Intermediaries and Advisors
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9:00 a.m. – 10:00 a.m.

Chair:
Colin Lloyd (Cleary Gottlieb)

Panel:
Maria Chiodi (Credit Suisse)
Ruth Epstein (Stradley Ronan)
Matthew Kulkin (CFTC)
Dorothy Mehta (Cadwalader)
Jamilla Piracci (NFA)
Registration and Compliance Requirements for CPOs and CTAs

Dorothy D. Mehta

January 11, 2019
I. Introduction: The Proposed Rulemaking

- Since 2012 under the Dodd-Frank rulemaking, many investment managers trading in commodity interests came under the jurisdiction of the CFTC as CPOs and/or CTAs.

- Through interpretative notices and no-action letters, the CFTC and the NFA assisted CPOs and CTAs during this time with their registration and compliance obligations.

- On October 18, 2018, the CFTC proposed certain rules to help clarify these obligations and to simplify any burdensome requirements under the notice of proposed rulemaking, Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors, available at https://www.cftc.gov/sites/default/files/2018-10/Federalregister100918.pdf (the “Proposed Rulemaking”).
II. Summary of Proposed Rulemaking

- The Proposed Rulemaking addresses the following:
  
  - Codification of existing relief under CFTC Advisory 18-96 relating to non-U.S. pools.
  
  - Expansion of representation requirements relating to Statutory Disqualifications
  
  - Codification of existing relief under CFTC No-Action Letter Nos. 12-37 and 14-143 relating to Family Offices.
  
  - Codification of existing relief under CFTC No-Action Letter No. 14-116 relating to general solicitation under the JOBS Act
  
  - Codification of existing relief under CFTC No-Action Letter No. 12-40 relating to Business Development Companies (BDCs)
  
  - Codification of existing relief under CFTC No-Action Letter Nos. 14-115 and 15-47 relating to submission of Forms CPO-PQR and CTA-PR.
III. Codification of CFTC Advisory 18-96

- As background for the Proposed Rulemaking, CFTC Advisory 18-96 provides relief for certain registered CPOs who operate offshore funds from CFTC Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11) and from the location of books and records requirement under CFTC Rule 4.23.

- In order for a CPO to avail itself of the relief from CFTC Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11), the following requirements must be met (and certifications made to the CFTC):
  1. CPO must be registered with the CFTC;
  2. The commodity pool is, and will remain, organized and operated outside of the United States;
  3. The commodity pool will not hold meetings or conduct administrative activities within the United States;
  4. No shareholder of or other participant in the commodity pool is or will be a United States person;
  5. The commodity pool will not receive, hold or invest any capital directly or indirectly contributed from sources within the United States; and
  6. The CPO, the commodity pool and any other person affiliated therewith will not undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participation from United States persons.
Codification of CFTC Advisory 18-96 (cont.)

- In order for a CPO to avail itself of the relief from CFTC Rule 4.23, the following requirements must be met (and certifications made to the CFTC):

  1. The CPO will maintain the original books and records of the commodity pool at the main office of the commodity pool located outside the United States;

  2. The CPO desires to maintain such books and records outside the United States in furtherance of compliance with IRS requirements for relief from United States federal income taxation;

  3. The CPO will maintain duplicate books and records of the commodity pool at a designated office in the United States; and

  4. Within 72 hours after the request of a representative from the Commission, the United States Department of Justice or the National Futures Association (“NFA”), the original books and records will be provided to such representative at a place located in the United States that is specified by the representative.
Other Existing Relief for Non-US CPOs: CFTC Rule 3.10(c)(3)

- For CPOs operating exclusively offshore, CFTC Rule 3.10(c)(3) provides registration relief for firms located outside of the US engaged in intermediating commodity interest transactions on U.S. designated contract markets only on behalf of persons located outside of the U.S.

- CFTC Rule 3.10(c)(3) provides in relevant part, that:
  - “[a] person located outside the Unites States, its territories or possessions engaged in the activity of…a commodity pool operator, as defined in Sec. 1.3(nn) of this chapter,
  - in connection with any commodity interest transaction made on or subject to the rules of any designated contract market or derivatives transaction execution facility
  - only on behalf of persons located outside the United States, its territories or possessions, is not required to register in such capacity;
  - Provided, that any such commodity interest transaction executed on or subject to the rules of designated contract market or derivatives transaction execution facility is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.”

- Note in CFTC No-Action Letter 16-08, registration relief under 3.10(c)(3) was expanded to include foreign intermediaries (i.e., CPOs and CTAs) trading in swaps not subject to a clearing requirement.

- This relief is self executing.
Proposed CFTC Rule 4.13(a)(4) relating to CFTC Advisory 18-96

Under the Proposed Rulemaking, proposed rule 4.13(a)(4) for non-U.S. pools would require the following:

1. The pool is, and will remain, organized and operated outside of the United States;

2. The pool will not hold meetings or conduct administrative activities within the United States;

3. No shareholder of or other participant in the pool is or will be a U.S. person;

4. The pool will not receive, hold or invest any capital directly or indirectly contributed from sources within the United States; and

5. The person, the pool and any person affiliated therewith will not undertake any marketing activity for the purpose, or that could reasonably be expected to have the effect, of soliciting participation in the pool from U.S. persons.
Potential Considerations for the Non-U.S. Rulemaking

1. Definition of “non-U.S. person”: The Proposed Rulemaking includes various exemptions for “non-U.S. persons,” (e.g., Rule 4.13(a)(3), the “18-96 Exemption” and its interaction with Rule 3.10(c)(3)), but does not define “non-U.S. person” for these purposes. It would be useful if the CFTC provided a consistent definition of “non-U.S. person” for purposes of these exemptions, preferably by reference to the definition of “non-United States person” in CFTC Rule 4.7.

   Note CFTC Rule 4.13(a)(3) is proposed to be amended under the Proposed Rulemaking to include a “non-U.S. person” as an eligibility requirement for pool participants.

2. Application of CFTC Rule 3.10(c)(3) to CTAs: It would be useful if the CFTC clarified that non-U.S. CTAs may rely on the exemption in Rule 3.10(c)(3) for non-U.S. clients, while registering or claiming an exemption for advice to U.S. clients. This would conform the proposal for non-U.S. CPOs to non-U.S. CTAs.

3. Continued Reliance on 18-96: Confirm that CPOs may rely on existing guidance under CFTC Advisory 18-96 following codification of that relief into a new registration exemption for operators of offshore pools.
IV. Expanding the Prohibition on Statutory Disqualifications

- Currently, none of the CPO registration exemptions under CFTC Rule 4.13 prohibit statutory disqualifications as a condition of relief.

- In contrast, one of the requirements to obtain relief under Advisory 18-96 is that neither the registered CPO nor its principals is subject to any statutory disqualification under sections 8a(2) or 8a(3) of the CEAct, unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than 30 days prior to the claim of this exemption.

