interconnectedness within financial markets. Although LEIs have been around since 2012 and authorities in over 40 jurisdictions have mandated the use of LEI codes to identify legal entities involved in a financial transaction,[9] this is a new requirement for Form CPO–PQR. The lack of LEI information for CPOs and their operated pools has made it challenging to align the data collected on Form CPO–PQR with the data received from exchanges, clearinghouses, swap data repositories, and futures commission merchants. As a result, we cannot always get a full picture of what is happening in the markets we regulate. Adding an LEI requirement for CPOs and their operated pools will help give us a complete perspective.

In addition, the final rule better aligns Form CPO–PQR with Form PQR of the NFA, which all CPOs must file quarterly and which the NFA may revise to include questions regarding LEIs. Under these circumstances, we could permit a CPO to file NFA Form PQR in lieu of our Form CPO–PQR as revised. In doing so, we would offer CPOs greater filing efficiencies without compromising our ability to obtain relevant data.

Form CPO–PQR, as Revised, has Other Regulatory Benefits

The Dodd-Frank Act established the Office of Financial Research (OFR) nearly a decade ago to look across our financial system for risks and potential vulnerabilities.[10] It was contemplated that, for the OFR to do its work, it would have access to data from other U.S. financial regulators. Yet to date, the CFTC has shared none of the Form CPO–PQR data with the OFR, largely because of the shortcomings outlined above.

Once Form CPO–PQR is revised, it has the potential to be useful not only to the CFTC. To this end, we have negotiated a memorandum of understanding (MOU) with the OFR, under which we will for the first time provide to the OFR the information we collect regarding CPOs. Under the MOU, the OFR will receive the Form CPO–PQR Information consistent with the provisions of Section 8(e) of the CEA, which establishes important protections for CFTC data sharing.[11]

Conclusion

For these reasons, I am pleased to support the Commission's final rule to amend the compliance requirements for CPOs on Form CPO–PQR. As revised, Form CPO–PQR will focus on the collection of data elements that can be used with other CFTC data streams and regulatory initiatives to facilitate oversight of CPOs and their operated pools. This will primarily reduce current data collection requirements, but also mandate disclosure of LEIs by CPOs and their operated pools. Focusing on enhancing data collection by the agency is no doubt tedious. Nonetheless, I am convinced it leads to smarter regulation that helps promote the integrity, resilience, and vibrancy of U.S. derivatives markets.

[8] Dan M. Berkovitz, Commissioner, CFTC, Statement on Proposed Amendments to Parts 45, 46, and 49: Swap Data Reporting Requirements (Feb. 20, 2020), available at: *https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement022020b.*

[9] *See* Financial Stability Board, Thematic Review on Implementation of the Legal Entity Identifier, Peer Review Report (May 28, 2019), available at: *https://www.fsb.org/2019/05/thematic-review-on-implementation-of-the-legal-entity-identifier/.*

[10] *See* Sections 151–56 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[11] In Section 8(e) of the CEA (7 U.S.C. 12(e)), Congress authorized the CFTC to share nonpublic information it obtains under the CEA with other federal agencies acting within the scope of their jurisdiction. Although Congress prohibited the CFTC from publishing data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, Section 8(a) allows the CFTC to publish research and analysis based on such data and information where it has been appropriately aggregated, anonymized, or otherwise masked to avoid such separate disclosure. In conjunction, these two provisions of Section 8 give the CFTC the power to review the work product of other federal agencies with which it shares data and information to ensure that they do not separately disclose confidential information obtained from the CFTC, and to authorize those agencies to publish research and analysis based on such confidential information.

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I support today's final rule that would simplify and streamline the reporting obligations of commodity pool operators (CPOs) on Form CPO–PQR. The Commission first adopted Form CPO–PQR in 2012 and closely modeled the form on Form PF. The Commission adopted the Form of its own volition; unlike Form PF, which is specifically mandated by the Dodd-Frank Act, there is no similar statutory directive requiring the adoption of Form CPO–PQR.[1] In my opinion, since its adoption, the detailed information requested on Form CPO–PQR has not significantly enhanced the Commission's oversight over CPOs and has never been fully utilized by staff. I have long questioned the Commission's need to know the litany of data requested on the Form.

