SPEECHES & TESTIMONY

Statement of Chairman Heath P. Tarbert Before the November 25, 2019 Open Meeting

November 25, 2019

Thank you for attending this public meeting of the U.S. Commodity Futures Trading Commission (CFTC or Commission). I am pleased to support both sets of final rules on today's agenda. Both amend Part 4 of the Commission's regulations governing commodity pool operators (CPOs) and commodity trading advisors (CTAs), significantly improving the regulatory experience for our market participants. Each rule is a step toward further harmonizing regulations for entities subject to both CFTC and SEC oversight.

The first set of amendments adopts exemptions from CPO and CTA registration for entities that qualify as "Family Offices" under Securities and Exchange Commission (SEC) rules, consistent with past CFTC staff no-action relief. This rulemaking also amends certain exemptions in Part 4 to permit general solicitation in these dually regulated offerings, as contemplated by the Jumpstart Our Business Startups (JOBS) Act of 2012[1] and applicable SEC regulations.

The second set of amendments clarifies an existing exclusion from the CPO definition for registered investment companies, and expands it to also exclude registered investment advisers operating or soliciting on behalf of business development companies. The rulemaking also eliminates certain duplicative and unnecessary regulatory filings by carving out particular classes of CPOs and CTAs from the filing requirements.

Amendments to Part 4 Rules: CPOs and CTAs

I support all of today's amendments to Part 4 of the Commission's regulations. Each amendment is designed to simplify the rules governing CPOs and CTAs, advancing our strategic goal of "encouraging innovation and enhancing the regulatory experience for market participants at home and abroad."[2] In particular, today's amendments to Part 4 will also improve harmonization for market participants subject to concurrent CFTC and SEC jurisdiction.

Family Offices and JOBS Act Entities

The first final rule we are considering adopts CPO and CTA registration exemptions for persons meeting the definition of "Family Office," a term the SEC adopted in 2012 for the purpose of excluding such entities from investment adviser regulations. Family Offices are entities established by families to manage their wealth and provide other services to family members, such as tax and estate planning.[3]

In addition to adding exemptions for Family Offices, this final rule amends existing Part 4 exemptions to permit dually regulated firms to use "general solicitation" in certain of their offerings, consistent with the statutory goals of the JOBS Act and SEC regulations. This is a meaningful step in the process of harmonizing CFTC and SEC regulations in a manner that is sensible and imposes no limitation on our Commission's ability to regulate CPOs and CTAs effectively in the interest of customer protection.

Today's final rule also improves the regulatory experience for Family Offices. By definition, Family Offices do not solicit the public or market themselves as an investment strategy or product available to the public; therefore, they do not raise the same customer protection concerns as do other types of CPOs and commodity pools. Requiring them to file exemption claims with the Commission creates a paperwork burden that does not provide any meaningful customer protection benefit. Today's amendments account for the low risks Family Offices pose to customers.

This final rule also amends two Part 4 exemptions to permit general solicitation in certain dually regulated private offerings and resales under SEC Regulation D and Rule 144A, respectively, consistent with the JOBS Act. These SEC rules allow issuers and resellers to market their securities more widely and to confirm their existence to the public without fear of violating federal securities laws and regulations, provided that securities sales are limited to sophisticated investors.

Until today, Part 4 did not account for those SEC regulations.[4] Today's final rule will harmonize two Part 4 exemptions with SEC regulations to eliminate this inconsistency with respect to marketing certain investment products. I stress, however, that customer protection will in no way be constrained by the rule because—while wider marketing will be permitted in some instances—the limited types of participants allowed to invest in these exempt pools are unchanged.

Registered Investment Companies, Business Development Companies, and their Registered Investment Advisers

The amendments to Regulation 4.5 clarify that existing exclusions from the CPO definition[5] for SEC-registered investment companies (RICs) should be claimed by the entity that solicits for and operates the RIC—usually its SEC-registered investment adviser (RIA).[6] These changes harmonize the Commission's Part 4 registration requirements with the SEC's statutory scheme for RICs and RIAs. As RIAs more closely approximate CPOs and are already registered with the SEC, it makes far more sense for them—rather than the RICs they operate—to claim the exclusion from the CPO definition. Making this change will eliminate unnecessary burdens and improve the regulatory experience for asset managers.

I also support amending Regulation 4.5 to exclude RIAs of business development companies from the CPO definition. This amendment is consistent with existing staff no-action relief that has been in effect since 2012.[7]

Business development companies are closed-end investment companies[8] established by Congress for the purpose of making capital available to small, developing, and financially troubled entities that may not have ready access to public capital markets. Given their unique role, business development companies (through their RIAs) tend to use derivatives for hedging and to manage risks related to the companies in which they invest.

Business development companies function similarly to closed-end RICs, and it is therefore appropriate for our Commission to treat them similarly. Excluding business development company RIAs from the CPO definition promotes regulatory consistency and harmonization, and I am pleased to support it. This consistency will improve the regulatory experience for entities that perform a unique and valued role in our markets.

Elimination of Regulatory Filings for Certain CPOs and CTAs

Finally, I support today's amendments to the definition of "Reporting Person" in Regulation 4.27, which determines which CPOs and CTAs must file Forms CPO-PQR (Pool Quarterly Report for Commodity Pool Operators) and CTA-PR (Annual Program Report for Commodity Trading Advisors) with the Commission.

The amendments to Regulation 4.27 will provide relief consistent with current exemptions while streamlining reporting obligations for CPOs and CTAs. In particular, the amendments will remove redundancy from regulatory filing requirements for certain registered CPOs that only operate pools for which they claim a CPO exemption or exclusion.

Finally, the amendments will remove filing requirements for registered CTAs that do not direct client accounts, or who are already required to report substantially similar information due to being registered in another capacity, *e.g.*, dual CPO-CTA registration. These amendments will reduce the burdens placed on our market participants by more carefully tailoring our regulations to remove filing requirements that are duplicative of those of the SEC or otherwise of limited utility to the CFTC.

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[1] Pub. L. No. 112-106, § 302, 126 Stat. 306, 315 (2012).

[2] *See* Remarks of Chairman Tarbert at the 2019 FIA Expo (Nov. 6, 2019), https://www.youtube.com/watch?v=HedqIdrZ2y0.

[3] *See* SEC Rel. 2011-134, SEC Adopts Rule Under Dodd-Frank Act Defining "Family Offices" (June 22, 2011), https://www.sec.gov/news/press/2011/2011-134.htm.

[4] Commission staff did, however, issue an exemptive letter in 2014 to permit general solicitation in certain Part 4 exempt pools, consistent with the SEC's amendments. *See* CFTC Letter No. 14-116 (Sept. 9, 2014), available on the CFTC's website. But the contents of the exemption letter have never been codified in Part 4 of our regulations.

[5] The term "commodity pool operator" is set forth in Section 1a(11) of the Commodity Exchange Act.

[6] The SEC oversees investment advisers pursuant to the Investment Advisers Act of 1940, as amended, and through SEC regulations promulgated thereunder.

[7] *See* CFTC Letter No. 12-14 (Oct. 11, 2012), available on the CFTC's website.

[8] Closed-end RICs arise under the Investment Company Act of 1940 and are characterized by several characteristics under the securities laws, including the absence of continuously offered shares and redemption rights. *See* SEC, "Closed-End Fund Information," available at https://www.sec.gov/fast-answers/answersmfclosehtm.html.