



## Significant Changes to CFTC Regulations Impacting Private Fund Managers February 21, 2012



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# Table of Contents

- Introduction
- Registration as a Commodity Pool Operator and/or a Commodity Trading Advisor
- Exclusions and Exemptions from CPO Compliance Obligations Without Registration
- Exemptions from CPO Compliance Obligations for Registered CPOs
- Exemptions from CTA Compliance Without Registration
- Exemption from CTA Compliance Obligations for Registered CTAs
- Forms CPO-PQR and CTA-PR



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## **Introduction**

# SEC and CFTC Jurisdiction

- Securities and Exchange Commission
  - regulates securities and the securities markets
  - starting this year, will also regulate security-based swaps
  - hedge fund interests/shares are securities, even if the fund only trades in futures
- Commodity Futures Trading Commission
  - regulates futures contracts and options on futures contracts
  - starting this year, will also regulate swaps

# Key Actors, Laws

- CFTC: Commodity Futures Trading Commission
  - Created in the 1970s as an independent agency with the mandate to regulate commodity futures and option markets in the United States; also regulates trading by U.S. residents on non-U.S. exchanges
- NFA: National Futures Association
  - Self-regulatory organization for the U.S. futures industry
- CEA: Commodity Exchange Act
  - Key law governing federal regulation of futures trading activities
- Dodd-Frank: Dodd-Frank Wall Street Reform and Consumer Protection Act
  - Title VII completely restructures the trading of over-the-counter derivatives



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## **Registration as a Commodity Pool Operator and/or a Commodity Trading Advisor**

# Commodity Pool Operator (“CPO”) v. Commodity Trading Advisor (“CTA”)

- Commodity Pool: the statutory term for a fund or other pooled vehicle that invests in futures contracts, options on futures contracts, leverage contracts and/or retail forex transactions (and soon swaps), even indirectly through another pool (“fund-of-funds”)
- The CEA regulates the operator of a commodity pool, as opposed to the pool itself
- Each commodity pool has at least one CPO and one CTA, although this may be the same entity
- Each commodity pool may also have multiple CPOs and/or CTAs

# Definition of CPO

- CPO is someone who operates a commodity pool and who solicits investors with regards to that pool
  - often the managing member or general partner
  - in a corporate structure (like a Cayman company), most likely the investment manager
- Title VII of Dodd-Frank amended the definition of CPO to, among other things, include swaps
- The CFTC, through a series of orders, has delayed the effective date of the Dodd-Frank changes to the definition of CPO
- Currently, the effective date will be the earlier of July 16, 2012 or the effective date of the regulations adopted by the CFTC and the SEC further defining the term “swap”

# Definition of CTA

- CTA is someone who provides trading advice with respect to futures, options on futures, leverage contracts and/or retail forex transactions
  - in a fund that has no separate investment adviser, the general partner/managing member is both CPO and CTA
  - in a corporate structure, the adviser is usually both the CPO and the CTA
  - in a separate account, the investment adviser is a CTA; there is no CPO
- Title VII of Dodd-Frank amended the definition of CTA to, among other things, include swaps
- The CFTC, through a series of orders, has delayed the effective date of the Dodd-Frank changes to the definition of CTA
- Currently, the effective date will be the earlier of July 16, 2012 or the effective date of the regulations adopted by the CFTC and the SEC further defining the term “swap”

# Registration as CPO and/or CTA

- The CPO and its associated persons (“APs”) must register as such under the CEA
- The CPO must also become a member of NFA and its APs must become associate members of NFA
- NFA handles registration processing on behalf of CFTC
- Applicants for registration as a CPO and membership in NFA must file Form 7-R and must submit a Form 8-R for each AP and natural person principal

