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Christopher Kirkpatrick, Secretary
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
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Via electronic submission

17 December 2018

Dear Mr. Kirkpatrick,

Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors– CFTC RIN 3038-AE76

The Alternative Investment Management Association Limited ("AIMA")[1] appreciates the opportunity to comment on the United States Commodity Futures Trading Commission ("CFTC" or "Commission") proposed regulations governing the registration and compliance requirements for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") (the "Proposals").[2] AIMA's members include investment advisers registered with the United States Securities and Exchange Commission ("SEC") and other international regulatory bodies such as the Financial Conduct Authority in the United Kingdom. Particularly since the CFTC adopted major amendments to its regulations governing CPOs and CTAs in 2012, some AIMA members are also CPOs and CTAs for purposes of the U.S. Commodity Exchange Act ("CEA") and regulations thereunder. Accordingly, these AIMA members have either registered under the CEA and/or operate in accordance with exemptions from such registration provided in the CEA or CFTC regulations promulgated thereunder.

AIMA recognizes that the Proposals are a response to the CFTC's Project KISS initiative as well as the CFTC staff's internal review of the Commission's regulatory regime.[3] AIMA and other trade associations and many industry participants responded to the Project KISS Request for

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1 AIMA the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA works closely with its members to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes, and sound practice guides. Providing an extensive global network for its members, AIMA's primary membership is drawn from the alternative investment industry whose managers pursue a wide range of sophisticated asset management strategies. AIMA's manager members collectively manage more than $2 trillion in assets.

2 Notice of proposed rulemaking, Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors, 83 Fed. Reg. 52902 (October 18, 2018).

3 Project KISS, 82 Fed. Reg. 21494 (May 9, 2017); *amended by* 82 Fed. Reg. 23765 (May 24, 2017).

Information and we appreciate that the CFTC has considered and continues to consider those comments. AIMA is pleased that the Proposals would codify the relief stated in various staff letters, including the JOBS Act relief, because adopting such relief in regulations will make the relief more permanent and easier to find, particularly for newer market participants. However, AIMA is concerned that certain provisions of the Proposals would not make the CFTC regulatory framework simpler and less burdensome, the stated goals of Project KISS, but would instead make it more complicated and more burdensome for some market participants.

AIMA's major recommendations are that the CFTC:

- Revise its proposed Regulation 4.13(a)(4) to delete several provisions based on Advisory 18-96 that are no longer relevant and clarify certain aspects of that new exemption. We are particularly concerned with the provisions that would require a CPO to determine investors' sources of capital and restricting where it can conduct administrative activities. We are also concerned that the provision does not restrict the determination of exemption eligibility to the time of investment or include a "reasonable belief" standard;

- Clarify the treatment of all exemptions from CPO and CTA registration so that a person may use them in combination as appropriate. We are concerned that, although a CPO may be able to take advantage of the exemption provided by proposed Regulation 4.13(a)(4) for certain pools and the exemption provided by existing Regulation 4.13(a)(3) for other pools, a person claiming exemption with respect to certain pools under Regulation 3.10(c)(3) may not be permitted to claim the exemption provided by existing Regulation 4.13(a)(3) for other pools; and

- Not adopt the proposed new requirement that persons claiming most of the CPO registration exemptions certify that they are not subject to statutory disqualifications under CEA Sections 8a(2) or (3). We believe that the disqualifications under Section 8a(3) are overbroad and without time limits and that the proposed new requirement is inconsistent with the SEC's approach in this area.

AIMA has also suggested some additional areas where the Commission could either codify prior staff guidance or provide additional exemptive relief. Each of these comments is addressed in more detail in the Annex.

We truly appreciate the CFTC's consideration of our comments on the Proposals. If you have questions or require further information, please contact Jiří Król or Jennifer Wood of AIMA at +44 (0) 20 7822 8380.

Yours sincerely,

Jiří Król
Deputy CEO
Global Head of Government Affairs

cc: The Honorable Chairman J. Christopher Giancarlo
The Honorable Commissioner Brian D. Quintenz
The Honorable Commissioner Rostin Behnam
The Honorable Commissioner Dawn DeBerry Stump
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ANNEX

In the pages that follow, we offer feedback on the proposals made by the CFTC and offer a few related proposals of our own for your consideration.