In my view, many of the questions on the existing form are more academic than pragmatic in nature—information that may be nice for the Commission to have, but data that is certainly not necessary for the Commission to effectively oversee commodity pools and the derivatives markets. This is why I am very pleased that the final rule eliminates the most burdensome sections on the current form—Schedules B and C, which together contain roughly 72 distinct questions, if one includes all the separately identifiable subparts. Many of these questions are challenging for CPOs to calculate precisely and require numerous underlying assumptions that vary from firm to firm, making it difficult, if not impossible, for the Commission to perform an apples-to-apples comparison across the commodity pool industry.

While today's final rule represents a marked improvement over the current CPO reporting regime, more work remains to be done. Importantly, the proposal requested comment about reverting back to the former Schedule of Investments originally adopted by the National Futures Association (NFA) in 2010 for its NFA Form PQR (2010 Schedule of Investments). In 2012, the Schedule of Investments adopted by the Commission went further than the 2010 Schedule of Investments, by lowering the itemized reporting thresholds and adding significantly more granular subcategories of investments. For example, the Commission sought information regarding the tranches of various types of securitizations and the types of bonds held by the pool. Historically, the information on the Schedule of Investments has mostly been used by the NFA for their CPO examination program. However, in its comment letter to the Commission, the NFA noted that it ''does not have a need for the more granular information currently in the Schedule'' and that it ''fully supports [aligning the current schedule with the 2010 Schedule of Investments] because [NFA] believe[s] a more streamlined schedule will significantly alleviate filing burdens on CPOs without negatively impacting the usefulness of the information that is collected.''[2]

I am disappointed that this final rule does not amend the form to adopt the 2010 Schedule of Investments, but I am encouraged that the preamble instructs DSIO staff to evaluate the ongoing utility of the current Schedule of Investments, including comparing it to the 2010 Schedule of Investments, within 18–24 months following the compliance date. As part of this review, staff is instructed to consider whether or not, in light of its utility, the Commission should revert back to the 2010 Schedule of Investments. After completing this review, in whole or in stages, staff will develop recommendations, provide relief, or propose a rulemaking for the Commission's further consideration to effectuate staff's findings. This review will allow staff to carefully consider which questions on the Schedule of Investments are necessary to effectively oversee CPOs and to propose eliminating any fields which are being received through other data channels or have no regulatory use case to the Commission's oversight function. I think this review is long overdue and is especially timely given the developments in other data streams, like part 45 swap data, that DSIO is actively working to combine with clearinghouse data to provide a complete picture of a CPO's derivatives activity. I believe that DSIO's ability to monitor, in real time, a fund's derivatives positions will be absolutely vital to the oversight and regulation of commodity pools in the future.

In closing, I deeply appreciate DSIO staff's efforts to address my concerns on this point in the weeks leading up to today's vote. Thank you all very much for your engagement and dedication.

Appendix 4—Concurring Statement of Commissioner Rostin Behnam

I respectfully concur with the Commodity Futures Trading Commission's (the ''Commission'' or ''CFTC'') issuance of today's final rule (the ''Final Rule'') amending Regulation 4.27 and Form CPO–PQR. As a whole, the Final Rule provides a thoughtfully balanced and complete evaluation of the issues identified in the notice of proposed rulemaking[1] and the responsive comments. Perhaps, just as importantly, the Final Rule clearly acknowledges that it is the first of several steps in the Commission's ongoing assessment of Form CPO–PQR not only for its utility as a regulatory tool, but as a yardstick to measure improvements to the Commission's data integration and analytical capabilities. The Final Rule makes smart, targeted corrections without forgoing the possibility of future adjustments should the Commission later determine that additional data would support evolving regulatory initiatives or Financial Stability Oversight Counsel (FSOC) requirements to fulfill statutorily mandated duties and initiatives aimed at identifying and monitoring risks to financial stability.[2]

In determining to reduce the frequency and scope of commodity pool operator (CPO) data reporting and collection, the Commission is pivoting away from what was an ambitious vision for ongoing oversight, monitoring, and trend analysis inspired by the events and fallout of the 2008 financial crisis.[3] To be sure, keeping pace with regulatory change and shifting priorities while exercising appropriate discipline in collecting, handling, and managing data is an endless endeavor. Nevertheless, I am pleased with today's outcome, and I am confident that as we continue moving forward, the tremendous abilities of the dedicated staff whose direct insight and experience informed our decisions will ensure we continue to act decisively in furthering our goals and supporting our mission critical duties.