# APs & Principals: Definitions and Responsibilities

- If an entity is registered as a CPO or CTA, its “principals” and “associated persons” must be identified
- Who is a “principal”?
  - anyone with controlling influence, such as directors and officers
  - anyone with certain titles (regardless of ownership or controlling influence), including Director, President, CEO, COO, CFO for corporations, LLCs and LPs, general partner for LPs and manager and managing member for LLCs and LLPs
  - any natural person who owns 10% or more of the voting securities or contributed 10% or more of the capital
  - any entity that owns 10% of shares or contributed 10% or more of the capital
- Consequences of being a “principal”?
  - unlike “AP” status, being a “principal” does not entail any test-taking requirement but does require each natural person “principal” to file a Form 8-R with a fingerprint card for purposes of fitness screening

# APs & Principals: Definitions and Responsibilities (cont'd)

- Who is an “AP”?
  - natural person involved in soliciting funds, securities or property for participation in a commodity pool or opening a discretionary commodity interest trading account
  - as well as supervisors of such persons, even if those supervisors do not personally solicit
  - does not have to be employed solely by the CPO/CTA; may have multiple sponsors
  - someone may be both a principal and an AP

# APs & Principals: Definitions and Responsibilities (cont'd)

- Consequences of being an “AP”?
  - registration on Form 8-R
  - fingerprint card
  - ethics training required by CFTC rules
  - oversight requirements
  - Series 3 exam
    - exam requirement may be avoided or waived if:
      - » AP has passed Series 3 within previous 2 years; or since having passed the exam, there has not been a period of 2 consecutive years in which the AP was not registered as an AP or as a floor broker
      - » NFA's Director of Compliance may grant waivers from the Series 3 examination requirement to individuals associated with CPOs if:
        - the CPO or the pool is subject to regulation by a federal or state regulator, or the pool is privately offered pursuant to an exemption from the registration requirements of the Securities Act, and the CPO limits itself to operating a pool that: (1) engages principally in securities transactions, (2) commits only a small percentage of its assets as initial margin deposits and premiums for futures and options on futures, and (3) uses futures and options on futures only for hedging or risk management purposes; or
        - the individual requesting the waiver is a general partner of a CPO or a pool that is primarily involved in securities investments; there is at least one registered general partner of the CPO or pool who has taken and passed the Series 3 examination; and the person requesting the waiver is not involved in soliciting or accepting pool participations, trading futures or options, handling customer funds, or supervision of these activities or engaging in any other activity that is integral to the operation of the fund as a pool
      - » NFA's Director of Compliance may grant waivers from the Series 3 examination requirement to individuals associated with CTAs if:
        - the CTA is subject to regulation by a federal or state regulator;
        - the CTA's futures and options trading advice to each of its clients is incidental to its securities advice; and
        - the CTA's futures and options trading advice is only for hedging or risk management purposes

# CPO/CTA Compliance Obligations

- Disclosure Document
  - see Rules 4.21, 4.24, 4.25 and 4.26 for CPOs and Rules 4.31, 4.34, 4.35 and 4.36 for CTAs
  - past performance disclosure rules
    - if pool has less than a 3-year operating history, performance information must be supplied for other persons and entities (in addition to performance information for the offered pool), including the performance of other pools and managed accounts operated or traded by the CPO/CTA and the trading manager of the offered pool
    - CFTC past performance disclosure rules may be in conflict with the SEC's rules and FINRA's rules
      - » on February 8, 2012, the CFTC proposed harmonization of compliance obligations for registered investment companies required to register as CPOs
      - » in its release, the CFTC requested comments on whether it should consider harmonizing its past performance disclosure obligations with the SEC's requirements
      - » the CFTC did not address the conflict with the FINRA rules for disclosure documents distributed by registered broker/dealers in its February 8, 2012 proposal
  - must be distributed to each prospective pool participant/client
  - must be filed with the NFA, pre-cleared by the NFA and updated every 9 months
- Reporting to Both NFA and Investors
  - CPOs must furnish to each pool participant certain prescribed reports
- Recordkeeping
  - A CPO or CTA must keep, at its main business office, accurate books and records regarding each pool/client account it operates/advises
  - records are subject to inspection by the CFTC, the NFA, and the U.S. Department of Justice

