



September 16, 2016

Via Electronic Mail: <http://comments.cftc.gov>

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Commodity Pool Operator Annual Report; RIN 3038-AE47

Dear Mr. Kirkpatrick:

Managed Funds Association (“**MFA**”)¹ appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”) on its notice of proposed rulemaking on amendments to its rules governing pool annual reports and periodic account statements.²

I. Introduction/Executive Summary

MFA strongly supports the Commission’s codification of exemptive relief from certain requirements under CFTC Rules 4.22 and 4.7 that was previously granted by the Division of Swap Dealer and Intermediary Oversight (together with its predecessors, the “**Staff**”) on a case-by-case basis. MFA agrees that the notice filings required under the proposed rules would result in more timely relief being provided to commodity pool operators (“**CPOs**”) and decrease the cost of obtaining such relief. In addition, MFA believes that codifying such relief will allow the Staff to more efficiently allocate its limited resources to activities with higher priority. We also agree that the proposed rules will generally provide the same level of protection to pool participants as does current Rule 4.22.

MFA supports permitting the CPOs of certain non-U.S. pools to use the accounting principles, standards or practices followed in the U.K., Ireland, Luxembourg, and Canada when preparing the annual reports or periodic statements for such pools, in lieu of U.S. generally accepted accounting principles (“**U.S. GAAP**”) or International Financial Reporting Standards (“**IFRS**”). As we discuss in more detail below, in our view, permitting a CPO that uses IFRS or one of the proposed alternative accounting principles with respect to a pool’s annual report to use the same accounting principles when completing the financial

¹ MFA represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

² 81 Fed. Reg. 51828 (Aug. 5, 2016) (the “**Notice**”).

information with respect to that pool on its Form CPO-PQR will significantly enhance the usefulness of the proposed relief.

In addition, as we discuss in more detail below, in our view, the following would also enhance the usefulness of the proposed annual report relief with respect to certain newly formed pools:

- Measure the permissible time period based on when the pool began trading or, in the alternative, expand the permissible time period to six months from when the pool received subscription amounts from non-“insiders.”
- Remove any limit on the amount of gross capital contributions or the number of participants in the pool or, if the Commission determines that a limit is necessary, increase the capital contributions limit to \$6 million and require that the pool satisfy only one of the above criteria.
- Expand the category of “insiders” to include any entity that controls, is controlled by or is under common control with such “insiders” and, with respect to pools operated pursuant to CFTC Rule 4.7, knowledgeable employees and certain other “insiders” included in the “qualified eligible person” definition in Rule 4.7.

MFA also supports the Commission providing relief from the annual report audit requirement with respect to pools whose only participants are the CPO and other “insiders.”

II. U.S. GAAP Alternatives

MFA appreciates the Commission’s proposal to expand the permissible accounting standards that CPOs may use in preparing financial statements included in a pool’s annual reports and periodic account statements. MFA agrees that “pool participants are knowledgeable enough to evaluate financial statements prepared under principles, standards or practices established in the U.K., Ireland, Luxembourg or Canada, provided that the relevant accounting principles, standards or practices are properly disclosed to them.”³ We believe, however, that the efficacy of such amendments will be greatly enhanced if conforming amendments were made to Form CPO-PQR.

As the Commission is aware, CFTC Rule 4.27 and Form CPO-PQR provide that all financial information included in Form CPO-PQR must be reported in accordance with generally accepted accounting principles consistently applied. Form CPO-PQR further specifies that such financial information must be reported in accordance with U.S. GAAP. On November 5, 2015, the Staff reiterated this requirement in its FAQ regarding Form CPO-PQR.⁴

MFA respectfully requests that the Commission amend Rule 4.22(d) or Rule 4.27 and Form CPO-PQR to permit a CPO to use IFRS or the accounting principles, standards or practices followed in the U.K., Ireland, Luxembourg or Canada when completing such form with respect to a pool whose annual reports and periodic account statements are prepared using such principles.⁵ As a result of the Commission

³ 81 Fed. Reg. at 51832.

⁴ CFTC Division of Swap Dealer and Intermediary Oversight Responds to Frequently Asked Questions Regarding Commission Form CPO-PQR (Nov. 5, 2015).

