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### CFTC Proposes Amendments to Regulation 4.7 Exemption



On October 2, 2023, the Commodity Futures Trading Commission (CFTC) [published a notice of proposed rulemaking \(NPRM\)](#), which includes a proposal to amend portions of 17 C.F.R. § 4.7. Under Regulation 4.7, commodity pool operators (CPOs) and commodity trading advisors (CTAs) are exempt from certain disclosure, reporting, and recordkeeping requirements, so long as the "prospective and actual pool participants and/or advisory services are restricted to individuals and entities considered 'Qualified Eligible Persons'" (QEPs).

The CFTC is proposing two material updates to the exemption. The first is an increase to the portfolio requirement's monetary thresholds. Under the current iteration of the rule, certain persons may only qualify as QEPs if they can meet the portfolio requirement, which requires meeting one of two monetary thresholds:

1. Owning "securities (including pool participations) of issuers not affiliated with such person and other investments with an aggregate market value of at least \$2,000,000."
2. Having "on deposit with a futures commission merchant, for its own account at any time during the six months preceding either the date of sale to that person of a pool participation in the exempt pool or the date the person opens an exempt account with the CTA, at least \$200,000 in exchange-specified initial margin and option premiums, together with required minimum security deposit for retail forex transactions... for commodity interest transactions."

The proposal would increase these thresholds to \$4,000,000 and \$400,000, respectively. The monetary thresholds had not been increased since the original rule went into effect, and these changes are being made "to account for the effects of inflation over the last three decades."

The second material update is to the disclosure requirements for exempt CPOs and CTAs. The CFTC is proposing to establish minimum disclosures that would apply even to those CPOs and CTAs that qualify for the exemption. The proposal would require CPOs and CTAs to prepare (1) general disclosures that include information on "principal risk factors, investment programs, use of proceeds, custodians, fees and expenses, and

conflicts of interest" and (2) performance disclosures that "involve the presentation of vital current and past performance metrics in a format consistent with that already developed for non-QEP pool participants and advisory clients." While not reportable to the CFTC, the disclosures must be retained as business records and would be subject to review via examination processes.

In addition to the above, the proposal includes a change that would permit some CPOs to distribute monthly account statements within the 45 days following the end of the month and other technical amendments.

The CFTC is seeking comments on the proposed amendments; commenters will have 60 days to submit comments following the NPRM's publication in the Federal Register.

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