# NFA By-Law 1101

- “Self-policing” mechanism that requires that registered CPOs and CTAs only transact business with persons who are:
  - NFA Members (FCMs, IBs, CPOs, CTAs) or
  - exempt from registration
- Impacts private fund managers primarily in three ways:
  - affects their due diligence process with underlying managers
  - affects their due diligence process with their own investors/clients
  - affects their broker (FCM) and solicitor (IB) relationships

# Due Diligence on Underlying Managers

- Is the manager trading futures, options on futures, leverage contracts, retail forex and/or (in 2012) swaps? If yes, then:
  - identify the CPO(s) and the CTA(s)
  - determine whether the CPO(s) and CTA(s) are registered or exempt from registration
  - if exempt, on what basis
  - check the NFA website ([www.nfa.futures.org](http://www.nfa.futures.org)) to confirm that appropriate filings have been made
  - check manager's CFTC/NFA compliance procedures
- It is theoretically possible that some underlying managers may also be “major swap participants,” which is a new registration category post Dodd-Frank (rules are pending adoption)

# Polling Question #1

Does your firm currently have adequate resources and infrastructure in place to implement a compliance program for CFTC/NFA obligations if registration is required?

[a] No. We would need to completely build out this aspect of our compliance program.

[b] No. However, we will be able to leverage off our investment adviser (SEC) compliance program currently in place.

[c] Yes. We were registered before 4.13(a)(4) was available, and our CPO (CFTC/NFA) compliance program remains in place.

[d] Yes. Given our activity in “commodity interests”, we voluntarily registered and have a sufficient CPO (CFTC/NFA) compliance program currently in place.



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## **Exclusions and Exemptions from CPO Compliance Obligations Without Registration**

# Exclusion for Certain “Otherwise Regulated Persons”

- CFTC Rule 4.5 excludes from the definition of CPO persons that operate pools that are regulated by some other regulatory authority
- As this is an exclusion, all the CFTC’s CPO requirements are not applicable
- CFTC Rule 4.6(a)(2) excludes from the definition of CTA any person who is excluded from the definition of CPO under CFTC Rule 4.5

# Exclusion for Certain “Otherwise Regulated Persons” (cont’d)

- Certain “qualifying entities” and their principals and employees are excluded from CFTC regulation as CPOs
- However, they must comply with other requirements of CFTC Rule 4.5
- A qualifying entity is:
  - a registered investment company that complies with certain trading limitations and marketing restrictions (see next slide);
  - an insurance company subject to state regulation with respect to the operation of a separate account;
  - a bank, trust company or any financial depository institution subject to regulation by any state or the United States with respect to the assets of a trust, custodial or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment discretion; or
  - a trustee of, named fiduciary of, or an employer maintaining, a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)

# Exclusion for Certain “Otherwise Regulated Persons”: New Limitations for Registered Investment Companies

- On February 8, 2012, the CFTC adopted an amendment to CFTC Rule 4.5 as it applies to registered investment companies
  - under the amendment, a registered investment company wishing to continue to claim the Rule 4.5 exclusion from CPO status is required to:
    - limit its non-bona fide hedging use of derivative trading (including swaps) to 5% or less of the liquidation value of its portfolio; or
    - limit the net notional value of its non-bona fide hedging commodity interest positions to 100% or less of the liquidation value of its portfolio; and
    - refrain from marketing itself as a vehicle for trading in the commodity futures, commodity options or swaps markets
- CFTC also clarified that controlled foreign corporations wholly owned by registered investment companies and used for trading commodity interests are commodity pools and are required to have their operator register with the CFTC as a CPO unless they can claim an exemption or exclusion

# Exclusion for Certain “Otherwise Regulated Persons”: New Limitations for Registered Investment Companies (cont’d)

- Timeline for implementation of amendments to CFTC Rule 4.5:
  - Compliance with the amendments to CFTC Rule 4.5 for purposes of registration only will be the later of either December 31, 2012 or 60 days following the adoption of final rules defining the term “swap”
  - Entities required to register due to the amendment will be subject to the CFTC’s recordkeeping, reporting, and disclosure requirements 60 days after the effectiveness of the final rule implementing the CFTC’s proposed harmonization effort with the SEC
- On February 8, 2012, the CFTC also issued a notice of proposed rulemaking detailing its proposed modifications to Part 4 of its Rules to harmonize the compliance obligations that apply to investment companies registered with both the SEC and the CFTC