I. "New" Regulation 4.13(a)(4)

The Proposals include a new exemption from CPO registration that would be set forth in Regulation 4.13(a)(4) and would require that:

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.

The proposed regulation is adapted from an old CFTC Advisory, Advisory 18-96, which applied **only** to registered CPOs.[4] The proposed regulation also includes the condition, which is another provision brought over from Advisory 18-96, that any person claiming the exemption represent that neither the person nor any of its principals is subject to any statutory disqualification under Section 8a(2) or 8a(3) of the CEA, unless such disqualification arises from a matter that was previously disclosed in connection with a previous registration application, if such registration was granted, or which was disclosed more than thirty days prior to the claim of this exemption

II. Concerns with Using the Advisory 18-96 Provisions

AIMA appreciates the CFTC's attempt to create an additional method for claiming exemption from CPO registration. While the provisions of Advisory 18-96 may have made sense when adopted over 20 years ago, AIMA does not believe that all of the conditions of the Advisory are relevant today as conditions for an exemption from registration. Our particular concerns are set forth below.

a. Sources of capital

AIMA is concerned about the condition that would require a CPO to determine the investors' direct or indirect sources of capital. Would this mean that the exemption would be unavailable if an investor who is a lifelong resident of Italy, for example, wired funds from a bank account that she held in the United States to the pool? AIMA believes that such conditions are inconsistent with an initiative intended to simplify and streamline regulations and with the realities of today's global business environment.

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[4] 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," reprinted in [1994-1996 Transfer Binder] COMM. FUT. L. REP. (CCH) ¶26,659 (April 11, 1996).

b. Meetings and administrative activities in the United States

Given the increasingly global scale of business operations today, AIMA does not believe that conducting some administrative activities within the United States should make the exemption unavailable. We understand that this requirement in the Advisory was adopted reflecting the relevant tax law at the time, which is no longer applicable. The Taxpayer Relief Act of 1997 included a provision intended to simplify and reduce administrative costs for offshore investment vehicles. Effective January 1, 1998, offshore investment vehicles with U.S. investment managers are exempt from federal income taxation for securities and commodity interest trading profits even if their trading activities and "principal office" and related administrative functions are conducted in the United States. Therefore, it is no longer necessary to maintain books and records outside of the United States to qualify for the tax exemption and this condition should not be required to claim the relief in proposed Regulation 4.13(a)(4).[5]

c. Determining exemption eligibility

The former Regulation 4.13(a)(4), which the CFTC repealed in 2012,[6] provided that a CPO claiming exemption from registration thereunder could do so if it reasonably believed, at the time of investment (or, in the case of an existing pool, at the time of conversion to the status meeting the criteria of the exemption), that all pool participants met the criteria needed for the CPO to claim exemption. Regulations 4.13(a)(3)(iii) and 4.7(a)(2) have similar provisions regarding investor status necessary for a CPO to claim registration and other regulatory relief based upon pools only trading a de minimis amount of commodity interests or to claim certain regulatory relief based upon pools only being offered to "qualified eligible persons" ("QEPs"), respectively.

Not only does proposed Regulation 4.13(a)(4) not contain a "reasonable belief" provision like other CFTC exemptions, but it also seems to require testing of non-U.S. status at the time of investment and at all times while an investor is invested in the pool. Consequently, proposed Regulation 4.13(a)(4) could require a CPO claiming exemption thereunder to continuously monitor the status of its pool participants at all times, not only at the time of investment, as well as the source of investors' funds. AIMA believes that this would impose an undue if not impossible compliance burden on CPOs claiming the proposed exemption.

We also believe that this continuous testing requirement is unnecessary to fulfill the purposes of the exemption. A determination of eligibility for an exemption is appropriately made at the time an investor is deciding whether or not to invest in a pool. If the investor does decide to invest when he, she or it is a non-U.S. person, the fact that the person may re-locate to the United States many years later should not make the CPO ineligible to maintain the registration exemption. The CPO should not be required to track the investor's whereabouts, and if the investor remains satisfied with the investment, her subsequent move for employment, lifestyle

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[5] AIMA notes also that, in the proposed amendment to Regulation 4.23(c) that would permit registered CPOs with a main business office in the United States operating a pool that has its main business office outside of the United States, its territories or possessions to keep records at the pool's main business office, one of the conditions for such relief is that the CPO desires to maintain such books and records outside the United States in furtherance of compliance with Internal Revenue Service ("IRS") requirements for relief from U.S. federal income taxation. AIMA believes that this condition should also be removed, as it is no longer relevant.

