

IN THIS ISSUE:

- New and Developing Federal Regulation
- Cross-Border Topics
- Additional CFTC Staff Letters And Guidance
- Financial Oversight Stability Council Developments
- Other Developments
- NFA Update
- Looking Ahead: Developments So Far In 2017

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York, N.Y.
Chicago, IL
Malvern, Pa.
Harrisburg, Pa.
Cherry Hill, N.J.
Wilmington, Del.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2017
Stradley Ronon Stevens & Young, LLP
All rights reserved.

NEW AND DEVELOPING FEDERAL REGULATION

CFTC Reproposes Position Limits

On December 5, 2016, the U.S. Commodity Futures Trading Commission (CFTC) voted unanimously to repropose federal position limits on speculative positions in 25 core physical commodity futures contracts traded pursuant to the rules of a designated contract market (DCM) and their “economically equivalent” futures, options, and swaps.¹ This reproposal and the adoption of a final aggregation rule (discussed below) are the latest in a long line of developments relating to CFTC position limits.²

Under the reproposal, DCMs would retain the authority to adopt limits that are more (but not less) restrictive than those set by the CFTC, subject to exchange-granted exemptions consistent with CFTC regulations. In many instances, the reproposal would set position limits that are meaningfully higher than those originally proposed.

Similar to the supplemental proposal from May 2016, the reproposal would establish a revised definition of the term “bona fide hedging position” that more closely tracks the standards set forth in section 4a(c) of the CEA. For physical commodities, the CFTC is proposing to define a bona fide hedging position as a position that: (a)(i) is a substitute for activity in the physical marketing channel, (ii) is economically appropriate to the reduction of risk, and (iii) arises from the potential change in value of current or anticipated assets, liabilities or services; or (b) reduces the risk of a swap that was executed opposite a counterparty for which such swap would satisfy the three tests set forth in (a). For excluded (i.e., financial) commodities, only the economically appropriate test in the preceding element (a)(ii) would be required. The reproposal would also eliminate from the definition of “bona fide hedging position” the previously proposed: (i) incidental test, which would have required that the risks offset by a commodity derivative position be incidental to the position holder’s commercial operations, and (ii) orderly trading requirement, which would have required that a bona fide hedging position be established and liquidated in an orderly manner in accordance with sound commercial practices.

The reproposal would also include exemptions to the position limits for eight enumerated bona fide hedging positions and for certain cross-commodity hedges applicable to physical and excluded (i.e., financial) commodities and would add a provision deeming certain trade options, if adjusted on a futures-equivalent basis, to be equivalent to a cash position for the purpose of recognition as the basis of a bona fide hedging position.³

Like the supplemental proposal, the reproposal would clarify the discretion of exchanges in recognizing risk management exemptions for excluded (i.e., financial) commodities. Specifically, it would provide that the rules of a swap execution facility (SEF) or DCM may recognize risk management exemptions in excluded commodities without regard to the economically appropriate test noted above. The reproposal would also add an Appendix A to Part 150 which would provide non-exclusive guidance on risk management exemptions

for commodity derivative contracts in excluded commodities.⁴ Examples of risk management would include: (i) balance sheet hedging, including foreign currency translation and offsetting interest rate risk; (ii) unleveraged synthetic positions; and (iii) temporary asset allocations. For more detail, see Appendix A as set forth in the reproposal.⁵

Consistent with the CFTC's 2016 supplemental proposal, the reproposal would enable an exchange to file with the CFTC (and enact) rules allowing recognition of certain non-enumerated bona fide hedging positions, exemptions to position limits for certain spread positions, and certain enumerated anticipatory bona fide hedging positions. With respect to the ability of exchanges to set position limits for physical and excluded (i.e., financial) commodity derivative contracts not subject to CFTC limits, CFTC Regulation 150.5 was repropounded largely the same as it was set forth in the 2013 proposal and revised and clarified in the 2016 supplemental proposal. For more detail on the 2016 supplemental proposal, refer to our quarterly review for the second quarter of 2016.⁶

Finally, the reproposal would relieve DCMs and SEFs temporarily from the obligation to establish position limits on swaps that are subject to a federal position limit when the exchange lacks access to position information on swaps, and would update reporting requirements under Part 19 of the CFTC's regulations.

Comments on the reproposal are due February 28, 2017.

According to the reproposal, the earliest date of compliance for the rules, if adopted, would be January 3, 2018. However, final position limit rules, if adopted, may differ significantly from the proposed rules, in light of the change in CFTC leadership.

CFTC Adopts Final Rule on Aggregation

Also on December 5, 2016, in connection with the position limits reproposal discussed above, the CFTC adopted final rules concerning aggregation requirements for positions subject to the CFTC's position limit rules (the Aggregation Rules).⁷ As noted above, the adoption of a final aggregation rule is the latest in a long line of developments relating to CFTC position limits and aggregation.⁸

Initially, the Aggregation Rules will apply only to the nine legacy agricultural commodity futures contracts for which federal position limits are currently in place under CFTC Regulation 150.2.⁹ If and when the federal position limits rules discussed above are finalized, the Aggregation Rules will apply to all 25 referenced contracts. Furthermore, if exchanges were

to adopt their own aggregation rules that model the CFTC's Aggregation Rules for positions in contracts other than those contracts subject to the CFTC's position limits, there could be an even broader reach of contracts affected.