# Exclusion for Operators of Certain Employee Benefit Plans

- Certain other employee benefit plans are excluded from the definition of a commodity pool, thereby excluding the operators of these plans from the definition of CPO under CFTC Rule 4.5
  - non-contributory ERISA plans
  - certain contributory ERISA plans where employee contributions are not committed as margin or premiums for futures or options contracts
  - certain employee welfare plans
  - church plans
  - governmental plans

# Exemption for Pools That Trade a *De Minimis* Amount of Commodity Interests

- Rule 4.13(a)(3) requires that pool investors either be non-United States persons or meet a standard basically equivalent to an “accredited investor” standard and that the pool trade only a *de minimis* amount of commodity interest positions (which includes futures contracts, commodity options, retail forex transactions and swaps) whether entered into for bona fide hedging purposes or otherwise, specifically:
  - the aggregate initial margin, premiums, and required minimum security deposit for retail forex transactions required to establish such positions cannot be more than 5% of the liquidation value of the pool’s portfolio after taking into account unrealized profits and losses; or
  - the aggregate net notional value of such positions does not exceed 100% of the liquidation value of the pool’s portfolio after taking into account unrealized profits and losses
  - under the net notional test, can net futures contracts on the same underlying commodity across markets and can net swaps cleared on the same designed clearing organization
- Funds of funds have a hard time complying with Rule 4.13(a)(3) because it is difficult to monitor the trading activities of underlying managers

# Rescinded Exemption for Pools with Highly Sophisticated Investors

- On February 8, 2012, the CFTC rescinded Rule 4.13(a)(4) (effective 60 days after publication in the Federal Register), which contained a broad exemption from most of the requirements of the CEA
- Rule 4.13(a)(4) generally required investors to meet the “qualified purchaser standard” or be non-United States persons
- Rule 4.13(a)(4) did not contain any limit on the amount of a pool’s trading in commodity interests
- Rule 4.13(a)(4) required:
  - a filing claiming the exemption must be made with the NFA
  - that fund investors receive disclosure stating that the CPO relies on the exemption

# Rescinded Exemption for Pools with Highly Sophisticated Investors: Uncertain Future

- As a result of the rescission of Rule 4.13(a)(4), many private fund managers will be forced to either comply with Rule 4.13(a)(3), register as a CPO (in addition to being registered with the SEC), or exit the commodity interest markets
- Rule 4.7 may return to prominence
  - only available to registered CPOs
  - requires that quarterly and annual reports are sent to investors
  - requires that annual reports are filed with the NFA
  - investors must meet the QEP standard

## Polling Question #2

Does your firm or client currently rely on CFTC exemption 4.13(a)(4) with the anticipation of being able to rely on (a)(3) instead?

[a] No. My firm or client does not currently rely on (a)(4).

[b] No. My firm or client will not be able to rely on (a)(3).

[c] Yes. It appears that my firm or client will be able to rely on (a)(3).

[d] Unsure. It is not yet obvious that my firm or client will be able to rely on (a)(3) given the de minimis threshold.



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## **Exemptions from CPO Compliance Obligations for Registered CPOs**

# Exemption for CPOs Whose Use of Futures Contracts and Commodity Options is Limited

- CFTC Rule 4.12(b) is available only for a person who is registered as a CPO or who has applied for CPO registration
- Exempts the CPO from only some of the disclosure (primarily, disclosure of past performance of the pool and its principals, and the pool's CTA and its principals), reporting, and recordkeeping requirements generally applicable to CPOs
- Often used by managers of privately-placed limited partnerships or limited liability companies that invest in commodity interest transactions (futures, options on futures, retail forex, leverage contracts and soon swaps), in addition to securities

