

PUBLIC STATEMENTS & REMARKS

Statement of Chairman Heath P. Tarbert in Support of Revising Form CPO-PQR

April 14, 2020

The esteemed 19th century mathematician Charles Babbage asked “if you put into the machine the wrong figures, will the right answers come out?”^[1] Babbage foresaw what would evolve in the 20th century as the “garbage-in, garbage-out” predicament—a potential pitfall now only magnified in the 21st century by the combination of computing technology and vast amounts of data. Since becoming Chairman, I have prioritized improving the CFTC’s approach to collecting data. As a federal agency, we must be selective about the data we collect, and then make sure we are actually making good use of the data for its intended purpose.

This issue has arisen in a number of contexts here at the CFTC. For example, we recently proposed amendments to our swap data reporting rules, which cover both regulatory reporting and the disclosure of certain swap transaction data to the public at large.^[2] The purpose of those amendments is to simplify the swap data reporting process to ensure that market participants are not burdened with unclear or duplicative reporting obligations that do little to reduce market risk or facilitate price discovery. If those amendments are adopted, the CFTC will no longer collect data that does not advance our oversight of the swaps markets.^[3] And we will start collecting additional data that does.

Today we are engaged in a similar exercise. We are considering amendments to the compliance requirements for commodity pool operators (“CPOs”) on Form CPO-PQR. These amendments reflect the CFTC’s reassessment of the scope of Form CPO-PQR and how it aligns with our current regulatory priorities. By refining our approach to data collection, today’s amendments—in conjunction with our current market surveillance efforts—would enhance the CFTC’s ability to gain more timely insight into the activities of CPOs and their operated pools. At the same time, the amendments would reduce reporting burdens for market participants.

Background on Form CPO-PQR

Form CPO-PQR requests information regarding the operations of a CPO, and each pool that it operates, in varying degrees of frequency and complexity, depending upon the assets under management (“AUM”) of both the CPO and the operated pool(s). When adopting Form CPO-PQR in 2012, the Commission determined that form data would be used for several broad purposes, including:

- increasing the CFTC’s understanding of our registrant population;
- assessing the market risk associated with pooled investment vehicles under our jurisdiction; and
- monitoring for systemic risk.^[4]

For the majority of more pool-specific questions on Form CPO-PQR, the Commission believed the incoming data would assist the CFTC in monitoring commodity pools to identify trends over time. For example, the CFTC would get information regarding a pool’s exposure to asset classes, the composition and liquidity of a pool’s portfolio, and a pool’s susceptibility to failure in times of stress.^[5]

Shortcomings of Form CPO-PQR

Seven years of experience with Form CPO-PQR, however, have not borne out that vision. To begin with, in an effort to take into account the different ways CPOs maintain information, the Commission has allowed CPOs flexibility in how they calculate and present certain of the data elements. As a result, it has been challenging, to say the least, for the CFTC to identify trends across CPOs or pools using Form CPO-PQR data. In addition, taking into account the volume and complexity of the data it was requesting, the Commission decided not to require the data to be provided in real-time, but instead mandated only post hoc quarterly or annual filings.

As the CFTC staff has reviewed the data over the years, it has become apparent that the disparate, infrequent, and delayed nature of CPO reporting has made it difficult to assess the impact of CPOs and their operated pools on markets. This is largely because conditions and relative CPO risk profiles may have changed, potentially significantly, by the time Form CPO-PQR is filed with the CFTC. This was not entirely unforeseen. When Form CPO-PQR was adopted, some criticized the rulemaking, raising concerns about whether the information gathered would enable the CFTC to monitor commodity pools for systemic risk effectively.^[6] They likewise questioned whether the CFTC even had the resources to do so and in fact would do so.^[7]

Sound Regulation Means Collecting Information We Intend to Use

What we need is not over-regulation or even de-regulation, but rather sound regulation.^[8] In the midst of the coronavirus pandemic, when we are facing the greatest economic challenge since the 2008 financial crisis, and possibly since the Great Depression, the fact that we are asking market participants to put all this time and effort into providing us data that is difficult to integrate with the CFTC's other more timely and standardized data streams is not sound regulation. Frankly, it is wasteful and an example of bad government.

My colleague Commissioner Dan Berkovitz recently made the following observation: "In addition to obtaining accurate data, the Commission must also develop the tools and resources to analyze that data."^[9] He is spot on. I believe the converse is also true. We should not collect data we cannot use effectively. In the case of Form CPO-PQR, this means not requiring market participants to provide information that the CFTC has neither the resources nor the ability to analyze with our other data streams. Our credibility as a regulator is strengthened when we honestly admit that our regulations ask for data that we both have not used effectively and have no intention of using going forward. That is what we are doing today.

Alternative Sources of Data Are Available to the Commission

Although we would be eliminating some components of Form CPO-PQR—those required data that the CFTC has not used in meeting its mission—Form CPO-PQR is not our only source of data regarding commodity pools. The CFTC has devoted substantial resources to developing other data streams and regulatory initiatives designed to enhance our ability to surveil financial markets for risk posed by all manner of market participants, including CPOs and their operated pools. These data streams include extensive information related to trading, reporting, and clearing of swaps. Importantly, most of the transaction and position information the CFTC uses for our surveillance activities is available on a more timely and frequent basis than the data received on the current iteration of Form CPO-PQR. Furthermore, CFTC programs to conduct surveillance of exchanges, clearinghouses, and futures commission merchants already include CPOs and do not rely on the information contained in Schedules B and C of Form CPO-PQR.