The Aggregation Rules provide that, for purposes of applying the position limits set forth in CFTC Regulation 150.2, a person generally must aggregate all positions in accounts for which that person, by power of attorney or otherwise, directly or indirectly: (i) controls trading or (ii) holds a 10 percent or greater ownership or equity interest in the positions held and trading done by such person. For this purpose, positions or ownership or equity interests held by, and trading done or controlled by, two or more persons acting pursuant to an expressed or implied agreement or understanding are treated as if the positions or ownership or equity interests were held by, or the trading were done or controlled by, a single person.¹⁰ The Aggregation Rules also require that any person who, by power of attorney or otherwise, holds or controls the trading of positions in more than one account or pool with substantially identical trading strategies must aggregate all such positions (determined pro rata) with all other positions held and trading done by such person and the positions in accounts which the person must otherwise aggregate (the Substantially Identical Trading Requirement).¹¹ The Substantially Identical Trading Requirement is a new requirement. The other aggregation requirements are, in the CFTC's view, already required under the pre-existing CFTC aggregation rules.¹²

With the exception of the Substantially Identical Trading Requirement, the other aggregation requirements described above do not apply under the conditions of seven available exemptions outlined in the Aggregation Rules. The Aggregation Rules provide exemptions for: (i) passive pool investors such as limited partners and shareholders that would be required to aggregate due to 10 percent or greater ownership of a pool; (ii) certain ownership of greater than 10 percent in an owned entity; (iii) accounts held by futures commission merchants (FCMs) in a discretionary account or in accounts that are part of a customer trading program; (iv) eligible entity client accounts carried by an independent account controller; (v) underwriting; (vi) broker-dealer activity; and (vii) information sharing, if the sharing of information associated with aggregation would create a reasonable risk that either person would violate state or federal law, or the law of a foreign jurisdiction, or regulations adopted thereunder. Each exemption has specific conditions that must be followed as well as certain exclusions or additional requirements for particular entities and affiliates, in order for an entity to avail itself of the exemption.¹³

Among other conditions, certain exemptions (specifically, those listed above as (ii), (iii), (iv) or (vii)) under the Aggregation Rules require a notice filing with the CFTC. The notice filing must state the relevant circumstances warranting disaggregation and contain a certification by a senior officer that the exemption's conditions have been met. Exemption (i) also requires a filing with the CFTC, but only in instances where the person seeking the exemption is a principal or affiliate of the operator of the pooled account. The Aggregation Rules provide an exemption from the notice filing for affiliated entities, allowing related entities to submit a notice filing for all affiliates on a single form, or to rely on an exemption already filed.¹⁴ To take advantage of this approach, affiliates must satisfy specific elements of the exemption set forth in CFTC Regulation 150.4(b)(8). Furthermore, affiliates may rely on an exemption previously filed only as it relates to positions and accounts identified on the previously filed exemption.

The Aggregation Rules become effective on February 14, 2017.

CFTC Approves Supplemental Proposal to Regulation AT

On November 4, 2016, the CFTC proposed a supplemental rulemaking (the Supplemental Proposal) to Regulation AT,¹⁵ which was originally proposed on December 17, 2015 (the Original Proposal).¹⁶ For more information about the Original Proposal, refer to our quarterly review for the first quarter of 2016.¹⁷

The Original Proposal would establish risk controls and other requirements for: (i) market participants using algorithmic trading systems (ATS) who met the definition of "AT Persons," (ii) clearing member FCMs, with respect to their AT Person customers, and (iii) DCMs executing AT Person orders. The term "AT Persons" would include any person registered or required to be registered as an FCM, floor broker, swap dealer (SD), major swap participant (MSP), commodity pool operator (CPO), commodity trading advisor (CTA), or introducing broker (IB) that engages in algorithmic trading on a DCM. The Original Proposal would also require the registration of certain proprietary traders who, while responsible for significant trading volumes in key futures products, are not currently registered with the CFTC. This requirement would be applicable specifically to proprietary traders engaged in algorithmic trading through direct electronic access to a DCM. Such entities would be required to register with the CFTC, if not already registered in another capacity.

In response to comments received on the Original Proposal, the Supplemental Proposal attempts to address the controversy

surrounding Regulation AT whereby the CFTC would be authorized, without the need of a subpoena, to gain access to the source code that powers trading strategies in automated futures trading. The Supplemental Proposal would limit the CFTC's access to source code by requiring either the issuance of a subpoena or a special call approved by the CFTC itself. The Supplemental Proposal would also limit access to records that track changes to an AT Person's source code and log files that record the activity of an AT Person's algorithmic trading system to subpoena or special call.