# Exemption for CPOs Whose Use of Futures Contracts and Commodity Options is Limited (cont'd)

- In order to meet the exemption requirements, the pool must:
  - be offered and sold in compliance with the registration requirements of the Securities Act, or an exemption from such registration requirements;
  - be engaged generally and routinely in the buying and selling of securities and securities-derived instruments;
  - trade commodity interests in a manner “solely incidental” to its securities trading activities; and
  - not enter into commodity interest transactions for which the aggregate initial margin and premiums, and required minimum security deposit for retail forex transactions, exceed 10% of the fair market value of the pool’s assets, after taking into account unrealized profits and unrealized losses on such contracts. In the case of an option that is in-the-money at the time of purchase, the in-the-money amount (as defined in CFTC Rule 190.01(x)) may be excluded in computing such 10%.
- Each existing and prospective pool participant also must be informed in writing of the limitations described in the two bullet points immediately above before the pool commences trading commodity interests

# Exemption for Persons Who Operate Pools Composed Solely of “QEPs”

- CFTC Rule 4.7(b) provides an exemption from almost all the disclosure, reporting, and recordkeeping requirements otherwise applicable to registered CPOs
- However, this exemption is available only to a registered CPO, and only with respect to a pool composed solely of persons that the CPO “reasonably believes” are “qualified eligible persons” (“QEPs”)
- Furthermore, the pool must be sold in an offering exempt from the registration requirements of the Securities Act pursuant to Section 4(2) (for example, under Rule 506 of Regulation D) or Regulation S, or by a bank registered as a CPO with respect to a collective trust fund exempt from registration under Section 3(a)(2) of the Securities Act
- These pools may not be marketed to the public

# Exemption for Persons Who Operate Pools Composed Solely of “QEPs” (cont’d)

- The definition of QEP is contained in CFTC Rule 4.7(a)(2) and (a)(3)
  - Rule 4.7(a)(2) identifies persons who do not need to meet the “Portfolio Requirement” to be QEPs (certain institutional investors)
  - Rule 4.7(a)(3) identifies persons who must meet the “Portfolio Requirement”
- Because “qualified purchasers,” “knowledgeable employees” and non-United States persons are defined as QEPs without having to meet the “Portfolio Requirement,” the eligibility requirements for Section 3(c)(7) of the Investment Company Act of 1940, as amended, and CFTC Rule 4.7(b) funds are the same

# Exemption for Persons Who Operate Pools Composed Solely of “QEPs” (cont’d)

- Under Rule 4.7(a)(1)(v), “Portfolio Requirement” means that a person must:
  - (a) own securities (including pool participations) of issuers not affiliated with such person and other investments with an aggregate market value of at least \$2 million;
  - (b) have had on deposit with a futures commission merchant (“FCM”), for its own account, at any time during the six months preceding the date it purchases the pool participation in the exempt pool or opens an exempt account with a CTA at least \$200,000 in exchange-specified initial margin and option premiums, together with the required minimum security deposit for retail forex transactions for commodity interest transactions; or
  - (c) own a portfolio comprised of a combination of the funds or property specified in paragraphs (a) and (b) immediately above in which the sum of the funds or property includable under (a) above, expressed as a percentage of the minimum amount required, and the amount of futures margin and option premiums includable in (b) above, expressed as a percentage of the minimum amount required, equals at least 100%. (For example, \$1 million of securities (50% of \$2 million under (a)) plus \$100,000 of initial margin and option premiums (50% of \$200,000 under (b)) would equal 100%.)