⁵ An amended Rule 4.27 or Rule 4.22(d) could also provide that a CPO that has filed the notice required under proposed Rule 4.22(d)(2)(iii) is not required to make any additional filing to use the same accounting principles with respect to the reporting of such pool in its Form CPO-PQR.

amending Rule 4.22(d) in November 2009⁶ (and the Staff providing exemptive relief prior to that date⁷), many CPOs of non-U.S. pools have prepared their annual reports and periodic account statements in accordance with IFRS. As a result, many CPOs do not, in the ordinary course, compute the financial information requested in Form CPO-PQR with respect to certain pools in accordance with U.S. GAAP. Further, reconciling such financial information to be consistent with U.S. GAAP can be an expensive and difficult process. MFA would appreciate the Commission taking this time to reconsider requiring all financial information in Form CPO-PQR to be reported in accordance with U.S. GAAP and allow filers to follow IFRS or the accounting standards or practices in Ireland, Luxembourg, or Canada.

III. Initial (Stub) Year Annual Reports

MFA appreciates the Commission proposing relief that would generally permit the CPOs of certain newly formed pools to include unaudited financial statements in the annual reports for such pools that are otherwise prepared in accordance with Rule 4.22. MFA agrees that, if adopted, the amendments will result in lower costs to CPOs and their pools relative to continuing to seek bespoke no-action relief from the Commission. MFA, however, respectfully requests that the Commission make a few revisions to the proposed rulemaking that could result in even greater cost-savings while still furthering the Commission's goal of providing pool participants with the "information necessary to assess the overall trading performance and financial condition of their pool."⁸

A. Stub-Period

MFA believes that a pool should come within the scope of the relief if it *began trading* within three months of the end of its first (partial) fiscal year. The proposed rule provides that a pool would come within the scope of the stub year audit relief if it was *formed* within three months of the end of its first (partial) fiscal year. For these purposes, we understand that a pool would be considered formed when the CPO first received funds, securities or other property for the purchase of an interest in the pool.

Based on past Staff precedent, MFA respectfully requests that the Commission base the relief on when the pool began trading. We note that most of the exemptive relief the Staff has granted in these circumstances has been based on when the pool began trading. For example, all but two of the twelve relevant, publicly available exemptive letters issued in 2016 refer to when the pool began trading rather than when it was formed.⁹

⁶ 74 Fed. Reg. 57585 (Nov. 9, 2009).

⁷ See, e.g., CFTC Staff Letter 09-12 (permitting the use of IFRS by the CPO to a pool organized under the laws of Ireland); see also CFTC, Division of Clearing and Intermediary Oversight, Annual Reporting for Commodity Pools (Jan. 16, 2008) (noting that the Staff had provided relief on a case-by-case basis to CPOs that operate offshore pools by allowing such pools to prepare and present pool financial statements in accordance with IFRS (in addition to U.K. and Irish accounting standards) rather than U.S. GAAP).

⁸ 81 Fed. Reg. at 51833.

⁹ See CFTC Staff Letters 16-13, 16-14, 16-30, 16-35, 16-41, 16-42, 16-43, and 16-50. But see CFTC Staff Letters 16-51 (referring to the date on which the pools "commenced operations") and 16-15 (referring to the date on which the pool "launched"). One letter refers to the dates on which a master fund and two feeder funds both "received initial investments and began trading." CFTC Staff Letter 16-31. Another refers to both the date on which the master fund began trading and the date on which the master fund and two feeder funds received subscription amounts from third party participants, but conditioned relief on the CPO delivering a certified report

MFA notes that the Notice stated that “[t]he Commission is proposing to use the formation of the pool as the starting point of the stub period, and thus the point for determining eligibility for relief, to ensure that all CPOs and their pool participants are on a level playing field with respect to both what information the Annual Report must contain for the pool’s first fiscal year, and the requirement that such information be audited.”¹⁰ MFA notes that the financial reports contained in the annual report preceding its first full fiscal year will be prepared in accordance with Rule 4.22 or Rule 4.7, as applicable, which require that the financial statements are audited by an independent public accountant and prepared in accordance with U.S. GAAP or, if applicable, IFRS (or, if the proposed rules are adopted and the pool qualifies, one of the other approved U.S. GAAP alternatives). Further, Rule 4.22 generally requires the annual report to include a Statement of Operations, and Changes in Net Assets, for (a) the period between (i) the close of the pool’s fiscal year and (ii) the later of (x) the date the pool was formed and (y) the date of the most recent Statement of Financial Condition filed with the National Futures Association (“NFA”) and (b) the corresponding period of the previous fiscal year. Basing the relief on the trading date does not preclude the Commission from requiring that the Statement of Operations and Changes in Net Assets included in the audited annual report following the pool’s first full fiscal year cover the period between the date the pool was formed and the end of its first (partial) fiscal year in accordance with existing Rule 4.22.