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

or whatever reason should not cause the CPO to be required to redeem the investor's shares or change the way the pool is operated.

AIMA also believes that the exemption under proposed Regulation 4.13(a)(4) should be available if the investor acquires its interests or shares in the pool via an offshore secondary market transaction consistent with the provisions of SEC Regulation S as long as the transaction does not involve the issuer of such securities, or its agents, affiliates or intermediaries. This treatment would be consistent with relief provided by the SEC and is needed for exchange-traded funds where the issuer has no control over secondary market purchasers.

d. Interaction with Regulation 3.10(c)(3)

AIMA is concerned with how the CFTC discusses the interplay of proposed CFTC Regulation 4.13(a)(4) with other exemptive provisions. The CFTC specifically requests comment on whether the interaction between Regulation 3.10(c)(3)(i) and the new Regulation 4.13(a)(4), as proposed, is understood.[7] AIMA believes that this interaction is not well understood. It appears to AIMA that, under the Proposals, a CPO would be able to claim exemption from registration for certain pools operated in accordance CFTC Regulation 4.13(a)(3) and for other pools operated in accordance with new CFTC Regulation 4.13(a)(4).[8] AIMA also understands that the CFTC would not permit a CPO to claim exemption from registration for certain pools operated in accordance CFTC Regulation 4.13(a)(3) and for other pools operated in accordance with CFTC Regulation 3.10(c)(3) if the Regulation 4.13(a)(3) pools have any investors located in the United States. This appears to be how the CFTC purports to differentiate the relief provided by proposed CFTC Regulation 4.13(a)(4) from the relief currently provided under CFTC Regulation 3.10(c)(3) for CPOs.[9]

AIMA recommends that the CFTC make clear that, as with the case for proposed CFTC Regulation 4.13(a)(4), a CPO can claim exemption from registration for certain pools operated in accordance with CFTC Regulation 3.10(c)(3) and other pools that are operated in accordance with Regulation 4.13(a)(3). Per the Commission's own words in the Proposal, a CPO should not "be required to choose between the potentially more costly options of having such [Regulation 4.13(a)(3)] pools operated by an affiliate registered with the Commission or otherwise eligible for other relief, operating all pools (regardless of location) consistent with another registration exemption, or registering as a CPO and listing all operated pools with the Commission."[10]

AIMA finds no investor- or market-protection justification for permitting a CPO that would be able to claim exemption from registration under proposed CFTC Regulation 4.13(a)(4) to be able to also operate pools meeting the criteria of Regulation 4.13(a)(3) without losing its registration exemption yet denying that relief to a CPO claiming exemption under CFTC Regulation 3.10(c)(3) wanting to also operate pools meeting the criteria of Regulation 4.13(a)(3). Investors would not be disadvantaged, as they are receiving the type of regulation authorized by the CFTC for such pools. Moreover, the CFTC, which has claimed repeatedly that it is not receiving the resources commensurate with its added responsibilities under the Dodd-Frank Act, would not be required to regulate the intermediary/investor relationship for foreign-located CPOs dealing only with

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7 83 Fed. Reg. at 52916.

8 Id. at 52921.

9 Id. at 52906, 52914, 52916, Question 5.

10 Id. at 52921.

non-U.S. investors or with U.S. investors that meet a QEP-type standard participating in pools that trade only a de minimis amount of commodity interests.