# Exemption for Persons Who Operate Pools Composed Solely of “QEPs” (cont’d)

- CPOs who operate under this exemption have:
  - No specific disclosure document requirements other than a legend and the requirement that the PPM include all disclosures necessary to make the information contained therein, in context, not misleading
  - Limited periodic reporting requirements
  - Limited recordkeeping requirements
  - Notice requirements



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## **Exemptions from CTA Compliance Obligations Without Registration**

# Exemption for Registered Investment Advisers

- Under CEA Section 4m(3), persons who are registered as investment advisers under the Advisers Act whose business does not consist primarily of acting as CTAs, and who do not act as CTAs to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered DTEF, are exempt from registration as CTAs
- If a CTA holds itself out to the public as being primarily engaged in advising on commodity interests or investing, reinvesting, owning, holding or trading them, it cannot rely on this exemption

# Exemption for Other Registered Investment Advisers (cont'd)

- Under CFTC Rule 4.14(a)(8), certain persons may be exempt from registration as CTAs and from complying with the CFTC's CTA disclosure and recordkeeping requirements
- Such persons include persons who are:
  - registered as investment advisers under the Investment Advisers Act,
  - excluded from the definition of “investment adviser” pursuant to Sections 202(a)(2) (certain banks and trust companies) or 202(a)(11) of the Investment Advisers Act,
  - U.S. state-registered investment advisers, or
  - investment advisers that are exempt from federal and state registration

# Exemption for Other Registered Investment Advisers (cont'd)

- However, to qualify for this exemption, the investment adviser must comply with the following requirements:
  - advice must be furnished only to certain entities excluded from the commodity pool definition
    - “qualified entities” and entities excluded from the commodity pool definition under Rule 4.5 (*i.e.*, non-contributory and governmental plans),
    - pools that are organized and operated outside of the United States and have only non-U.S. person investors, and
    - Rule 4.13(a)(3) pools
  - advice must be “solely incidental” to investment adviser’s business
  - the investment adviser must not otherwise hold itself out as a CTA
- Other Requirements
  - Rule 4.14(a)(8) also contains certain notice filing requirements and requires the retention of certain records, and persons who rely upon the exemption are subject to special calls by CFTC staff

# Exemption for Persons with 15 or Fewer Clients

- Section 4m(1) of the CEA exempts from registration a CTA who provides commodity interest trading advice to 15 or fewer persons within the preceding 12 months and who does not hold itself out to the public as a CTA
  - The CFTC adopted Rule 4.14(a)(10) in 2003 to provide that any entity advised by a CTA that receives commodity interest trading advice based on its investment objectives, rather than on the individual investment objectives of its investors, would count as only one “person” for purposes of determining eligibility for the exclusion from registration under Section 4m(1) of the CEA
- This exemption, if applicable, also exempts the CTA from the CFTC’s CTA disclosure and recordkeeping requirements
- However, if a CTA holds itself out to the public as a CTA, this exemption does not apply, regardless of how many persons the CTA advises



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## **Exemption from CTA Compliance Obligations for Registered CTAs**

# Exemption for Persons Who Provide Advice to QEPs

- CFTC Rule 4.7(c) provides an exemption from almost all the disclosure and recordkeeping requirements otherwise applicable to registered CTAs
- However, this exemption is available only to registered CTAs and only with respect to commodity interest trading advice provided to persons that the CTA “reasonably believes” are QEPs as defined in CFTC Rule 4.7(a)(2-3)
- This exemption has its own limited disclosure requirements, recordkeeping requirements and notice requirements



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## **Forms CPO-PQR and CTA-PR**

# Forms CPO-PQR and CTA-PR

- CFTC adopted CFTC Rule 4.27(d) that, jointly with the SEC, establishes new reporting requirements with respect to private funds
  - requires CPOs and CTAs to report certain information to the CFTC on Forms CPO-PQR and CTA-PR, respectively
  - CPOs dually registered with the SEC and CFTC that file Sections 1 and 2 of Form PF, as applicable, must generally file Schedule A of Form CPO-PQR only
  - Non-dually registered CPOs must file all relevant sections of Form CPO-PQR based on certain reporting thresholds
  - All CTAs, regardless of SEC registration, will complete Form CTA-PR
  - Both forms must be filed via NFA's EasyFile System