If the Commission, however, determines that the relief must be based on the date the pool was formed, MFA respectfully requests that the final rule or adopting release clarify that the date “the pool was formed” is the date the first subscription amounts were received from a pool participant that is not an “insider.”¹¹ MFA believes that such an interpretation is appropriate because the CPO or an affiliate may provide seed capital some months prior to first accepting subscription amounts from third parties. In the Notice, the Commission indicated that, in structuring the proposed amendments, it was attempting to balance the avoidance of unnecessary burdens with the maintenance of customer protections.¹² As part of this balance, the Commission determined that capital contributions from “insiders” should not count toward the gross capital contribution limit.¹³ Similarly, we respectfully request that capital contributions from “insiders” not trigger the beginning of the stub period.

Additionally, MFA believes that a pool that was formed up to six months prior to the end of its first (partial) fiscal year should come within the scope of the relief. MFA notes that the Staff has previously granted exemptive relief where a pool began trading up to six months prior to its first (partial) fiscal year-end.¹⁴ We assume that the Staff was comfortable granting such relief, in part, because pool participants

that covered a period beginning on the commencement of trading, rather than the date on which subscription amounts were received. *See* CFTC Staff Letter 16-48.

¹⁰ 81 Fed. Reg. at 51830.

¹¹ *See* CFTC Staff Letter 14-37 (permitting the CPO to a pool that commenced trading on July 12, 2013 to deliver an 18-month certified annual report covering the period from July 8, 2013, the date on which the pool first received funds from a third party participant, through the end of the pool’s first full fiscal year). Even if the Commission determines that the date of formation is the date the pool first receives any funds, securities or other property for the purchase of an interest in the pool, we respectfully request that the Commission consider explicitly stating that fact in subsection (g)(2).

¹² *See* 81 Fed. Reg. at 51830.

¹³ *See id.*

¹⁴ *See* CFTC Staff Letter 16-30 (permitting the CPO to a pool that began trading on July 21, 2015 to deliver an 18-month certified annual report covering the period from the commencement of trading through the end of the pool’s first full fiscal year). *See also* CFTC Staff Letter 16-13 (permitting the CPO of a pool that began trading on August 1, 2015 to file and distribute a 17-month certified annual report); CFTC Staff Letter 16-14 (granting

would still receive an unaudited annual report after its first (partial) fiscal year and an audited annual report, which would include the stub-period, after its first full fiscal year. As a result, pool participants would be provided with the “information necessary to assess the overall trading performance and financial condition of their pool.”¹⁵

B. Size of the Commodity Pool and Number of Participants

MFA respectfully requests that there not be a limit on the gross capital contributions that the CPO may receive for interests in the pool or on the total number of participants in the pool. Since the CPO of any pool seeking to avail itself of the proposed relief will need to obtain consents from the pool’s participants to qualify for such relief, there is no need to impose any such limits. Moreover, pool participants will still be provided with an unaudited annual report otherwise prepared and distributed in accordance with Rules 4.22(c) and 4.7(b)(3) after the pool’s first (partial) fiscal year. In addition, the annual report that is prepared after its first full fiscal year will include the stub-months and be prepared in accordance with Rules 4.22(c) and 4.7(b)(3), which must include an opinion on the financial statements included therein issued by an independent public accountant. Thus, pool participants would still be provided with the “information necessary to assess the overall trading performance and financial condition of their pool.”¹⁶

If, however, the Commission determines that there should be a limit on gross capital contributions, MFA respectfully requests that the limit be increased to \$6 million.¹⁷ In addition, MFA respectfully requests that a pool be required to satisfy only one of the limits. That is, to utilize the relief, the pool should be required to have either no more than \$6 million in gross capital contributions or no more than fifteen participants. We note that for many of our members, the required minimum investor subscription amounts for many of their pools exceed \$1.5 million. Accordingly, a \$1.5 million gross capital contribution limit would render the relief unusable to many of our members. While increasing the limit to \$6 million would render the relief only slightly more practicable, requiring that only one of the criteria be satisfied, either the limit on contributions or the limit on the number of participants, would make the relief much more useful.