Taken together, the CFTC's other existing data efforts have enhanced our ability to surveil financial markets, including with respect to the activities of CPOs and the pools they operate. In general, the CFTC's alternate data streams provide a more timely, standardized, and reliable view into relevant market activity than that provided under Form CPO-PQR. The proposal contemplates a revised Form CPO-PQR that would be more easily integrated with these existing and more developed data streams. This would enable the CFTC to oversee and assess the impact of CPOs and their operated pools in a way that is both more effective for us and less burdensome for those we regulate.

Legal Entity Identifiers Are Something We Need

Our proposal does more than simply eliminate certain data collections. It would also require the collection of an additional piece of key information: legal entity identifiers (“LEIs”) for CPOs and their operated pools. LEIs are critical to understanding the activities and interconnectedness within financial markets. Although LEIs have been around since 2012 and authorities in over 40 jurisdictions have mandated the use of LEI codes to identify legal entities involved in a financial transaction,^[10] this would be a new requirement for Form CPO-PQR. The lack of LEI information for CPOs and their operated pools has made it challenging to align the data collected on Form CPO-PQR with the data received from exchanges, clearinghouses, swap data repositories, and futures commission merchants. As a result, we cannot always get a full picture of what is happening in the markets we regulate.

The Commission is therefore proposing to amend Form CPO-PQR to include a question seeking the LEIs of both CPOs and the operated pools. The inclusion of LEIs within this smaller data set on the amended Form CPO-PQR should enable the CFTC to synthesize the various data streams on an entity-by-entity basis more efficiently and accurately. Inclusion of LEIs may also permit better use of swap data repository and other data to illuminate any risks inherent in pools and pool families.

In addition, the proposal would better align Form CPO-PQR with Form PQR of the NFA, which all CPOs must file quarterly and which the NFA may revise to include questions regarding LEIs. Under these circumstances, we could permit a CPO to file NFA Form PQR in lieu of our Form CPO-PQR as revised. In doing so, we would offer CPOs greater filing efficiencies without compromising our ability to obtain relevant data.

Data Sharing with the OFR Could be Improved

The Dodd-Frank Act established the Office of Financial Research (“OFR”) nearly a decade ago to look across our financial system for risks and potential vulnerabilities.^[11] It was contemplated that the OFR would have access to data from other U.S. financial regulators. Yet to date, the CFTC has shared none of the Form CPO-PQR data with the OFR, largely because of the shortcomings outlined above.

Another benefit of today’s proposal is that we intend to share with the OFR the information collected on Form CPO-PQR once it is revised. To this end, we are presently in the process of negotiating a memorandum of understanding with the OFR, which will allow us for the first time to provide the information we collect regarding CPOs.

Conclusion

For these reasons, I am pleased to support the Commission’s proposal to amend the compliance requirements for CPOs on Form CPO-PQR. Form CPO-PQR as revised would focus on the collection of data elements that can be used with other CFTC data streams and regulatory initiatives to facilitate oversight of CPOs and their pools. The proposal would reduce data collection requirements for market participants, while mandating disclosure of LEIs by CPOs and their operated pools. Focusing on enhancing data collection by the agency is no doubt tedious. Nonetheless, I am convinced it leads to smarter regulation that helps promote the integrity, resilience, and vibrancy of U.S. derivatives markets.

[1] Charles Baggage, *PASSAGES FROM THE LIFE OF A PHILOSOPHER* (London 1864).

[2] See Proposed Rule: Amendments to the Real-Time Public Reporting Requirements (Part 43) (Feb. 20, 2020) (*publication in the Federal Register forthcoming*); and Proposed Rule: Amendments to the Swap Data Recordkeeping and Reporting Requirements (Part 45) (Feb. 20, 2020) (*publication in the Federal Register forthcoming*).

[3] See Heath P. Tarbert, Chairman, CFTC, Statement in Support of Proposed Rules on Swap Data Reporting (Feb. 20, 2020), available [here](#).

[4] See Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11252 (Feb. 24, 2012).

- [5] See Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations, 76 FR 7976, 7981 (Form CPO-PQR Proposal) (Feb. 11, 2011).
- [6] See, e.g., Jill E. Sommers, Commissioner, CFTC, Dissenting Statement, Commodity Pool Operators and Commodity Trading Advisors: Amendments to Compliance Obligations (Feb. 9, 2012), available [here](#).
- [7] *Id.*
- [8] See CFTC Vision Statement, available [here](#).
- [9] Dan M. Berkovitz, Commissioner, CFTC, Statement on Proposed Amendments to Parts 45, 46, and 49: Swap Data Reporting Requirements (Feb. 20, 2020), available [here](#).
- [10] See Financial Stability Board, Thematic Review on Implementation of the Legal Entity Identifier, Peer Review Report (May 28, 2019), available [here](#).
- [11] See Sections 151-56 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010), available [here](#).

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