- In response to customer protection concerns, the CFTC is proposing CFTC Rule 4.13(a)(6) under the Proposed Rulemaking.
Proposed CFTC Rule 4.13(a)(6)

- For any CPO claiming the registration exemption under 4.13(a)(1) through (a)(5), the following also would be a condition for this exemptive relief:
  
  - must represent that neither the person (claiming the relief) nor any of its principals is subject to any statutory disqualification under Section 8a(2) or 8a(3) of the CEAct, unless such disqualification arises from a matter which was previously disclosed in connection with a previous application, if such registration was granted, or which was disclosed more than 30 days prior the claim of this exemption.
Potential Considerations with Proposed CFTC Rule 4.13(a)(6)

- Clarification of Process: clarify the process for CPOs to comply with the proposed new requirement to disclose statutory disqualifications when claiming an exemption from CFTC registration under CFTC Rule 4.13 in light of (i) the "breadth and ambiguity" of statutory disqualifications under CEA Sections 8a(2) and 8a(3), (ii) the proposal to require CPOs that have previously claimed an exemption from registration under CFTC Rule 4.13 to disclose any statutory disqualifications as part of their annual affirmation requirement, and (iii) the possibility of unintentional violations of the securities laws of which a CPO may be unaware at the time of the violation (e.g., restrictions on short sales in connection with a public offering under Rule 105 of SEC Regulation M);

- Statutory Disqualification Screening: A few thoughts on alternatives to the proposed statutory disqualification screening for CPOs claiming a registration exemption under CFTC Rules 4.13(a)(1)-(5):
  - rely on generally applicable anti-fraud provisions of the CEA;
  - rely on substituted compliance (e.g., Form ADV disclosures for RIAs or local screening requirements of non-U.S. firms registered in their home jurisdiction);
  - as a fallback, limit screening to individual (as opposed to entity) principals.
V. Proposed CPO and CTA Registration Exemptions for Qualifying Family Offices

- In order to provide relief consistent with the SEC’s rulemakings, the CFTC issued two no action letters (Nos. 12-37 and 14-143 for registration relief as a CPO and CTA for certain qualifying family offices.

- In effect, these family offices would need to meet the definitions of Family Office under SEC rules in order to qualify for the CFTC exemptive relief.

- A key difference is that unlike the SEC rules, the CFTC exemptive relief is not self-executing; Family Offices seeking relief are required to file a letter with the CFTC to claim the relief.

- *Note the statutory disqualification proposed representations do not apply to the Family Office exemptions.*
Proposed CFTC Rule 4.13(a)(8) relating to CPOs

- For a Family Office claiming the CPO registration exemption, such Family Office must meet the following requirements in respect of each pool:

  1. Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold only to family clients as defined under Investment Advisers Act 202(a)(11);

  2. The pool qualifies as a family office as defined under Investment Advisers Act 202(a)(11); and

  3. The person reasonably believes, at the time of investment, or in the case of an existing pool meeting the criteria, that each person who participates in the pool is a family client or a family office.

- The proposed exemptive relief is not self-executing; a filing is required as is an annual affirmation.
Proposed CFTC Rule 4.14(a)(11) relating to CTAs

- For a Family Office claiming the CPO registration exemption, such Family Office must meet the following requirements in respect of each pool:
  - The person’s commodity trading advice is solely directed to, and is for the sole use of, “family clients” as defined under the Advisers Act.

- The proposed exemptive relief is self-executing similar to other exemptive relief under CFTC Rule 4.14.
Potential Consideration for CPO Exemptive Relief as a Family Office

- Two potential issues with the proposed rulemaking for Family Offices claiming exemptive relief as CPOs are:

  1. Privacy: Will the claimed relief be publicly available on the NFA’s website?

  2. Annual Affirmation: Will the Family Office have sufficient controls in place to meet this obligation?

- Note the SEC does not have any of these requirements.
VI. Proposed Amendments Permitting General Solicitation by CPOs under the JOBS ACT

- The CFTC issued no-action relief (No. 14-116) for CPOs availing themselves under the general solicitation rules promulgated under the JOBS Act.

- In the Proposed Rulemaking, the CFTC is proposing to adopt this no action relief as part of its Part 4 Rules in CFTC Rule 4.7 and CFTC Rule 4.13.
VII. Proposed Exclusionary Relief for BDCs

- CFTC Rule 4.5 provides an exclusion for certain types of CPOs in respect of “qualifying entities”.

- In the Proposed Rulemaking, CFTC Rule 4.5(b)(1) would be amended to include business development companies (BDCs) for the CPO exclusion.
VIII. Relief from Rule 4.27 for Certain CPOs and CTAs

- Under the Proposed Rulemaking, the CFTC is proposing to amend CFTC Rule 4.27 in a manner consistent with the exemptive relief currently made available in CFTC Staff Letters 14-115 and 15-47 such that CPOs that operate only pools for which they are otherwise excluded from the CPO definition or exempt from CPO registration are not required to file a Form CPO-PQR, and CTAs that do not direct client accounts are not required to file a Form CTA-PR. As such, these CPOs and CTAs would be excluded from the definition of Reporting Person in CFTC Rule 4.27(b).

- Also excluded from the definition of Reporting Person, would be CTAs relying on 4.14(a)(4) or 4.14(a)(5), and who limit their activities to those described by that exemption, but nevertheless elect to register as CTAs.
IX. Other Potential Items for Considerations

- Recordkeeping relief: It would be useful if the CFTC amended the recordkeeping provisions of Rule 4.23 and 4.7 to:

  - permit records to be held at any third-party record-keeper in line with CFTC Letters 14-114 and 17-24;

  - delete the requirement that CPOs obtain a statement from third-party record-keeper as to their recordkeeping arrangements;

  - delete the requirement for registered CPOs maintaining records for non-U.S. funds outside the United States (18-96 recordkeeping relief) that (i) the CPOs maintain records offshore to comply with IRS requirements, and (ii) maintain duplicate records in the United States.

- In addition, it would be useful for the CFTC to make conforming changes to Rule 4.33 and 4.7 with respect to CTAs.
Bibliography


- CFTC Advisory 18-96; Offshore Commodity Pools Relief for Certain Registered CPOs From Rules 4.21, 4.22 and 4.23(a)(10) and (a)(11) and From the Location of Books and Records Requirement of Rule 4.23. April 11, 1996. [https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm](https://www.cftc.gov/sites/default/files/tm/advisory18-96.htm).


Bibliography (cont.)


Dorothy D. Mehta is a partner in the firm’s Financial Services Group and a leader in its investment management practice. Her client base includes U.S. and non-U.S. investment advisers to hedge funds, private equity funds and managed accounts, commodity pool operators, commodity trading advisors and family offices. Dorothy has extensive experience in the structuring, formation and operation (domestically and on a cross-border basis) of a variety of alternative investments products, including U.S. and non-U.S. hedge funds, private equity funds, hybrid funds, funds-of-funds, and commodity pools (both privately- and publicly-offered), and the establishment of separately managed account arrangements.

Dorothy regularly advises clients on registration and related compliance requirements of the SEC and CFTC (including with the rules and by-laws of the NFA), assisting with structuring considerations, compliance program reviews, audits and no action letter requests. Dorothy also routinely counsels clients on matters pertaining to the Dodd-Frank Act, the Commodity Exchange Act and federal securities laws generally. With recent Dodd-Frank amendments to the commodities laws, she has been significantly involved with hedge funds, private equity funds, registered investment companies and structured finance vehicles in their transition to CFTC regulation.