We also note that our members have seen the costs of operating a pool increase as a result of increased regulation. These high costs, such as the costs associated with auditing a pool’s financial statements, often result in high barriers to entry. By adopting any of the above revisions, MFA believes that the Commission will lower the barriers to entry to CPOs that want to launch new pools. Absent such suggestions, a CPO may delay forming a new pool and/or commencing trading for such pool until the beginning of the following year. This may result in the pool missing out on beneficial trading and/or investment opportunities.

C. Identity of Participants

If the Commission determines that eligibility for the relief should be based on a pool having below a certain amount of gross capital contributions and/or a certain number of pool participants, MFA agrees with the Commission that certain “insiders” and their capital contributions should be excluded. MFA

the same relief for a pool that began trading on August 3, 2015); and CFTC Staff Letter 16-48 (permitting the CPO of a master fund and two feeder funds to file and distribute a certified annual report that covers the period from September 28, 2015 through December 31, 2016).

¹⁵ 81 Fed. Reg. at 51833.

¹⁶ *Id.*

¹⁷ See CFTC Staff Letter 00-58 (granting relief where the pool had gross capital contributions in excess of \$7,000,000, but redemptions in excess of \$600,000); see also CFTC Staff Letter 10-10 (granting relief where the pool had a net asset value of at least \$6,000,000).

respectfully requests that the Commission augment the category of “insiders” to cover any entity that controls, is controlled by or is under common control with an “insider.” MFA notes that a similar concept is found in CFTC Rule 4.22(c)(8), which generally provides that the CPO of a pool is not required to deliver an annual report to any pool (i) that it is the CPO of or (ii) whose CPO it controls, is controlled by or with whom it is under common control.

In addition, MFA respectfully requests that the “insider” category be further expanded with respect to pools operated pursuant to Rule 4.7 to cover knowledgeable employees, as defined in Rule 4.7(a)(2)(vii), in addition to those persons identified in Rule 4.7(a)(2)(viii)(A) that are not already included in the proposed category of “insiders.” The Commission has stated in the past that it considers such participants to be “sophisticated investors who have the financial ability and experience necessary to understand the risks of futures trading and to obtain the information they require”¹⁸ and, thus, do not “need the full protections of the Part 4 framework.”¹⁹ Moreover, MFA believes that augmenting the “insider” category with respect to pools operated pursuant to Rule 4.7 would be consistent with Rule 4.7’s goal of “[r]educing unnecessary regulatory prescriptions for CPOs offering pool participations only to persons who . . . do not appear to need the full protections offered by the part 4 framework.”²⁰ Accordingly, MFA believes that excluding such “insiders” and their contributions from the participant and contribution limits in pools operated pursuant to Rule 4.7 would avoid unnecessary burdens while maintaining customer protections.

D. Liquidation Reports

MFA supports the Commission’s goal of ensuring that all pool participants have “information necessary to assess the overall trading performance and financial condition of their pool.”²¹ MFA respectfully requests that the final rule permit a CPO that has relied on the rule to file an unaudited stub year report to also file an unaudited liquidation report because the CPO will be required to obtain waivers from all pool participants to file an unaudited liquidation report. CFTC Rule 4.22(c)(7) permits the CPO of a pool that has ceased operations to file a liquidation report in lieu of the annual report specified in Rule 4.22(c). Rule 4.22(c)(7)(iii) provides that such liquidation report may be unaudited if the CPO has obtained written waivers from all pool participants in the pool. MFA respectfully requests, therefore, that the Commission still permit a CPO that has relied on the proposed rule to file an unaudited liquidation report because the CPO will be required by Rule 4.22(c)(7) to obtain waivers from all pool participants in order to be permitted to file an unaudited liquidation report. We understand that the Commission may be concerned with pool participants not being aware that they are waiving their right to receive any audited financial statements for the pool. If so, we respectfully note that the final rule could require that the waiver include an acknowledgement of the effect of such waiver.