AIMA believes that the Commission should clarify that CPOs operating certain pools in accordance with Regulation 3.10(c)(3) can claim other exemptions for other pools as this approach would be consistent with past Commission practice. For example, in determining whether a CTA qualifies for exemption from registration provided for in CEA Section 4m(1), the CTA, during the course of the preceding 12 months, is not permitted to furnish commodity trading advice to more than 15 persons nor to hold itself out generally to the public as a CTA. The CFTC has adopted a regulation (Regulation 4.10(a)(10), providing that, in counting against the 15-person limit, a CTA that has its principal office and place of business outside of the United States, its territories or possessions must count only clients that are residents of the United States, its territories and possessions.[11] AIMA believes that this regulation only makes sense when read in conjunction with Regulation 3.10(c)(3) as applied to CTAs. A non-U.S. CTA can have an unlimited number of advisees located outside of the United States, its territories or possessions, and can separately have up to 15 advisees that are residents of the United States, its territories and possessions during a 12-month period provided that the non-U.S. CTA does not hold itself out generally to the public as a CTA. The non-U.S. CTA claims exemption under Regulation 3.10(c)(3) for the former group of advisees and exemption under CEA Section 4m(1) for the latter, both exemptions being self-executing. The fact that the non-U.S. CTA has some advisees located in the United States, its territories or possessions does not prevent it from also claiming exemption under Regulation 3.10(c)(3). A CPO should be accorded the same treatment if it can claim exemption under Regulation 3.10(c)(3) for certain pools and Regulation 4.13(a)(3) for other pools.[12]

AIMA further believes that there are jurisdictional reasons for the CFTC to show restraint in this regard. The CFTC has and retains full authority to oversee trading on markets located in the United States, through market surveillance, position limits and large trader reports, which are applicable to any person trading on such U.S. markets, no matter where such person is located However, the relationship between an intermediary and its investors, if both are located outside of the United States, its territories or possessions, should be left to the regulatory authorities in those other jurisdictions. If that intermediary wants to operate another pool for which it can claim exemption under Regulation 4.13(a)(3), the intermediary should be permitted to do so without losing its other exemption for its pools with no U.S. investors. We also believe that the recent White Paper authored by Chairman Giancarlo also supports this approach.[13]

e. Other Questions Related to Proposed Regulation 4.13(a)(4)

The Proposals pose certain other questions for which the Commission requests specific comment with respect to proposed CFTC Regulation 4.13(a)(4). One question is whether CPOs claiming that exemption should be required to disclose the exemption to investors.[14] AIMA

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11 CFTC Regulation 4.14(a)(10)(ii)(c).

12 The CFTC has previously provided for the use of different exemptions for different sets of clients. 52 Fed. Reg. 41975, 41978 (November 2, 1987); CFTC Staff Letter 05-13 (August 15, 2005). This is sometimes referred to as "stacking" exemptions or using a "mix-and-match" approach.

13 CROSS-BORDER SWAPS REGULATION VERSION 2.0, A Risk-Based Approach with Deference to Comparable Non-U.S. Regulation (October 1, 2018).

14 83 Fed. Reg. at 52916, Question 1.

recommends that the CFTC permit CPOs to inform investors about this circumstance as they see fit consistent with other regulatory requirements and antifraud proscriptions, but without mandating a specific disclosure or disclaimer.

Another question requests comment on whether allowing 30 days to convert from reliance upon Regulation 3.10(c)(3) to operating in accordance with the new Regulation 4.13(a)(4) is sufficient time.[15] AIMA recommends that there should be a longer phase-in period of at least twelve months, and notes that the Commission provided a substantial phase-in period after it repealed the old Regulation 4.13(a)(4) in 2012.

AIMA has one other technical issue regarding proposed Regulation 4.13(a)(4). CFTC Regulation 4.14(a)(8) provides an exemption from registration as a CTA to persons that are (i) registered as an investment adviser under the U.S. Investment Advisers Act of 1940 (the "Advisers Act") or with the applicable securities regulatory agency of any State, (ii) exempt from such registration, or (iii) excluded from the definition of the term "investment adviser" pursuant to the provisions of Sections 202(a)(2) or 202(a)(11) of the Advisers Act, subject to certain conditions. One condition is that the CTA's advice be limited to certain types of collective investment vehicles. The CFTC is proposing to add a new paragraph (a)(11) to Regulation 4.14 to accommodate persons advising family offices. However, the CFTC is not proposing to amend paragraph (a)(8)(i)(D) of that regulation to include CPOs claiming exemption under the new Regulation 4.13(a)(4) as permissible advisees, which is the case for CPOs claiming exemption under Regulation 4.13(a)(3). It was also the case for CPOs claiming exemption under the old Regulation 4.13(a)(4). Accordingly, AIMA recommends that, if the Commission adopts the new Regulation 4.13(a)(4), it also amends Regulation 4.14(a)(8)(i)(D) so that it provides the same coverage as it did prior to the revocation of old Regulation 4.13(a)(4) in 2012.