The CFTC shares aspects of its regulatory initiatives, risk surveillance, and monitoring duties with respect to CPO and commodity pools with the Securities and Exchange Commission (SEC), the National Futures Association (NFA), and the FSOC. The Final Rule in its detailed preamble identifies areas of overlap in which commenters suggested that the Commission ought to retreat from its proposed baseline for data collection in Revised Form CPO–PQR. I am pleased that the Commission reasonably considered such comments and provides well-reasoned responses based on analysis of facts and data incorporated directly into the record. While the Commission and its staff must always be prudent and judicious in our allocation of data, resources, authority, and deference in working amicably towards common goals, we should exercise great care so as to avoid sacrificing primacy and independence when acting directly in support of Congressional mandates and statutory directives.

I appreciate the Commission and its staff's ongoing engagement with the SEC and FSOC, as well as with NFA, throughout the drafting of the NPRM and the Final Rule, and I am encouraged that discussions are ongoing. As we move forward, it is my intention to ensure that the Commission provides staff the support and resources necessary to effectuate its current plans for Form CPO–PQR data and make future amendments and adjustments, as appropriate.

Appendix 5—Statement of Commissioner Dan M. Berkovitz

I am voting for the final rule to amend Regulation 4.27 and Form CPO–PQR (''Final Rule''). This Final Rule makes adjustments to the reporting requirements for Commodity Pool Operators (''CPOs'') and their pools based on lessons learned over several years since the requirements were first adopted.

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[1] *See* section 404 of the Dodd-Frank Act.

[2] NFA Comment Letter (June 20, 2020), *https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=29369.*

[1] Amendments to Compliance Requirements for Commodity Pool Operators on Form CPO–PQR, 85 FR 26378 (proposed May 4, 2020) (the ''NPRM'').

[2] *See* NPRM, 85 FR at 26379. Not only is the Commission among those agencies that could be asked to provide information necessary for the FSOC to perform its statutorily mandated duties, but the FSOC may issue recommendations to the Commission regarding more stringent regulation of financial activities that FSOC determines may create or increase systemic risk. *See* Dodd-Frank Act sections 112(d)(1), 120; *See also* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, 76 FR 71128, 71129 (Nov. 16, 2011); Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252, 11253 (Feb. 24, 2012).

[3] *See, e.g.,* NPRM, 85 FR at 26381.

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.

Several commenters suggested that the Commission collect less information on the Pool Schedule of Investments (''PSOI'') about CPO investments in various asset classes. I support the Commission's decision in the Final Rule to continue to collect position data about pool investments. To evaluate the risks posed by CPOs and the pools they operate, it is necessary to understand the total portfolio of each pool and its trading strategy. Recent market volatility—including historic price movements in crude oil—underscores the importance of the CFTC's ability to understand the nature of the participants in our markets and the scope of their activities in order to conduct timely oversight and spot emerging trends or risks.

Since joining the Commission I have supported and encouraged efforts to improve our data and analytical capabilities, and believe they should be expanded in the coming years. Commission staff currently is taking steps to better synthesize swap data for large account controllers and develop a more holistic surveillance program. Once these analytical tools have been further developed, staff will then be in a position to advise the Commission regarding whether any changes to the PSOI are appropriate.

To ensure that the Commission has a complete picture of pool activity across all derivatives markets, it should continue working to integrate swaps data with futures data. Some commenters have suggested that one way to do this would be to require all reporting CPOs and their pools—not just those that trade swaps—to obtain LEIs and submit them on Form CPO–PQR. I encourage the Commission and staff to continue to explore this approach, among others, so that the CFTC is able to aggregate all derivatives transactions by pools under common control.

I would like to thank the Division of Swap Dealer and Intermediary Oversight for their efforts in finalizing this rule in a form that I can support.

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