Dorothy currently serves on the Managed Fund Association’s Steering Committee and on the New York City Bar Association’s Private Investment Funds Committee, which shapes law and public policy. She also is an active member of several professional groups on private investment funds and CPO/CTA matters and is a frequent speaker at business and legal conferences.

Dorothy was listed as a “Next Generation Lawyer” in Fund Formation: Alternative/Hedge Funds by Legal 500 U.S.A., a “Highly Regarded Lawyer” in Hedge Funds in IFLR 1000, and as a “Rising Star” in Securities and Corporate Finance in New York - Metro by Super Lawyers.

Dorothy received her J.D. from Fordham University School of Law and an A.B. from Cornell University.
Winter Meeting
Panel on Intermediaries and Advisors
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Project KISS: Key Rule Changes for Intermediaries

By:

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*This outline reflects developments as of December 5, 2018.
I. **Project KISS**

- In 2017, the Commodity Futures Trading Commission ("CFTC") initiated Project KISS ("Keep It Simple, Stupid"), pursuant to which it requested and received public comment on streamlining the CFTC’s regulations.¹

- On February 12, 2018, Michael Gill, Chief of Staff to CFTC Chairman J. Christopher Giancarlo, delivered a speech in which he announced several potential rule proposals intended to streamline regulations applicable to intermediaries, consistent with Project KISS:²

  o Codification of CFTC No-Action Letter No. 13-11 to allow swap dealers to allocate disclosure obligations to other swap dealers ("SDs") acting as executing dealers in prime brokerage transactions;

  o Codification of CFTC No-Action Letter No. 13-70 to provide exceptions to business conduct and documentation requirements for swap dealers entering into “intended to be cleared swaps” on swap execution facilities;

  o Codification of No-Action Letter No. 17-12 to permit SDs entering into swaps with separately managed accounts to treat each account of the same legal entity as a separate counterparty for purposes of applying a maximum Minimum Transfer Amount of $50,000 per account;

  o Amendments to several SD business conduct standards to add flexibility for different types of SDs and simplify and clarify requirements;

  o Simplification of risk management rules (Rule 1.12 for futures commission merchants (“FCMs”) and Rule 23.600 for SDs) to allow more effective programmatic risk management rather than prescriptive policies and procedures that do not apply for many registrants. For example, Chief of Staff Gill stated that the CFTC would modify quarterly reporting obligations in light of new National Futures Association monthly risk reporting and adjust risk unit reporting line requirements to accommodate different types of SDs;

  o Simplification of segregation notice requirements to reduce burden and increase potential for more segregation (discussed in greater detail below);

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¹ See Project KISS, 82 Fed. Reg. 23765 (May 24, 2017); Project KISS, 82 FR 21494 (May 6, 2017).

² See Remarks of CFTC Chief of Staff Michael Gill at the National Press Club, CFTC Kiss Policy Forum (Feb. 12, 2018). The summary below covers Project KISS rule proposals that Chief of Staff Gill identified for the CFTC’s Division of Swap Dealer and Intermediary Oversight, except for proposals relating to commodity pool operators or commodity trading advisors. In his speech, he also identified rule proposals for the Division of Clearing and Risk and Division of Market Oversight.
o Modification of SD reconciliation requirements that overlap with reconciliation required by subsequent margin regulations;

o Codification of no-action letters and interpretations regarding an FCM’s receipt and holding of customer funds;

o Elimination of duplicative FCM filing requirements for segregation acknowledgment letters;

o Revision to required notices under Rule 1.12 to place focus on significant regulatory matters; and

o Modernization of FCM record requirements to reflect the shift to an increasing electronic environment.

II. Segregation Rule Proposal

• On July 24, 2018, the CFTC unanimously approved a Notice of Proposed Rulemaking (the “Seg Proposal”) to amend its regulations governing the right of counterparties to elect segregation of initial margin posted to SDs and major swap participants (“MSPs”) in connection with uncleared swap transactions (the “IM Seg Rules”).

• The Seg Proposal responds to concerns regarding the high degree of complexity in administering the IM Seg Rules, which goes beyond what is required by the Commodity Exchange Act (“CEA”) and places significant burdens on SDs, MSPs and their counterparties, despite the fact that a very small minority of counterparties have elected to segregate margin pursuant to the IM Seg Rules. Accordingly, the Seg Proposal is designed to align the requirements of the IM Seg Rules more closely with the statutory text.

• Background

  o In 2010, the Dodd-Frank Act amended the CEA to add Section 4s(l), which provides a counterparty with the right to elect segregation of initial margin posted

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4 CFTC Regulations, Subpart L; 17 C.F.R. §§ 23.700-704; Protection of Collateral of Counterparties to Uncleared Swaps; Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy, 78 Fed. Reg. 66621 (Nov. 6, 2013). Included as Appendix A to this outline is a comparison showing changes that would be implemented by the Seg Proposal to the text of the current IM Seg Rules.

5 In his concurring statement on the Seg Proposal, however, CFTC Commissioner Rostin Benham suggested that perhaps imposing more rigid segregation requirements on SDs and MSPs would increase incentives for counterparties to elect segregation.
to an SD or MSP for uncleared swap transactions. Section 4s(l) also includes related notification and reporting requirements.

- In 2013, the CFTC implemented these requirements when it finalized the IM Seg Rules. As noted below, the IM Seg Rules went well beyond the CEA to impose additional conditions on required segregation notices and account requirements. The IM Seg Rules became effective on May 5, 2014 for new counterparties and November 3, 2014 for existing counterparties.

- In October 2014, the CFTC issued an interpretive letter (“Letter 14-132”), which provided guidance reducing some of the complexity and ambiguity associated with the IM Seg Rules, but still retained most of the IM Seg Rules’ extra-statutory requirements.

- The CFTC and Prudential Regulators subsequently finalized uncleared swaps margin rules (“Mandatory Margin Rules”), which require a minimum amount of initial margin to be exchanged with, and segregated by, certain counterparties. As part of the Mandatory Margin Rules, the CFTC clarified that the IM Seg Rules do not apply to initial margin covered by its version of the Mandatory Margin Rules, but it did not address the Prudential Regulators’ parallel rules.

- **The Seg Proposal**
  - **Notification Requirements**
    - The Seg Proposal would amend the notice provisions of the IM Seg Rules by eliminating extra-statutory requirements to:

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6 CEA § 4s(l); 7 U.S.C. § 6s(l).

7 Id.


9 The Prudential Regulators include the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency.


• provide annual re-notification of the right to elect segregation;
• include specified information regarding eligible third-party custodians and the costs of segregation;
• provide notification to a specified officer of the counterparty;\(^{12}\) and
• obtain confirmation from the counterparty of both its receipt of the notification and its decision whether to elect segregation.