f. U.S. Person Definition

The Proposals would amend the *de minimis* commodity pool exemption in Regulation 4.13(a)(3) to explicitly permit non-U.S. person participants, regardless of their financial sophistication. The CFTC recognizes that market participants, relying on CFTC Staff Letter 04–13,[16] are generally not considering whether non-U.S. person participants meet one of the investor sophistication criteria listed in Regulation 4.13(a)(3)(iii). The CFTC appears to be using the definition of "non-U.S. person" in this context that is set forth in CFTC Regulation 4.7(a)(1)(iv).[17] However, the regulatory text of the Proposals does not do so explicitly and CFTC Regulation 4.7 states that the definitions therein are for the purposes of that regulation. AIMA recommends that the CFTC state in the text of the regulation that it will permit the use of the definition of "non-U.S. person" that is set forth in either CFTC Regulation 4.7(a)(1)(iv) or in Regulation S under the U.S. Securities Act of 1933 (the "Securities Act") in this context.[18] AIMA is concerned that, if the CFTC does not do this, issues could arise with respect to existing pools being operated in accordance with CFTC Regulation 4.13(a)(3) that have not explicitly referenced the non-United States person definition in Regulation 4.7. AIMA further recommends that, if the CFTC adopts the new Regulation 4.13(a)(4), it clarifies what it means when using the term "U.S. person" in the text of that

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15 Id. at Question 4.

16 CFTC Staff Letter 04-13 (April 14, 2004).

17 83 Fed. Reg. at 52907 & n.44.

18 17 C.F.R. §§230.901-230.905 and preliminary notes.

regulation and what it means when using the term "non-U.S. person" in the text of Regulation 4.13(a)(3)(iii).

III. Proposed Regulation 4.13(a)(6)

The Proposals would add an additional condition to all of the CPO exemptions in Regulation 4.13(a), other than the family office exemption, namely that the claimant and its principals are not subject to the statutory disqualifications in Sections 8a(2) and (3) of the CEA. While AIMA does not object in principle to the inclusion of certain statutory disqualifications, we believe the Commission should make some changes to proposed Regulation 4.13(a)(6).

Under current law, the disqualifications only apply in the context of registration. A person applying for registration and its principals are required to make disclosures regarding potential disqualifications on Form 7-R or 8-R, as appropriate, and the National Futures Association ("NFA") then conducts a hearing regarding whether or not registration should be allowed.[19] Proposed Regulation 4.13(a)(6) does not provide for a hearing to resolve a potential disqualification; rather it imposes an absolute bar on claiming the exemption. If persons with a disqualification are allowed to be registered after a hearing, we think it is appropriate to allow persons claiming an exemption (with presumably less commodity interest activity) to have a hearing in order to resolve any issues.[20]

As this new rule would also apply to persons who previously claimed a Regulation 4.13(a) exemption, we believe that there should be a delayed compliance date (at least twelve months)[21] for persons with current disqualifications, so that the issue of whether those disqualifications should be a bar to claiming the exemption could be resolved before the exemption is revoked. Similar delayed compliance relief should be provided for a disqualification event that occurs after the relief has already been properly claimed, especially since the disqualifications do not only apply to the claimant but also principals of the claimant. Otherwise, a claimant could lose the benefit of an exemption without necessarily knowing that it has (because of an act committed by a principal that the claimant might have no knowledge of). In any event, if an exemption were to be lost, a registrant would need some time to register as a CPO and for its associated persons to take and pass the relevant examinations. Consequently, a compliance period is reasonable and appropriate, and we request that the Commission make it clear that a person would not be subject to an enforcement action for being in violation of registration requirements during this compliance period.

Further, similar to the "bad actor" disqualifications in Rule 506(d) of Regulation D under the Securities Act, the disqualifications should not apply if the claimant did not know, and, in the exercise of reasonable care, could not have known that a disqualification exists.[22] This is

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[19] A hearing is technically only required in connection with Section 8a(3) disqualifications but, in accordance with CFTC guidance, NFA also provides a hearing in the context of Section 8a(2) disqualifications.