E. Waiver/Consent

MFA generally agrees that the relief provided in the final rule should be conditioned upon the CPO of the pool receiving waivers from each pool participant. MFA respectfully requests that the final rule explicitly permit such waivers to be obtained in advance in the pool’s subscription agreement or other agreement between the participant and the pool. While the proposed rule does not explicitly require that such waivers be obtained in a separate document, specifically providing in the rule that the waivers may be

¹⁸ 65 Fed. Reg. 47848, 47849 (Aug. 4, 2000) (quoting 57 Fed. Reg. 3148, 3151 (Jan. 28, 1992)).

¹⁹ *Id.* (citing 57 Fed. Reg. at 3150-51).

²⁰ 65 Fed. Reg. 11253, 11254 (Mar. 2, 2000) (quoting 57 Fed. Reg. 3148, 3150-51 (Jan. 28, 1992)).

²¹ 81 Fed. Reg. at 51833.

obtained in a separate document would provide greater clarity. We note that the Staff has granted no-action relief in the past where, instead of obtaining separate waivers, pool participants were deemed to have consented by executing the subscription agreement and investing in the pool.²²

While MFA agrees that the final rule should specify what should be included in the waiver, MFA respectfully requests that the final rule not prescribe a specific legend. Instead, the final rule should permit a CPO to tailor its waiver in any manner that it believes would best communicate the pertinent facts to the pool's participants. A prescriptive legend, as currently contemplated by the proposed rule, would prohibit such tailoring. It could also lead to an unintended technical violation of the rule if a waiver is distributed to pool participants that does not contain the legend verbatim. Instead, the Commission should take an approach similar to CFTC Rule 4.13(a)(3). That rule does not require any specific legend to be provided to pool participants, but instead simply describes what information must be provided.

MFA also respectfully requests that the final rule clarify that a CPO does not need to obtain waivers from "insiders." If adopted as proposed, the rule would exclude "insiders" and their capital contributions from the limits on participants and gross capital contributions. In excluding "insiders" and their contributions from such limits, the Commission stated that it determined that structuring the relief in such a way would avoid unnecessary burdens while maintaining customer protections. MFA believes this reasoning would similarly apply to not requiring a CPO to obtain waivers from "insiders."

Further, at least with respect to pools operated pursuant to Rule 4.7, the Commission has previously been concerned only with whether non-"insiders" requested that the annual report be audited. As the Commission is aware, Rule 4.7 previously provided relief from the requirement to have a pool's annual report audited provided that "holders of a majority of the units of participation in the pool who are unaffiliated with the CPO" did not request an audited annual report. In 2012, however, the Commission amended Rule 4.7 and rescinded this exemption.²³ Thus, at least with respect to pools operated pursuant to Rule 4.7, not requiring consent from "insiders" would be generally consistent with how affiliated participants were previously treated under Rule 4.7.

IV. Other "Insider" Pools

MFA believes that participants in a pool operated pursuant to Rule 4.7 and whose only pool participants are the CPO and certain "insiders"²⁴ should be able to waive the requirement that the CPO distribute to pool participants and file with NFA an annual report prepared in accordance with CFTC Rule 4.7(b)(3). In such circumstances, the mandated delivery of an audited annual report to pool participants provides minimal benefits that MFA believes are outweighed by the costs of preparing an audited annual report.

²² See, e.g., CFTC Staff Letter 16-51 (noting that adequate disclosure had been provided in the pools' offering memorandum and that pool participants had consented to receive an initial 13-month annual report by executing the subscription agreement and investing in the pool); CFTC Staff Letter 16-30 (noting that the signature page to the pool's operating agreement disclosed the CPO's intention to defer the pool's first audit until after the pool's first full fiscal year); and CFTC Staff Letter 16-13 (noting that the pool's offering memorandum stated that participants, by their investment in the pool and execution of the subscription agreement, consented to receive an initial 17-month annual report).

²³ See 77 Fed. Reg. 11251, 11261 (Feb. 24, 2012).

²⁴ MFA respectfully requests that any expansion of the "insider" category for purposes of the stub-year audit relief apply equally to the category of "insiders" for purposes of this relief.