- Under the Seg Proposal, the obligations of the SD or MSP with respect to counterparty notification would thus be limited to:
  • providing a single notification of the counterparty’s right to elect segregation of initial margin at the beginning of the first swap transaction that provides for the exchange of initial margin;\(^{13}\) and
  • for counterparties electing segregation, obtaining written confirmation of such election and establishing the terms of such segregation by written agreement.

- As under the current IM Seg Rules, the Seg Proposal would permit a counterparty to change its election whether or not to segregate at its discretion by written notice to the SD or MSP.

- The Seg Proposal’s amendments would supersede interpretive relief in Letter 14-132 that had permitted reliance on negative consent not to segregate because, as amended, the IM Seg Rules would no longer require an SD or MSP to obtain confirmation of an election not to segregate.

- Like Letter 14-132, the Seg Proposal would clarify that the IM Seg Rules only apply to counterparties that post initial margin. In addition, the Seg Proposal would clarify that the right to segregation under the IM Seg Rules, and the associated notification requirement, would not apply to margin segregated pursuant to the Prudential Regulators’ Mandatory Margin Rules, in addition to the CFTC’s Mandatory Margin Rules.

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\(^{12}\) The CFTC indicated in the Seg Proposal that it expects SDs and MSPs to use reasonable judgment to identify an appropriate person at the counterparty who can evaluate the right to elect segregation.

\(^{13}\) The CFTC noted in the Seg Proposal that segregation notices sent under the current IM Seg Rules would be sufficient for purposes of complying with the IM Seg Rules as amended by the Seg Proposal. Seg Proposal at 36487 n.25.
Requirements for Custody of Segregated Initial Margin

- The Seg Proposal would retain the requirements that (1) a custodian of initial margin be a legal entity independent of both the SD or MSP and the counterparty (although such entity may be affiliated with the SD, MSP or counterparty) and (2) the initial margin be held in an account “segregated for, and on behalf of, the counterparty, and designated as such.”
  - This account naming requirement continues to raise questions regarding customary segregation arrangements for initial margin, in which the custodial account is typically held in the name of the pledgor for the benefit of the secured party.

- The Seg Proposal would also retain the requirement that the parties enter into a written segregation agreement that requires, at a minimum, written instruction and notification of any withdrawals of initial margin.

- However, the Seg Proposal would eliminate the requirement for withdrawals of margin to be accompanied by a statement to the custodian that is, sworn, written, subject to penalty of perjury, and states that the relevant party is entitled to assume control of the initial margin.

Investment of Segregated Initial Margin

- The Seg Proposal would continue to permit parties to enter into contractual arrangements requiring the investment of segregated margin and related allocation of investment gains and losses.

- However, the Seg Proposal would remove the requirement that segregated initial margin be invested in a manner consistent with CFTC Rule 1.25.

- CFTC Rule 1.25 is intended to protect clients trading in exchange-traded futures and cleared swaps, which are subject to standardized terms, including with respect to the investment of segregated initial margin; in contrast, in the context of uncleared swaps, parties regularly negotiate bespoke transactions and are able to negotiate contractual protections and to agree on investment decisions for segregated initial margin in that context.14

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14 The Seg Proposal does acknowledge that, in some situations, nonfinancial end-user counterparties may have less negotiating power with SDs or MSPs as a result of the Seg Proposal, and the Seg Proposal solicited comments on these issues, including whether counterparties are at a disadvantage in negotiating the terms for segregation arrangements more generally. Proposal at 36491.
Additionally, because investment decisions for segregated margin for uncleared swaps are typically made by the counterparty and/or custodian—not the SD or MSP—applying CFTC Rule 1.25 in this context would be detrimental to the counterparty’s interests by restricting its investment discretion. Nor are such restrictions necessary to protect the SD or MSP since, by definition, the IM Seg Rules apply to margin the SD or MSP is not required to collect in the first place.

**Reporting Requirements for Non-Segregated Initial Margin**

- The Seg Proposal would retain rules addressing the statutory requirement for SDs and MSPs to report quarterly to counterparties not electing segregation of initial margin whether the back office procedures of the SD or MSP relating to margin and collateral requirements are in compliance with the agreement of the parties.

- The Seg Proposal would, however, streamline implementation of this requirement by:
  - eliminating the obligation of the chief compliance officer (“CCO”) of the SD or MSP to be the individual who provides the quarterly report, since the CCO might not be the best-placed individual to do so;\(^\text{15}\)
  - clarifying the timing of delivery of the report (no later than 15 business days after the end of the relevant quarter); and
  - eliminating the requirement that the report indicate whether or not the back office procedures were not in compliance with the agreement of the parties “at any point during the previous calendar quarter.”

- Although the CFTC did not provide guidance as to the content of the quarterly reporting obligation, SDs and MSPs have established practices in this area that we would expect to continue following adoption of the Seg Proposal.

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\(^\text{15}\) The Seg Proposal does note, however, that the CCO would remain responsible, under CFTC Rule 3.3, for addressing non-compliance issues, including issues related to these procedures.
III. **CCO Rule Amendments**

- On August 21, 2018, the CFTC unanimously approved final amendments (the "Amendments")\(^{16}\) to its regulations governing CCO duties and annual compliance report requirements for SDs, MSPs, and FCMs (together, "Registrants") (the "CCO Rule").\(^{17}\)

- The Amendments seek to streamline and clarify the CCO Rule, as well as align the CCO Rule with the corresponding Securities and Exchange Commission ("SEC") regulations governing CCOs of security-based swap dealers and major security-based swap participants (the "SEC CCO Rule").\(^{18}\) In particular, the Amendments significantly streamline and help harmonize the content of the annual compliance report (the "CCO Annual Report"). However, the CFTC declined to fully harmonize the CCO’s duties with parallel provisions of the SEC CCO Rule. Specifically, the CFTC emphasized that the CCO Rule requires CCOs to take a more active role in oversight of regulated activities, rather than the advisory role more traditionally associated with CCOs in the securities industry. The CFTC justified the departures from the SEC CCO Rule in respect of these duties by referring to the differences between the Registrants and the SEC-regulated entities. The CFTC did not, however, take these differences into account by adopting more flexible reporting lines, as commenters had requested. If anything, the Amendments reinforce the CFTC’s expectations regarding escalation of issues by the CCO to the highest levels of management of a Registrant.

- **Background**
  
  - In 2010, the Dodd-Frank Act amended sections 4d(d) and 4s(k) of the CEA to require Registrants to designate a CCO to fulfill certain requirements and duties.\(^{19}\) These duties include preparing and signing the CCO Annual Report.
  
  - In 2012, the CFTC implemented these requirements when it finalized the CCO Rule, which became effective on June 4, 2012.
  
  - In December 2014, in response to industry requests for guidance and clarification, the CFTC issued a staff advisory ("Advisory 14-153"),\(^{20}\) which provided guidance to Registrants on the form and content requirements of CCO Annual Reports, including the requirement that the Registrant identify and assess each of its written policies and procedures ("WPPs") for each regulatory requirement.

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\(^{17}\) Included as Appendix A to this Memorandum is a comparison showing changes that will be implemented by the Amendments to the text of the current CCO Rule.

\(^{18}\) 17 C.F.R. § 240.15Fk-1.