[20] The "bad actor" disqualifications in Rule 506(d) of Regulation D under the Securities Act allow the SEC, upon a showing of good cause, to have the disqualification not apply. The rule also allows the court or regulatory authority that enters the relevant order, judgment or decree to provide that disqualification should not apply. See Rule 506(d)(2)(ii) and (iii).

[21] If these matters will be resolved by the Commission itself, or via delegated authority to the staff, a period of more than six months may be required. Accordingly, it may be worthwhile to consider whether NFA should be given the authority to resolve these issues.

[22] See Rule 506(d)(2)(iv) of Regulation D.

particularly important as the disqualifications in Sections 8a(2) and (3) apply not only to the claimant, but also to its principals.

We also believe strongly that it is overbroad to include Section 8a(3) in proposed Regulation 4.13(a)(6) at all because Section 8a(3) is only a ground for disallowing registration - it is not an automatic bar like Section 8a(2). In addition, Section 8a(3)(B), (E) and (M) cover certain misdemeanor convictions no matter how old, settlements with the SEC for any violation of the securities laws even if there was no impact on the person's securities registration (we understand that NFA routinely clears the foregoing matters), and the amorphous "other good cause." Consequently, we strongly suggest limiting the disqualification to Section 8a(2). If that is not what the Commission decides to do, we would suggest (i) excluding Section 8a(3)(B) if there is no impact on securities registration, (ii) eliminating Section 8a(3)(M), and (iii) limiting the Section 8a(3) matters to those matters that are no more than 10 years old (using the date of the event as the starting point). The 10-year limitation is consistent with the disclosure requirements in Item 11 of Form ADV Part 1A (the form for registration of investment advisers), which, for registrants seeking to register with the SEC as investment advisers, only cover the prior 10 years.

Because registered CPOs can also claim some of the exemptions in Regulation 4.13(a), AIMA agrees that, if proposed Regulation 4.13(a)(6) were adopted, there should be a carve-out if the matter was disclosed in connection with a previously-granted registration.

IV. Amendments to Regulation 3.10(c)(3)

In addition to clarifying the interaction between CFTC Regulation 3.10(c)(3) and the exemptive provisions discussed above, AIMA also recommends that the CFTC codify previous staff letters related to Regulation 3.10(c)(3). This relief relates to the requirement to submit transactions for clearing and the treatment of certain international financial institutions.[23] The Commission proposed to codify this relief more than two years ago and AIMA recommends that the Commission finalize this rulemaking immediately.[24]

V. Proposed Regulation 4.13(a)(8)

AIMA and its members are supportive of the codification of the family office relief and are comfortable with a one-time, rather than an annual, notice filing. AIMA does believe, however, that the filings should be made public on the NFA's website as it will assist NFA members with NFA Bylaw 1101 compliance.

We have one technical suggestion, however, in proposed Regulation 4.13(a)(8)(ii). We believe it should read "The operator of the pool qualifies" not "The pool qualifies."

VI. CPO Recordkeeping Relief

We strongly recommend that subparagraph (2) of Regulation 4.23(b) be deleted. This subparagraph requires that a CPO claiming relief that would allow it to keep records other than at its main business office file an attestation with the NFA acknowledging that the records will be kept in accordance with Regulation 1.31 and agreeing that the records will be open to inspection by the Commission and certain others.

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[23] CFTC Staff Letters 15-37 (June 4, 2015) and 16-08 (February 12, 2016).

[24] 81 Fed. Reg. 51824 (August 5, 2016).

We recommend deleting this subparagraph for two reasons. First, this requirement does not apply to other categories of Commission registrants such as CTAs and FCMs. Second, it should be the registrant's obligation to comply with the Commission's rules, not third-party service providers. In practice, CPOs have found it exceedingly difficult to obtain this certification from their third-party recordkeepers.

VII. Codification of the Staff's Delegation Relief

We commend the Commission for codifying in Regulation 4.5 that the investment adviser is the CPO of a registered investment company ("RIC") or business development company ("BDC"). We also commend the Commission for adding BDCs into Regulation 4.5. We believe, however, that it would be appropriate for the Commission to codify the delegation relief for operators of private funds, particularly the relief contained in Staff Letters 14-69 and 14-126.