As discussed above, Rule 4.7 previously provided relief from the requirement to have a pool's annual reports audited. In 2011, the Commission proposed to eliminate such relief from Rule 4.7.²⁵ At that time, MFA wrote a comment letter suggesting that an exemption from the audit requirement should be retained where the pool's participants include only principals and the types of employees described in Rule 4.7(a)(2)(viii).²⁶ The Commission ultimately revised Rule 4.7 to remove such relief and cited a lack of data regarding the scope of that provision's applicability. At that time, the Commission stated it would prefer to have entities request exemptive relief on a case-by-case basis so that the Commission could determine if similar relief should be adopted in the future.²⁷

MFA appreciates the Commission reconsidering its position regarding "insider" pools after collecting more data. MFA does not believe that there is any need to limit the availability of this relief only to pools that have below a certain amount of gross capital contributions. By the nature of their status, "insiders" are more intimately familiar with the pool than unaffiliated third parties. As such, there is less of a need for the Commission to ensure adequate transparency for pool participants. In addition, it would be somewhat counterintuitive to impose a limit on gross capital contributions as higher contributions by "insiders" arguably indicate faith in, and a greater commitment to, the strategy being tested on the part of such "insiders."

V. Technical Corrections

MFA notes that the final rules should amend Rules 4.22(a)(6) and 4.7(b)(2)(v) in order to update the cross-reference to the notice filing requirement under Rule 4.22(d)(2). Currently, Rules 4.22(a)(6) and 4.7(b)(2)(v) state that the CPO of a pool that meets the conditions specified in Rule 4.22(d)(2)(i) and has filed the notice required under Rule 4.22(d)(2)(ii) may elect to follow the same accounting principles with respect to the computation and presentation of the pool's account statement. The proposed rule, however, would reorganize Rule 4.22(d)(2) such that the requirement to file a notice will, if the rule is adopted as proposed, be in subsection (d)(2)(iii).

VI. Additional No-Action Requests

MFA appreciates the Commission amending Rule 4.22 to provide relief to the CPOs of fledgling pools. MFA trusts that the Staff will continue to consider bespoke requests for no-action relief, if the facts warrant, given that a number of the pools in the publicly available no-action letters would not appear to satisfy the conditions in Rule 4.22, as it is proposed to be amended. We believe that if our above suggestions are incorporated into the final rule, the need for bespoke letters will be significantly reduced.

VII. Conclusion

MFA appreciates the opportunity to provide comments on the Commission's proposed amendments to its rules governing pool annual reports and periodic account statements. As discussed, we respectfully request that the Commission permit a CPO that uses IFRS, or will use one of the principles, standards or practices established in the U.K., Ireland, Luxembourg or Canada, with respect to a pool's annual report and periodic account statement to use the same accounting principles when completing the financial information with respect to that pool on its Form CPO-PQR. Also, as discussed, we respectfully request,

²⁵ See 76 Fed. Reg. 7975 (Feb. 11, 2011).

²⁶ See letter from Stuart J. Kaswell, Executive Vice President and Managing Director, MFA, to David A Stawick, Secretary, CFTC, dated April 12, 2011, comment no. 42180.

²⁷ See 77 Fed. Reg. at 11261.

with respect to the stub-year audit relief, that the Commission (i) measure the permissible stub-period based on when the pool commenced trading or, in the alternative, expand the permissible time period to six months from when the pool received subscription amounts from non-“insiders,” (ii) remove any limit on the amount of gross capital contributions or the number of participants in the pool or, if there must be a limit, increase the capital contributions limit to \$6 million and require that the pool satisfy only either the contributions or participant limit and (iii) expand the category of “insiders” to include any entity that controls, is controlled by or is under common control with such “insiders” and, with respect to pools operated pursuant to Rule 4.7, knowledgeable employees and certain other “insiders” who are currently included in Rule 4.7. Finally, as discussed, we respectfully request that the Commission provide relief from the annual report audit requirement for pools whose only participants are the CPO and other “insiders.”

We would be happy to discuss our comments or any other issues raised in the Notice at greater length with the Commission or the Staff. If the Staff has any questions, please do not hesitate to call Jennifer Han, Associate General Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President & Managing Director,
General Counsel

Cc:

The Hon. Chairman Timothy G. Massad
The Hon. Commissioner Sharon Y. Bowen
The Hon. Commissioner J. Christopher Giancarlo
Eileen T. Flaherty, Director
Division of Swap Dealer and Intermediary Oversight