\(^{19}\) CEA §§ 4d(d), 4s(k); 7 U.S.C. §§ 6d(d), 6s(k).

under the CEA and CFTC regulations. The Amendments replace and supersede Advisory 14-153 with a new appendix to CFTC Rule 3.3.

- **The CFTC Amendments**

  - **Definition of “Senior Officer”**
    
    - Consistent with the SEC CCO Rule, the Amendments define “senior officer” in the CCO Rule as “the chief executive officer or other equivalent officer of a registrant."
    
    - The CFTC declined to incorporate industry comments requesting that the definition accommodate different organizational structures of Registrants by, for example, designating the most senior officer within the Registrant’s swaps business as the “senior officer,” rather than the chief executive officer (“CEO”). The CFTC repeatedly emphasized the importance of the CCO having a direct reporting line to the highest executive-level at the Registrant and escalating issues to that level if necessary to address matters not resolved to the CCO’s satisfaction.

  - **CCO Duties**
    
    - **Duty to Administer Compliance Policies and Procedures**
      
      - Consistent with the SEC CCO Rule, the Amendments will limit the scope of the CCO’s duties in administering each of the Registrant’s policies and procedures to those policies and procedures relating to the Registrant’s business as an FCM, SD or MSP, as applicable, rather than policies and procedures related to compliance with all provisions of the CEA and CFTC regulations.

      - However, the CFTC declined to follow the SEC in providing further guidance that “administer” means “reviewing, evaluating, and advising” the Registrant on its compliance policies and procedures. Instead, the CFTC noted that “the role of the CCO, under the Dodd-Frank Act, goes beyond the customary and

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traditional advisory role of a CCO and requires more active engagement.”

- The CFTC went on to note that the CCO may be able to fulfill his or her role by actively engaging in processes involving “reviewing, evaluating, and advising” on compliance issues, and other personnel may have day-to-day responsibilities for implementing compliance procedures, but the CCO role requires escalating significant issues to the board or senior officer if others are not addressing those issues in a reasonably satisfactory manner.

- **Duty to Resolve Conflicts of Interest**
  - The current CCO Rule includes a duty for the CCO to resolve any conflicts of interest. The Amendments would align the rule with the SEC CCO Rule by qualifying the duty with a reasonableness standard and a materiality standard (i.e., a duty to “take reasonable steps” to resolve “material” conflicts of interest). The Amendments would further limit the scope of the duty to include only material conflicts relating to the Registrant’s business as an FCM, SD or MSP.
  - The CFTC did not adopt a fixed standard for materiality in this context. Instead, it suggested Registrants themselves make such determinations based on the relevant facts and circumstances.
  - The CFTC also declined to state that CCOs have a duty to minimize, rather than resolve, conflicts, as the CFTC views this as inconsistent with the language in the CEA. However, the CFTC recognized that in addition to eliminating conflicts if reasonably practicable, resolution can also include mitigating conflicts to the point of being immaterial.
  - Again, the CFTC emphasized its vision for a more active CCO role by noting that the requirement to “take reasonable steps” will require active involvement in conflict resolution, including identifying and advising on conflicts of interest as well as escalating unresolved conflicts to the board of directors or senior officer.

- **Duty to Ensure Compliance**
  - The CFTC declined to amend the CCO’s general duty to take reasonable steps to ensure compliance with the CEA to conform to the SEC CCO Rule, which solely requires the CCO to take reasonable steps to ensure that the Registrant establishes, maintains and reviews written compliance policies and procedures. The
CFTC specifically noted that, in its view, the statutory text of the CEA requires more of the CCO, such as a reasonable level of involvement in compliance monitoring, identifying noncompliance or potential noncompliance events, and advising on the mitigation and correction of compliance activities.

- Even though the CFTC stated that the CCO may reasonably rely on other personnel to implement many of the policies and procedures in the course of their regular business activities, the CFTC further emphasized that a CCO must escalate issues to senior management when necessary.

### Duty to Remediate Noncompliance Issues

- The Amendments would, consistent with the SEC CCO Rule, add reasonableness standards to the current obligations for the CCO to ensure that the Registrant:

  - establishes, maintains and reviews the applicable policies and procedures to remediate noncompliance issues identified by the CCO; and
  - establishes written procedures for the handling, management response, remediation, retesting and resolution of noncompliance issues.

- In each case, under the Amendments the CCO will be required to “take reasonable steps” to ensure such policies are established and that such policies are “reasonably designed” to achieve their purpose.

- In addition, the CCO is no longer required to consult with the board of directors or senior officer in connection with establishing procedures to remediate noncompliance issues identified by the CCO, even though particular issues can still require escalation.

- The CFTC indicated that the noncompliance issues identified by the CCO will continue to include, as a source, all complaints that can be validated, whether written or verbal. The SEC, by contrast, clarified that under its rules a “complaint that can be validated” means “a written complaint that can be supported upon a reasonable investigation.”
CCI Annual Report

- **Description of the Registrant’s WPPs**
  - The Amendments will continue to require a CCO to describe the Registrant’s WPPs as part of the CCO Annual Report, but clarify that the description is limited to WPPs relating to a Registrant’s business as an FCM, SD or MSP. This description should provide a narrative describing the different types of WPPs, how they work as a whole system or program, and how the Registrant puts them into practice.

- **Assessment of the Effectiveness of the Policies and Procedures**
  - The Amendments will eliminate the requirement for the CCO Annual Report to identify and assess each WPP for each regulatory requirement under the CEA and CFTC regulations. Instead, the CCO may submit a summary of WPPs relating to its business as an FCM, SD or MSP, as applicable, and detailed discussions of a Registrant’s annual assessment and recommended improvements.
  - The CFTC noted, however, that the CCO must still conduct an underlying assessment of the WPPs to comply with the CCO Rule requirements, which may include the use of sub-certifications or other methodologies currently employed by Registrants.

- **Resources Set Aside for Compliance**
  - The Amendments clarify that the CCO Annual Report’s discussion of resources need only address those resources set aside for compliance activities that relate to the Registrant’s business as an FCM, SD or MSP, which is consistent with the SEC CCO Rule.
  - Although the CFTC received comments advocating for a clarification that the discussion of resources in the CCO Annual Report does not need to include any sort of quantitative assessment, the CFTC declined to provide such clarification, noting that in certain areas, such as the number of compliance personnel and budgetary information, quantitative information would be appropriate in order to properly assess the adequacy of such resources.

- **Material Noncompliance Issues**
  - The CCO Annual Report must include a description of any material noncompliance issues.
• The CFTC declined to adopt a definition for “material noncompliance issue,” noting that given the differences in size and nature of businesses among Registrants, materiality should be individually assessed by each Registrant, and that Registrants should continue to define and implement their own materiality standards as part of the CCO Annual Report.

### Furnishing the CCO Annual Report

• Under the Amendments, the CCO Annual Report must be furnished to (1) the board of directors or the senior officer and (2) the audit committee (or equivalent body), if one exists. There is no obligation for a Registrant to form an audit committee merely to satisfy the CCO Rule.

