June 26, 2024

VIA ELECTRONIC SUBMISSION

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

Re: Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools: Updating the "Qualified Eligible Person" Definition; Adding Minimum Disclosure Requirements for Pools and Trading Programs; Permitting Monthly Account Statements for Funds of Funds; Technical Amendments (RIN: 3038-AF25)

Dear Mr. Kirkpatrick:

MFA[1] submits these supplemental comments to the Commodity Futures Trading Commission ("**CFTC**" or, the "**Commission**") in response to the Commission's notice of proposed rulemaking to Rule 4.7 (the "**NPRM**").[2] Since our submission of the Initial MFA Letter, we have continued the dialogue with our members, which include commodity pool operators ("**CPOs**"), commodity trading advisors ("**CTAs**"), and investors, and have carefully reviewed the other comment letters submitted to the Commission in response to the NPRM. As the Commission moves forward to take final action in connection with the NPRM, we respectfully submit these supplemental comments, which reflect input from our continued dialogue with

[1] Managed Funds Association ("**MFA**"), based in Washington, DC, New York, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180-member fund managers, including traditional hedge funds, credit funds, and crossover funds, that collectively manage over $3.2 trillion across a diverse group of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors to diversify their investments, manage risk, and generate attractive returns over time.

[2] 88 Fed. Reg. 70852 (Oct. 12, 2023), avail. at https://www.cftc.gov/sites/default/files/2023/10/2023-22324a.pdf. MFA submitted our initial comments in response to the NPRM on December 11, 2023 (the "**Initial MFA Letter**").

industry stakeholders and our further consideration of these issues. To be clear, we continue to support the recommendations outlined in the Initial MFA Letter.

MFA respectfully requests that the Commission consider the following additional recommendations, which are discussed in greater detail below, in connection with taking final action on the NPRM:

(i) Given the proposed increase in the portfolio/asset requirements, there is no need for the Commission to implement any proposed disclosure requirements;

(ii) If the CFTC decides to move forward with any proposed disclosure requirements, it is critical that the Commission exempt CPOs and CTAs with respect to 4.7(a)(2) investors from the disclosure requirements;

(iii) The Commission should "grandfather" existing 4.7 pools that contain both 4.7(a)(2) and 4.7(a)(3) investors with respect to any minimum disclosure requirements; and

(iv) If the Commission elects to apply disclosure requirements to 4.7(a)(3) investors, it is critical that the disclosure be principles-based and not conflict with other disclosure obligations.

I. Given the proposed increase in the portfolio/asset requirements, there is no need for the Commission to implement any proposed disclosure requirements

As discussed in our Initial MFA Letter, there is no demonstrated need to couple an increase in the requirements under Rule 4.7(a)(3) (the "**Portfolio Requirement**") with mandatory disclosures to be effective.[3] We reiterate that, while we do not oppose the proposed increases in the "qualified eligible person" ("**QEP**") thresholds, MFA's strong view is that doubling ~~of~~ the QEP dollar thresholds is sufficient to address the Commission's stated investor protection and modernization goals. The mandatory disclosure proposal, respectfully, is a proposed solution in search of a problem.

MFA therefore recommends that the Commission at a minimum give the marketplace time to implement the new QEP thresholds and to provide the Commission and the National Futures Association ("**NFA**") an opportunity to examine CPOs and CTAs and assess whether any additional requirements are necessary to protect QEPs meeting the new, doubled requirements. It would also benefit the Commission and its Staff to take the time to assess whether adjusting the Portfolio Requirement under Rule 4.7(a)(3), as proposed, will mitigate their stated concerns about the differences between QEPs and the unequal bargaining power of certain QEPs.

[3] As the Commission is aware, a prospective pool participant or a prospective client may meet the eligibility standard for a "qualified eligible person" either by way of their status under Rule 4.7(a)(2) or by satisfying a portfolio requirement (the "**Portfolio Requirement**") under Rule 4.7(a)(3).

II. If the CFTC decides to move forward with any proposed disclosure requirements, it is critical that the Commission exempt CPOs and CTAs with respect to 4.7(a)(2) investors from the disclosure requirements

If the Commission proceeds with changes to the minimum disclosure requirements, MFA recommends that the Commission not impose such requirements on CPOs and CTAs with respect to persons who are QEPs by virtue of their status under Rule 4.7(a)(2). We note that this is consistent with comments submitted by Dechert, arguing that if the Commission proceeds with the disclosure-related portion of the NRPM, any such requirements should continue to exempt pools and exempt accounts whose participants and clients are qualified under CFTC Rule 4.7(a)(2).[4] Rule 4.7(a)(2) QEPs have the level of financial sophistication, leverage, and resources to obtain and monitor the information necessary to make informed investment decisions. These QEPs are sophisticated investors that can protect their own interests, insist upon any disclosures or reporting they deem important, and thus are not disadvantaged by the absence of minimum disclosure requirements.