VIII. Endowment Funds

We believe that the relief provided in CFTC No-Action Letter 17-49 for certain university endowments and foundations should also be codified in Part 4. The standards for affiliated organization participants seem sufficiently general such that all universities meeting the conditions of that letter should be afforded similar relief. Codifying this relief will assist NFA members in their compliance with Bylaw 1101.

IX. CTA Recordkeeping Relief

AIMA recommends that the Commission codify the recordkeeping relief for CTAs provided in CFTC Exemption Letter 17-24.

X. Adopting Exemptions for Certain Foreign CPOs and CTAs

On June 22, 2017, AIMA filed a petition with the Commission requesting that the Commission adopt additional exemptions for CPOs and CTAs under its Part 4 rules. AIMA would like to reiterate its request for additional exemptive relief in accordance with its petition. In particular, AIMA reiterates its request for additional exemptive relief for non-US CPOs and CTAs modelled on the foreign private adviser and private fund adviser exemptions added to the Advisers Act by Dodd-Frank.

AIMA encourages the Commission to adopt CPO and CTA exemptions similar to the foreign private adviser exemption. That exemption, codified in Section 203(b)(3) of the Advisers Act, and the SEC's implementing rules, provides relief from investment adviser registration for a non-US adviser that advises fewer than 15 U.S. clients and fund investors and has less than $25 million in aggregate assets under management attributable to those clients and fund investors.

AIMA also encourages the Commission to adopt a CPO exemption similar to the private fund adviser exemption in Section 203(m) of the Advisers Act and the SEC's implementing rules as it applies to non-U.S. CPOs. This exemption, as it applies to a non-U.S. investment adviser, exempts it from registration with the SEC as an investment adviser if it advises private funds with U.S. person investors (but no other types of U.S. clients) without regard to any assets under management limitation.

As these proposals were described in detail in the petition, including suggested regulatory text, we are not repeating our reasoning here.

XI. The Cross-Reference Regarding Hedging is Confusing

In footnote 135 of the Proposal, in the section relating to BDCs, the CFTC notes that BDCs must comply with the trading limits in Regulation 4.5 to obtain relief similar to that accorded to RICs. This discussion includes cross-references to the vacated Regulation 151.5. The CFTC says that it will fix this aspect of the regulations when it adopts new position limits. AIMA recommends that the Commission delete any reference to vacated Regulation 151.5. We believe that it is inappropriate and confusing to continue a reference to a vacated regulation, and that it could cause firms to establish monitoring systems based upon those provisions, only to be required shortly thereafter to reconfigure their systems when new position limits are adopted.

XII. Technical Suggestions

In proposed Regulation 4.13(e)(3) and existing Regulation 4.13(a)(2), it should be made clear that a person can be registered as a CPO and claim exemptions under both Regulation 4.13(a)(3) and proposed Regulation 4.13(a)(4). The way it is currently proposed, it seems like a registered CPO must rely on either Regulation 4.13(a)(3) or proposed Regulation 4.13(a)(4) for its exempt pools, and we do not believe that this is the Commission's intent. Perhaps the easiest thing to do would be to combine (a)(2) and (a)(3) into one subsection and include references to both Regulation 4.13(a)(3) and proposed Regulation 4.13(a)(4).

We also suggest deleting the reference to Regulation 4.21(b) in proposed Regulation 4.23(a)(1)(iii) as Regulation 4.21(b) has been rescinded.

XIII. Conclusion

AIMA supports the goals of simplifying and streamlining regulations. AIMA believes that the best way to accomplish these goals is to (i) codify the relief in the various staff letters pertaining to CPOs and CTAs, (ii) make clear that any CPO or CTA may claim any registration exemption in combination with any other provided it satisfies the criteria of the different exemptive provisions, and (iii) not add new requirements for claiming these exemptions. AIMA also strongly believes that CPOs and CTAs should be permitted to structure their operations as they choose and claim whatever exemptions are available. The CFTC should not establish a structure where certain exemptions may be used in combination whereas others may not be so used. Even if CPOs and CTAs are permitted to combine exemptions, investors will still be afforded the protections that they are entitled to, intermediaries can structure their businesses as they see fit without having to establish additional affiliates, and the CFTC will remain able to conduct appropriate market surveillance.

Finally, the existing exemption framework has worked very efficiently and without significant problems. AIMA believes that there is no justification to make the system more cumbersome by adding overbroad requirements pertaining to statutory disqualification provisions.