• For Registrants with an audit committee (or an equivalent body), the CCO Annual Report must be furnished to such committee by the earlier of (i) its next scheduled meeting after the CCO Annual Report is furnished to the CFTC and (ii) 90 days after the CCO Annual Report is furnished to the CFTC.

• By contrast, the SEC CCO Rule requires delivery to both the board and the senior officer, as well as the audit committee. The CFTC acknowledged that the divergence with the SEC in this area is necessary given the greater diversity in corporate forms and organization structures among Registrants than among SEC-regulated entities.

### Certification

• The Amendments retain the requirement for the CCO, under penalty of law, to sign and certify that the CCO Annual Report is accurate and complete, but they add a materiality qualifier that the report is accurate and complete “in all material respects.” This qualifier aligns the certification requirement with the SEC CCO Rule.

• The CFTC declined to define or further clarify the meaning of “material” in this context, other than to note that it is consistent with the related duty to amend and recertify the CCO Annual Report if material errors or omissions are identified.

### Affiliated and Dual Registrants

• The Amendments clarify that Registrants that control, are controlled by or are under common control with, other Registrants (“Affiliated Registrants”) are permitted to use incorporation by
reference in their CCO Annual Reports in the form that best suits the Affiliated Registrants. To the extent that Affiliated Registrants submit joint reports, the CCO or CEO for each Registrant must certify the applicable contents of the CCO Annual Report.

- The Amendments also allow Registrants registered in more than one capacity ("Dual Registrants") to submit a single CCO Annual Report if:

  - the statutory requirements for the CCO Annual Report are clearly addressed and identifiable as they apply to the Dual Registrant in each of its registered capacities;
  
  - the CCO Annual Report clearly delineates the allocations of shared compliance programs, resources or other elements related to compliance; and
  
  - the Registrant complies with all of the requirements to certify and furnish the CCO Annual Report for each of its registrations.

- Appendix C to Part 3 – Guidance on the Application of Rule 3.3(e), Chief Compliance Officer Annual Report Form and Content ("Appendix C")

  - As noted above, the Amendments include a new Appendix C that supersedes Advisory 14-153.

  - The guidance in Appendix C is generally consistent with the guidance included in Advisory 14-153, other than eliminating the requirement to identify and assess a WPP for each and every applicable regulatory requirement under the CEA and CFTC regulations.

  - Because the CCO Annual Report no longer includes an obligation to identify a WPP applicable to each regulatory requirement, Appendix C emphasizes the need for the CCO Annual Report to discuss the Registrant’s WPP assessment process.

    - **Volcker Rule**

      - Although the CFTC noted that the industry has raised important considerations regarding the relationship between the CCO Rule and the compliance requirements of the Volcker Rule,23 the CFTC declined to

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address any issues with respect to Volcker Rule compliance at this time, but noted that it may address this issue in the future.

- **Substituted Compliance**
  - The CFTC clarified that existing substituted compliance determinations with respect to the CCO Rule are not affected by the Amendments.
APPENDIX A

Subpart L—Segregation of Assets Held as Collateral in Uncleared Swap Transactions

§ 23.700 Definitions.

As used in this subpart:

Initial Margin means money, securities, or property posted by a party to a swap as performance bond to cover potential future exposures arising from changes in the market value of the position.

Margin means both Initial Margin and Variation Margin.

Segregate. To segregate means to keep two or more items in separate accounts, and to avoid combining them in the same transfer between two accounts.

Variation Margin means a payment made by or collateral posted by a party to a swap to cover the current exposure arising from changes in the market value of the position since the trade was executed or the previous time the position was marked to market.

§ 23.701 Notification of right to segregation.

(a) Prior to the execution of each swap transaction that is not submitted for clearing, a swap dealer or major swap participant shall:

(1) Notify each counterparty to such transaction that the counterparty has the right to require that any Initial Margin the counterparty provides in connection with such transaction be segregated in accordance with §§ 23.702 and 23.703, except in those circumstances where segregation is mandatory pursuant to §23.157; or rules adopted by the prudential regulators pursuant to section 4s(e)(2)(A) of the Act.

(2) Identify one or more custodians, one of which must be a creditworthy non-affiliate and each of which must be a legal entity independent of both the swap dealer or major swap participant and the counterparty, as an acceptable depository for segregated Initial Margin; and

(3) Provide information regarding the price of segregation for each custodian identified in paragraph (a)(2) of this section, to the extent that the swap dealer or major swap participant has such information.

(b) The right referred to in paragraph (a) of this section does not extend to Variation Margin.

(c) If the counterparty elects to segregate Initial Margin, the terms of segregation shall be established by written agreement. The notification referred to in paragraph (a) of this section shall be made to an officer of the counterparty responsible for the management of collateral. If no such party is identified by the counterparty to the swap dealer or major swap participant, then the notification shall be made to the Chief Risk Officer of the counterparty, or, if there is no such Officer, the Chief Executive Officer, or if none, the highest-level decision-maker for the counterparty.
Prior to confirming the terms of any such swap, the swap dealer or major swap participant shall obtain from the counterparty confirmation of receipt by the person specified in paragraph (c) of this section of the notification specified in paragraph (a) of this section, and an election, if applicable, to require such segregation or not. The swap dealer or major swap participant shall maintain such confirmation and such election as business records pursuant to §1.31 of this chapter.

Notification pursuant to paragraph (a) of this section to a particular counterparty by a particular swap dealer or major swap participant need only be made once in any calendar year.

A counterparty’s election, if applicable, to require segregation of Initial Margin or not to require such segregation, may be changed at the discretion of the counterparty upon written notice delivered to the swap dealer or major swap participant, which changed election shall be applicable to all swaps entered into between the parties after such delivery.

§ 23.702 Requirements for segregated initial margin.

(a) The custodian of Initial Margin, segregated pursuant to an election under §23.701, must be a legal entity independent of both the swap dealer or major swap participant and the counterparty.

(b) Initial Margin that is segregated pursuant to an election under §23.701 must be held in an account segregated for, and on behalf of, the counterparty, and designated as such. Such an account may, if the swap dealer or major swap participant and the counterparty agree, also hold Variation Margin.

(c) Any agreement for the segregation of Initial Margin pursuant to this section shall be in writing, shall include the custodian as a party, and shall provide that: any instruction to withdraw Initial Margin shall be in writing and that (1) Any withdrawal of such Margin, other than pursuant to paragraph (c)(2) of this section, shall only be made pursuant to the agreement of both the counterparty and the swap dealer or major swap participant, and notification of such withdrawal shall be given immediately to the non-withdrawing party;

(2) Turnover of control of such Margin shall be made without the written consent of both parties, as appropriate, to the counterparty or to the swap dealer or major swap participant, promptly upon presentation to the custodian of a statement in writing, made under oath or under penalty of perjury as specified in 28 U.S.C. 1746, by an authorized representative of either such party, stating that such party is entitled to such control pursuant to an agreement between the parties. The other party shall be immediately notified of such turnover.

§ 23.703 Investment of segregated initial margin.

(a) Margin that is segregated pursuant to an election under §23.701 may only be invested consistent with §1.25 of this chapter.