III. The Commission should "grandfather" existing 4.7 pools that contain both 4.7(a)(2) and 4.7(a)(3) QEPs with respect to any minimum disclosure requirements

If the Commission ultimately determines to apply any disclosure requirements to CFTC 4.7(a)(3) QEPs, the Commission should grandfather existing pools that contain both CFTC Rule 4.7(a)(2) and 4.7(a)(3) QEPs. Currently, the two categories of QEPs may invest side-by-side in the same 4.7 pool, and CPOs of such 4.7 pools may not always distinguish between the two categories of QEPs in their subscription documentation. As a result, even if the Commission limits any disclosure requirements to pool investors that are QEPs under Rule 4.7(a)(3), it would still be burdensome and disruptive for CPOs operating 4.7 pools with both categories of QEPs to comply with and administer such a disclosure regime.

The NPRM makes clear that, as is currently the case, any determination of QEP status will continue to be made at the time of sale of pool participant units, or when an exempt account is opened with a CTA, and notes that increasing the Portfolio Requirement threshold would prevent a 4.7 CPO from accepting additional subscriptions from investors who no longer satisfy the Portfolio Requirement under the increased threshold, but it does not address or consider the disruptive consequences of such a scenario.[5] In addition, the Commission would need to address a plethora of other issues such as whether former Rule 4.7(a)(3) QEPs who no longer satisfy the Portfolio Requirement threshold would need to receive full Part 4 disclosures, whereas other Rule 4.7(a)(3) QEPs who continue to satisfy the Portfolio Requirement would

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[4] *See* Comment Letter, dated December 11, 2023, submitted by Dechert LLP (the "**Dechert Letter**"). We also generally agree with the other recommendations in the Dechert Letter.

[5] *See* 88 Fed. Reg. 70852 at 70869.

presumably receive the new minimum disclosures. Of course, such a result would be extremely burdensome and disruptive for impacted CPOs and their investors.

To ensure that any final rules minimize such disruption, MFA recommends that the Commission "grandfather" existing 4.7 pools and 4.7 managed account platforms with both categories of QEPs as part of the transition to implementing any disclosure requirements. We believe that this recommendation is necessary to fulfill the Commission's stated objective of "minimiz[ing] the potential for disruption to the 4.7 pool or trading program, as well as possible negative consequences for QEPs."[6]

IV. If the Commission elects to apply disclosure requirements to 4.7(a)(3) investors, it is critical that the disclosure be principles-based and not conflict with other disclosure obligations

If the Commission decides ultimately to adopt any minimum disclosure requirements for Rule 4.7(a)(3) investors, we reiterate that such disclosure should not consist of a set of rigid, prescriptive requirements, but instead apply a more flexible principles-based approach that facilitates harmonization with analogous Securities and Exchange Commission ("**SEC**") requirements for registered investment advisers under the Investment Advisers Act of 1940 as amended.

A principles-based approach is more in line with the complex nature of structures and trading and investment strategies typically characteristic of 4.7 pools and 4.7 accounts, rather than the prescriptive, retail-like disclosure that the Commission originally proposed. As noted in the Initial MFA Letter, the proposed rigid, prescriptive disclosure is unworkable in the context of private funds. A principles-based approach would provide better and more understandable disclosure to a 4.7 CPO's/CTA's investor base. In addition, there would not be the substantial additional burden of time and expense necessary to implement a rigid, prescriptive, and potentially confusing disclosure regime, which could conflict with other applicable regulations, such as for CPOs and CTAs who are also registered investment advisers with the SEC.[7]

Indeed, adopting a principles-based approach would advance a longstanding objective of the Commission, namely, to mitigate potentially conflicting or duplicative compliance obligations for CPOs and CTAs that are subject to both the CFTC and SEC regimes and thereby avoid unnecessary regulatory burdens. For example, in connection with adding "qualified purchasers" and "knowledgeable employees" to the list of persons and entities who qualify as QEPs under Rule 4.7(a)(2) in 2000, the Commission stated that it had been guided by the purposes of Rule 4.7, which include "coordinat[ing] the Commission's rules

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6 *See* 88 Fed. Reg. 70852 at 70855.

7 *See* 88 Fed. Reg. 70852 at 70858 n.57.

with certain federal securities laws."[8] This recommendation is also consistent with the Dechert Letter and other comment letters.

Finally, in any event, to the extent that the Commission adopts any substantive amendments to Rule 4.7, we urge that the CFTC afford CPOs and CTAs ample time to implement the necessary changes and transition to compliance.

V. Conclusion

We share the Commission's objectives, and we thank the CFTC for considering our additional recommendations. As with other proposed rulemakings from the CFTC, we appreciate the opportunity to work with the Commission on the NPRM, and would welcome the opportunity to discuss our views with you in greater detail. Please do not hesitate to contact Jeff Himstreet, Vice President & Senior Counsel (jhimstreet@mfaalts.org), or the undersigned, (jhan@mfaalts.org), with any question that you, your respective staffs, or the Commission's staff might have regarding this letter.

Very truly yours,

/s/ Jennifer W. Han

Jennifer W. Han
Executive Vice President
Chief Counsel & Head of Global Regulatory Affairs

Cc: The Hon. Rostin Benham, CFTC Chairman
The Hon. Kristin N. Johnson, CFTC Commissioner
The Hon. Christy Goldsmith Romero, CFTC Commissioner
The Hon. Summer K. Mersinger, CFTC Commissioner
The Hon. Caroline D. Pham, CFTC Commissioner

[8] *See* 65 Fed. Reg. 47848 at 47849 (Aug. 4, 2000).