



# Commodity Futures Trading Commission

## Office of Public Affairs

Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
cftc.gov

October 2, 2023

### **Fact Sheet and Q&A – Notice of Proposed Rulemaking to Amend Requirements for Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools Operated under Regulation 4.7: Updating the ‘Qualified Eligible Person’ Definition; Adding Minimum Disclosure Requirements for Pools and Trading Programs; Permitting Monthly Account Statements for Funds of Funds; and Technical Amendments**

The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend Regulation 4.7, a provision that provides exemptions from certain compliance requirements for commodity pool operators (“CPOs”) with respect to offerings to qualified eligible persons (“QEPs”) and for commodity trading advisors (“CTAs”) with respect to advising QEPs.

#### **Background**

The Commission adopted Regulation 4.7 in 1992. Since its adoption, the number of CPOs and CTAs operating pursuant to Regulation 4.7 and offering their pools and trading programs to QEPs has become, by far, the most popular registration status for CPOs and CTAs. In fact, the Commission has observed that the number of CPOs and CTAs relying upon Regulation 4.7 significantly outnumbers the number of CPOs and CTAs fully registered with the Commission, and the Commission expects that gap to continue to grow. With that in mind, the Commission is seeking to update various aspects of Regulation 4.7 to modernize the rule and reflect its current use.

In total, the Commission is seeking comment on four proposed amendments that would include the following:

1. Increases to the ‘Portfolio Requirement’ monetary thresholds in CFTC Regulation 4.7(a)(1)(v) to account for the effects of inflation over the last three decades;
2. New minimum disclosure requirements for CPOs and CTAs operating pools and trading programs under CFTC Regulation 4.7;
3. Amendments designed to codify routinely issued exemptive letter relief allowing CPOs of Funds of Funds operated under CFTC Regulation 4.7 to choose to distribute monthly account statements within 45 days of the month-end; and
4. Technical amendments to CFTC Regulation 4.7 designed to improve its efficiency and usefulness for intermediaries and their prospective and actual QEP pool participants and advisory clients, as well as the general public.

#### **Rationale**

The Commission is seeking to update and modernize the requirements under Regulation 4.7. First, the Commission proposes to update the monetary thresholds outlined in the Portfolio Requirement to account for the effects of inflation that have occurred since the thresholds were adopted in 1992. The Commission believes updating the Portfolio Requirement is overdue, and that the proposed increases would realign the thresholds with the Commission’s original intent in the QEP definition.

Second, the Commission wishes to narrow the existing complete relief from any disclosure requirements for CPOs and CTAs under Regulation 4.7 by proposing to require the provision of certain minimum disclosures to CPOs' and CTAs' prospective and actual QEP pool participants and advisory clients. The Commission preliminarily believes that requiring CPOs and CTAs to provide a baseline level of information to QEPs would alleviate concerns that have grown with the significant developments in derivatives markets, and increasingly complex products within those markets, over the last three decades. Additionally, the Commission is concerned that, without requiring basic disclosures, QEPs may have diminished power and leverage over time to demand a level of information necessary to make informed investment decisions from CPOs and CTAs offering 4.7 pools and trading programs.

Third, the Commission is proposing to codify in Regulation 4.7 routinely issued exemptive relief that it has granted to CPOs of Funds of Funds operated under Regulation 4.7 with respect to periodic reporting. Due to the popularity and regularity of this oft-requested and issued letter relief, the Commission believes adding the alternative account statement schedule to Regulation 4.7, thereby making it available to all CPOs of Funds of Funds without an individual request, is appropriate at this time.

Finally, the Commission is proposing technical amendments to certain aspects of Regulation 4.7 to improve its readability and overall utility.

## Proposed Rulemaking Q & A

### 1. What is the goal of the proposed rulemaking?

The Commodity Futures Trading Commission is proposing amendments to Regulation 4.7 to update and modernize that provision for CPO offerings to QEPs and CTAs with respect to advising QEPs.

### 2. What are the changes being made?

The Commission is seeking comment on **four** proposed amendments that would include the following:

- A. Increases to the 'Portfolio Requirement' monetary thresholds in CFTC Regulation 4.7(a)(1)(v) to account for the effects of inflation over the last three decades;
- B. New minimum disclosure requirements for CPOs and CTAs operating pools and trading programs under CFTC Regulation 4.7;
- C. Amendments designed to codify routinely issued exemptive letter relief allowing CPOs of Funds of Funds operated under CFTC Regulation 4.7 to choose to distribute monthly account statements within 45 days of the month-end; and
- D. Technical amendments to CFTC Regulation 4.7 designed to improve its efficiency and usefulness for intermediaries and their prospective and actual QEP pool participants and advisory clients, as well as the general public.

### 3. Who will be affected by these changes?

These changes will affect CPOs and CTAs operating commodity pools and trading programs pursuant to Regulation 4.7.

### 4. Why are the changes being made?

Generally, many aspects of Regulation 4.7 have not been updated since its adoption in 1992. The Commission is seeking to update and modernize the requirements to reflect developments in derivatives markets over the last 30 years. Given the increasing popularity of the Regulation 4.7 exemption, and the overwhelming number Regulation 4.7 CPOs and CTAs compared to fully registered CPOs and CTAs, the Commission deems it necessary to revisit certain key aspects of Regulation 4.7.

### 5. What questions are being asked of the public for comment?

The Commission seeks comment on all aspects of the proposed amendments including, but not limited to, the following:

- The proposed increases to the Portfolio Requirement in the QEP definition.
- Are CPI-U and the CPI-W indexes the most appropriate for considering the impact of inflation on the thresholds within the Portfolio Requirement, and if they are not, what other suggested indexes or methods should the Commission consider using to assess inflationary effects?
- Whether there is any data or information, from CPOs and CTAs that utilize Regulation 4.7, on the estimated number of advisory clients and pool participants that currently qualify as QEPs via the existing Portfolio Requirement, but would not so qualify if the increased monetary thresholds in the Portfolio Requirement are adopted?
- How much time would CPOs and CTAs need to determine that their existing QEP pool participants and clients would continue to satisfy the increased Portfolio Requirement?
- Should the Commission increase or decrease the types of information included in Proposed Regulations 4.7 (b)(2) and (c)(1)? In particular, should additional disclosure requirements listed in Regulations 4.24 and 4.34 be included for CPOs and CTAs, respectively? If so, what disclosures?
- The Commission is seeking specific data or information regarding:
  - (i) the current number of CPOs and CTAs utilizing Regulation 4.7 that provide the proposed minimum disclosures to their QEP participants and clients;
  - (ii) the level of disclosure currently provided by CPOs and CTAs to their QEP participants and clients;
  - (iii) if disclosures are provided, the general format, tenor, and manner used in both structuring and delivering the disclosures; and
  - (iv) the context and timing of when any such disclosures are provided (e.g., whether during solicitation or otherwise during the course of the investment relationship).
- What specific challenges would CPOs and CTAs face in complying with the disclosure requirements in Proposed Regulations 4.7 (b)(2) and (c)(1)? Should the Commission consider an implementation period for the proposed amendments, and if so, how much time should the Commission allow for CPOs and CTAs to develop and prepare QEP Disclosures that would comply with the proposed amendments?
- Do the proposed amendments to Regulation 4.7(b)(3) create a mechanism equivalent to the exemptive letters currently issued by the Commission, and is the alternate account statement distribution schedule and notice requirement clear?
- Whether the Commission should consider any other technical amendments for improving Regulation 4.7.