(b) Subject to paragraph (a) of this section, the swap dealer or major swap participant and the counterparty may enter into any commercial arrangement, in writing, regarding the investment of Initial Margin, segregated pursuant to § 23.701 and the related allocation of gains and losses resulting from such investment.

§ 23.704 Requirements for non-segregated margin.
(a) The chief compliance officer of each swap dealer or major swap participant shall report to each counterparty that does not choose to require segregation of Initial Margin pursuant to § 23.701(a), on a quarterly basis, no later than the fifteenth business day of each calendar quarter, on whether or not the back office procedures of the swap dealer or major swap participant relating to margin and collateral requirements were, at any point during the previous calendar quarter, not in compliance with the agreement of the counterparties.

(b) The obligation specified in paragraph (a) of this section shall apply with respect to each counterparty no earlier than the 90th calendar day after the date on which the first swap is transacted between the counterparty and the swap dealer or major swap participant.
§ 3.1 Definitions.

(j) Senior officer. Senior officer means the chief executive officer or other equivalent officer of a registrant.

§ 3.3 Chief Compliance Officer.

(d) Chief compliance officer duties. The chief compliance officer's duties shall include, but are not limited to:

1. Administering each of the registrant’s policies and procedures reasonably designed to ensure compliance with relating to its business as a futures commission merchant, swap dealer, or major swap participant that are required to be established pursuant to the Act and Commission regulations;

2. In consultation with the board of directors or the senior officer, taking reasonable steps to resolve any material conflicts of interest that may arise relating to the registrant’s business as a futures commission merchant, swap dealer, or major swap participant that may arise;

3. Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to the swap dealer's or major swap participant's swaps activities, or to the futures commission merchant's registrant’s business as a futures commission merchant, swap dealer or major swap participant;

4. Taking reasonable steps to ensure the registrant establishes, maintains, and reviews written policies and procedures, in consultation with the board of directors or the senior officer, for the reasonably designed to remediation of noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reporting error, or validated to the Commission and other appropriate authorities, or complaint that can be validated;

5. Taking reasonable steps to ensure the registrant establishes written procedures in consultation with the board of directors or the senior officer, reasonably designed for the handling, management response, remediation, retesting, and closing resolution of noncompliance issues; and

6. Preparing and signing the annual report required under paragraphs (e) and (f) of this section.
(e) Annual report. The chief compliance officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant, and provide the annual report to the board of directors or the senior officer. The annual report shall, at a minimum, contain a description of:

1. Contain a description of the written policies and procedures, including the code of ethics and conflicts of interest policies, of the futures commission merchant, swap dealer, or major swap participant described in paragraph (d) of this section, including the code of ethics and conflicts of interest policies;

2. The futures commission merchant’s, swap dealer’s, or major swap participant’s assessment of the effectiveness of its policies and procedures relating to its business as a futures commission merchant, swap dealer or major swap participant;

3. Review each applicable requirement under the Act and Commission regulations, and with respect to each:
   (i) Identify the policies and procedures that are reasonably designed to ensure compliance with the requirement under the Act and Commission regulations;
   (ii) Provide an assessment as to the effectiveness of these policies and procedures; and
   (iii) Discuss areas for improvement, and recommended potential or prospective changes or improvements to its compliance program and resources devoted to compliance;

4. List any material changes to compliance policies and procedures during the coverage period for the report;

5. Describe any material non-compliance issues identified, and the corresponding action taken; and

6. Describe any material changes to compliance policies and procedures during the coverage period for the report.

(f) Furnishing the annual report to the Commission and related matters.

1. Furnishing the annual report. Prior to furnishing the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant for its review. Furnishing the annual report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

2. If the futures commission merchant, swap dealer, or major swap participant has established an audit committee (or an equivalent body), then the chief compliance officer shall furnish the annual report to the audit committee (or
(2) **Furnishing the annual report to the Commission.** (i) Except as provided in paragraph (f)(2)(ii) of this section, the annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant.

(ii) The annual report of a swap dealer or major swap participant that is eligible to comply with a substituted compliance regime for paragraph (e) of this section pursuant to a comparability determination of the Commission may be furnished to the Commission electronically up to 15 days after the date on which the comparable annual report must be completed under the requirements of the applicable substituted compliance regime. If the substituted compliance regime does not specify a date by which the comparable annual report must be completed, then the annual report shall be furnished to the Commission by the date specified in paragraph (f)(2)(i) of this section.

(3) **Certification.** The report shall include a certification by the chief compliance officer or chief executive officer of the registrant that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete in all material respects.

(4) **Amending the annual report.** The futures commission merchant, swap dealer, or major swap participant shall promptly furnish an amended annual report if material errors or omissions in the report are identified. An amendment must contain the certification required under paragraph (f)(3) of this section.

(5) **Extensions.** A futures commission merchant, swap dealer, or major swap participant may request from the Commission an extension of time to furnish its annual report, provided the registrant's failure to timely furnish the report could not be eliminated by the registrant without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(6) **Incorporation by reference and related registrants.** (i) **Prior reports.** A futures commission merchant, swap dealer, or major swap participant may incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period to the Commission.

(ii) **Dual registrants.** If the futures commission merchant, swap dealer, or major swap participant is registered in more than one capacity with the Commission, and must submit more than one annual report, an annual report submitted as one registrant may incorporate by reference sections in the annual report furnished within the current or immediately preceding reporting period as the other registrant. A dual registrant may submit one annual report that addresses the
requirements set forth in paragraphs (e), (f)(1) and (f)(3) of this section with respect to each registration capacity.

(iii) Affiliated registrants. If a futures commission merchant, swap dealer, or major swap participant controls, is controlled by, or is under common control with, one or more other futures commission merchants, swap dealers, or major swap participants, and each of the affiliated registrants must submit an annual report, an affiliated registrant may incorporate by reference in its annual report sections from an annual report prepared by any of its affiliated registrants furnished within the current or immediately preceding reporting period. Affiliated registrants may submit one annual report that addresses the requirements set forth in paragraphs (e), (f)(1) and (f)(3) of this section with respect to each affiliated registrant.
Maria Chiodi is a Managing Director in the General Counsel department at Credit Suisse Securities (USA) LLC (“Credit Suisse”). She heads the Americas Regulatory Change and Cleared Derivatives teams. Maria is an active member of the Futures Industry Association Law & Compliance Division (“L&C”) Executive Committee. She served as President of L&C from 2010-14. Prior to joining Credit Suisse, Maria covered OTC derivative businesses at Societe Generale and Nomura Securities International, Inc.
Colin Lloyd is a partner in the New York office of Cleary Gottlieb Steen & Hamilton LLP. He advises on a broad range of securities and derivatives regulatory, legislative, transactional and enforcement matters. His clients include U.S. and non-U.S. broker-dealers, swap dealers, banks, exchanges, electronic trading platforms, clearinghouses, private equity funds, investment managers, sovereigns and derivatives end users. He is frequently counsel to leading financial market trade associations and ad hoc coalitions on major industry initiatives.