## CPO-PQR Schedules, Thresholds, and Deadlines

Assets Under Management	Schedule A	Schedule B	Schedule C
Dually registered (at least \$1.5 billion AUM)	Quarterly – 60 days (also filing Form PF)		
Dually registered (less than \$1.5 billion AUM)	Annually – 90 days (also filing Form PF)		
Large CPO (at least \$1.5 billion AUM)	Quarterly – 60 days (not filing Form PF)	Quarterly – 60 days (for each pool)	Quarterly – 60 days (for each “Large Pool”)
Mid-Sized CPO (at least \$150 million AUM)	Annually – 90 days (not filing Form PF)	Annually – 90 days (for each pool)	
Small CPO (less than \$150 million AUM)	Annually – 90 days (not filing Form PF)		

# CPO-PQR Schedules, Thresholds, and Deadlines (cont'd)

- Filing requirements differ based on the aggregated gross pool assets under management (“Gross AUM”) of a CPO – this differs from the SEC’s “regulatory assets under management” for Form PF
- Even if a dually registered CPO files Form PF with the SEC, it may still need to file Schedules B and/or C if it has pools that were not captured on Form PF

# CPO-PQR Initial Filing Deadlines (12/31 fiscal year)

Commodity Pool Assets Under Management	Deadline
Large CPOs with at least \$5 billion AUM in commodity pools	November 29, 2012
Large CPOs with between \$1.5 billion and \$5 billion AUM in commodity pools	March 1, 2013
All other CPOs	March 31, 2013

- Rule 4.27 will become effective on July 2, 2012 and will apply to all registered CPOs regardless of whether they are still relying on Rule 4.13(a)(4) at that time

# Form CPO-PQR, Schedule A

- Schedule A seeks basic identifying information about the CPO, including:
  - general information about the CPO (number of employees, name of CCO, number of pools operated)
  - total and net assets under management
  - information about each of the pools operated (names of co-CPOs, foreign registrations, master/feeder status)
  - Information on third party used by the pool (admin. auditors, brokers, custodians, marketers, etc.)
  - change in assets under management and performance
  - subscription and redemption activity

# Form CPO-PQR, Schedule B

- Schedule B seeks information about each pool operated by a CPO, including:
  - breakdown of the assets of the pool by investment strategies
  - borrowings of the pool and types of creditors
  - pool counterparty and credit exposure
  - pool trading and clearing mechanisms
  - value of the pool derivative positions
  - schedule of investments by asset types

# Form CPO-PQR, Schedule C

- Schedule C seeks information from Large CPOs on an aggregate basis as well as on an individual pool basis for each “Large Pool”
  - “Large Pool” means any pool that has a net asset value individually, or in combination with any parallel pool structure, of at least \$500mm
  - Section 1: geographical breakdown of all of the pools of the CPO and the aggregate turnover rate of such CPO’s pools
  - Section 2: each Large Pool’s information regarding the following:
    - its liquidity, holding of unencumbered cash, number of open positions
    - counterparty credit exposure
    - risk metrics
    - secured and unsecured borrowing information
    - derivative positions and the collateral posted to secure such positions
    - duration of fixed income assets

# CPO-PQR and Funds-of-Funds

- The treatment of investments in other funds is consistent with the instructions adopted for Form PF
  - CPO may exclude any pool assets invested in other unaffiliated pools but must do so consistently for purposes of both thresholds and responding to questions (except Schedule A, Questions 10 and 11)
  - CPO may not, however, disregard liabilities, even if incurred in connection with such investments
  - Any “fund of funds” is required to be reported only in Schedule A and otherwise should be disregarded, even with respect to liabilities

# Form CTA-PR

- Only Schedule A of Form CTA-PR was adopted
- Schedule A requires all CTAs to provide basic information about the CTA's business and the pools for which it provides advice
- Form CTA-PR needs to be filed on an annual basis within 45 days after the end of the CTA's fiscal year
- Initial filing due on February 14, 2013 for most CTAs

# Questions?





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Ms. Meer is a partner in K&L Gates' Washington, D.C. office and a member of the Investment Management practice group. She focuses her practice on compliance issues under the Investment Advisers Act of 1940 and the Commodity Exchange Act, private investment companies, including hedge and private equity funds, negotiated mergers and acquisitions of investment advisers and broker-dealers, derivatives and related areas.



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