Colin is a frequent speaker on financial market regulatory matters, including at events organized by the American Bar Association, the Securities Industry and Financial Markets Association, the Futures Industry Association, the International Swaps and Derivatives Association, the Institute of International Bankers and the Practicing Law Institute. Colin is a regular guest lecturer at Columbia University Law School and has been invited to speak at events held by Harvard Law School and Vanderbilt University Law School. He is also a contributor to U.S. Regulation of the International Securities and Derivatives Markets (Wolters Kluwer), the Guide to Bank Underwriting, Dealing and Brokerage Activities (Thomson West), Regulation of Foreign Banks and Affiliates in the United States (Thomson West) and OTC Derivatives Regulation Under Dodd-Frank: A Guide to Registration, Reporting, Business Conduct and Clearing (Thomson West).

Colin was one of three lawyers distinguished by the Institute of International Finance as a “Future Leader,” a distinction given to 44 leaders within the financial industry who are all under 40. In 2017, he was recognized as a “Next Generation Lawyer” by The Legal 500 U.S. and a “Rising Star” by Law360. He was also recently shortlisted as a “Rising Star” in Financial Regulation by Euromoney and was named a “Trailblazer” in Cryptocurrencies, Blockchain and Fintech by the National Law Journal.
Ruth Epstein has more than 30 years of corporate, securities and financial services experience, including five years with the Securities and Exchange Commission in the Division of Enforcement and the Office of General Counsel. Ruth concentrates on complex issues faced by participants in the investment management and variable insurance products industries and counsels financial services clients on a broad range of regulatory, governance, product development and enforcement issues. She assists clients in responding and adapting to expanded regulation of their industry by the Commodity Futures Trading Commission (CFTC) and the National Futures Association (NFA).

Ruth is a frequent author and lecturer on topics affecting her clients. In recent years, she has co-authored four “friend of the Court briefs” in matters of critical importance to the industry, including two in the U.S. Supreme Court – Jones v. Harris Associates LP (standard for review of advisory fees) and Janus Capital Group, Inc., et al. v. First Derivative Traders (responsibility for statements in mutual fund prospectuses).

As co-chair of the American Bar Association’s Sub-Committee on Securities Activities of Insurance Companies, Ruth took an active role in the debate surrounding a number of important regulatory initiatives affecting funds and variable products, including the SEC’s summary prospectus and XBRL proposals. She is actively involved with clients and industry groups in dialogue with the CFTC regarding the CFTC’s regulation of funds and advisers, in connection with related rulemaking proposals and issuance of interpretative guidance.

RESULTS
Some of the matters on which Ruth has assisted clients and addressed audiences are:

- application of the Dodd-Frank Wall Street Reform and Consumer Protection Act to investment advisers, broker dealers, funds and insurance companies
- evaluation of commodity pool operator and commodity trading advisor status of financial services clients; identification of available exemptions; CFTC and NFA registration and compliance
Ruth S. Epstein

- preparation for central clearance of over-the-counter derivatives; participation in key CFTC rulemakings affecting funds and advisers (e.g. cross border regulation and protection of customer assets); monitoring and developing appropriate responses to regulatory developments and trends
- “de-risking” initiatives for variable products issuers and related product development
- valuation of complex instruments
- developing compliance programs in response to new regulations and product initiatives

RECOGNITIONS
- Chambers USA, listed for investment funds: registered funds
  - “Sources say that the ‘responsive, smart and accessible’ Ruth Epstein is ‘a real pleasure to work with’ and has ‘a deep knowledge of SEC regulation,’ along with ‘first-rate writing and analysis.’ She is highly regarded as a leading light in matters pertaining to Commodity Futures Trading Commission (CFTC) regulations,” notes Chambers.
- The Legal 500 U.S., recommended for mutual/registered funds
- The Best Lawyers in America
Jamila Piracci joined NFA in 2011 from the Federal Reserve Bank of New York, where she was an attorney with a primary focus on orderly liquidation authority and resolution planning under the Dodd-Frank Act, as well as on market and other developments pertaining to OTC derivatives. Prior to joining the Reserve Bank, Jamila spent nearly a decade advising a range of OTC derivatives market participants, including dealer banks, investment managers and energy firms. The focus of her transactional and advisory work was in the interest rate, commodity and credit derivatives areas, and she acted as deal counsel for structured derivative programs, including cash and synthetic CDOs and CLOs. Jamila also was an Assistant General Counsel at ISDA, where she chaired working groups developing market documentation and best practices primarily in the credit derivatives area. Jamila received her bachelor's degree from Harvard-Radcliffe College at Harvard University. She received her MBA from the S.C. Johnson Graduate School of Management at Cornell University and her JD from Cornell Law School. Jamila has written a number of articles and has spoken frequently on issues pertaining to OTC derivatives.
Matt Kulkin is Director of the CFTC’s Division of Swap Dealer and Intermediary Oversight (DSIO).

Prior to his appointment at the Commission in 2017, Matt was a partner in the Washington, DC office of Steptoe & Johnson LLP, where he advised financial market participants on legislative and regulatory issues related to banking, swaps, futures, securities, and capital markets.

Matt has written and spoken extensively about these issues, and previously served as the co-chair of the D.C. Bar’s Derivatives, Securitization and Project Finance Committee.

Before practicing at Steptoe & Johnson, Matt spent more than seven years at Squire Patton Boggs LLP.

He earned his law degree from George Washington University Law School and his undergraduate degree from Tufts University.
Dorothy D. Mehta

Dorothy D. Mehta is a partner in the firm's Financial Services Group and a leader in its investment management practice. Her client base includes U.S. and non-U.S. investment advisers to hedge funds, private equity funds and managed accounts, commodity pool operators, commodity trading advisors and family offices. Dorothy has extensive experience in the structuring, formation and operation (domestically and on a cross-border basis) of a variety of alternative investments products, including U.S. and non-U.S. hedge funds, private equity funds, hybrid funds, funds-of-funds, and commodity pools (both privately- and publicly-offered), and the establishment of separately managed account arrangements.

Dorothy regularly advises clients on registration and related compliance requirements of the SEC and CFTC (including with the rules and by-laws of the NFA), assisting with structuring considerations, compliance program reviews, audits and no action letter requests. Dorothy also routinely counsels clients on matters pertaining to the Dodd-Frank Act, the Commodity Exchange Act and federal securities laws generally. With recent Dodd-Frank amendments to the commodities laws, she has been significantly involved with hedge funds, private equity funds, registered investment companies and structured finance vehicles in their transition to CFTC regulation.

Dorothy currently serves on the Managed Fund Association's Steering Committee and on the New York City Bar Association's Private Investment Funds Committee, which shapes law and public policy. She also is an active member of several professional groups on private investment funds and CPO/CTA matters and is a frequent speaker at business and legal conferences.

Dorothy was listed as a "Next Generation Lawyer" in Fund Formation: Alternative/Hedge Funds by Legal 500 U.S.A, a "Highly Regarded Lawyer" in Hedge Funds in IFLR 1000, and as a "Rising Star" in Securities and Corporate Finance in New York - Metro by Super Lawyers.

Dorothy received her J.D. from Fordham University School of Law and an A.B. from Cornell University.