In addition, the Supplemental Proposal would revise Regulation AT's proposed risk control framework to concentrate pre-trade risk controls at a minimum of two levels instead of three. The Supplemental Proposal would allow risk controls to be set at either the AT Person level or the FCM level in addition to the DCM level instead of requiring all three levels to have risk controls. This two-level risk control structure would allow an AT Person to delegate compliance with pre-trade risk control measures to its FCM upon agreement with its FCM. Furthermore, the Supplemental Proposal would shift the risk controls to the executing FCM and away from the clearing FCM. The Supplemental Proposal would also add a definition for "electronic trading" and expanded risk controls for AT Persons, FCMs, and DCMs to cover all electronic trading instead of being limited to only algorithmic trading by AT Persons. Additional changes and guidance regarding use of third party systems by AT Persons as part of their algorithmic trading, certification of compliance with Regulation AT by AT Persons and FCMs, and DCM review of FCM and AT Person compliance were also addressed. The former requirement that AT Persons and FCMs prepare annual compliance reports was eliminated in the Supplemental Proposal as well.

Regarding the proposed registration of certain market participants, the Original Proposal would require any unregistered persons engaged in proprietary algorithmic trading through direct electronic access on a DCM to register as "floor traders." The Supplemental Proposal would retain these requirements but would also incorporate a volume-based quantitative test for registration, and would extend this volume-based quantitative test to the determination of whether a person or entity is an AT Person. The proposed threshold is 20,000 contracts or more per day, on average, over a six-month period for a firm's own account, the accounts of its customers, or both.

Comments on the Supplemental Proposal were initially due January 24, 2017, but the comment period has been extended through May 1, 2017.¹⁸

CFTC Approves Final Rule Amending the Timing for Filing Chief Compliance Officer Annual Reports by Certain Registrants

On November 10, 2016, the CFTC adopted amendments to its regulations regarding the timing for furnishing to the CFTC the chief compliance officer (CCO) annual reports of FCMs, SDs, and MSPs (collectively, Registrants).¹⁹ Prior to the amendments, Registrants had up to 60 days to submit the CCO annual report. The amendments modify CFTC Regulation 3.3(f)(2)(i) to give all Registrants up to 90 days after their fiscal year end to furnish the CCO annual report to the CFTC, codifying the ongoing relief most recently provided by CFTC Staff Letter No. 15-15.²⁰

The amendments also clarify the filing requirements for SDs and MSPs located in a jurisdiction for which the CFTC has issued a comparability determination and which elect to file comparable annual reports (Comparable Annual Report) in accordance with that determination (Substituted Compliance Registrants). Specifically, the amendments clarify that if a Substituted Compliance Registrant's home jurisdiction does not require or is silent as to a particular completion or due date for the CCO annual report, then the Substituted Compliance Registrant must furnish its Comparable Annual Report not more than 90 days after its fiscal year end.

The CFTC also adopted a new CFTC Regulation 3.3(h) to delegate to the Director of the Division of Swap Dealer and Intermediary Oversight (DSIO) authority to grant extensions to the CCO annual report filing deadline.²¹

The amendments became effective November 16, 2016.

Adoption of Amendments to CPO Annual Report, and Other Financial Reporting Requirements and Proposal to Amend Instructions to Form CPO-PQR

On November 21, 2016, the CFTC issued final rules adopting amendments to certain regulations applicable to the financial reports a CPO is required to provide for each pool that it operates.²² The amendments codify relief that, to date, has been available through exemptive or no-action letters. The amendments: (i) permit financial statements in the annual report for a pool (Annual Report) and other required CPO financial reports to be presented and computed using accounting principles, standards or practices followed in the United Kingdom (UK), Ireland, Luxembourg or Canada (Additional Alternative GAAP); (ii) provide an exemption from the audit requirements applicable to the Annual Report (a) for a pool's first fiscal year when the period from formation of the pool to the end of the pool's first fiscal year is a short period of time and (b) for a period during which the only participants in a pool are

the CPO itself or certain other insiders; and (iii) clarify that an audited Annual Report must be distributed and submitted at least once during the life of a pool.

For more information on the rule proposal, refer to our quarterly review for the third quarter of 2016.²³

Use of Alternative Accounting Principles, Standards or Practices

CFTC Regulation 4.22(d) specifies how the financial statements in the Annual Report must be presented and computed. Prior to the amendments, paragraphs (d)(1) and (d)(2) required that the financial statements be presented and computed in accordance with U.S. Generally Accepted Accounting Principles (GAAP) or Internal Financial Reporting Standards (IFRS), where certain criteria are met. The CFTC amended Regulation 4.22(d)(2) so that it would also permit the use of Additional Alternative GAAP. A CPO seeking to avail itself of Additional Alternative GAAP is required to claim the relief by filing a notice with the National Futures Association (NFA) containing the same representations required for CPOs desiring to use IFRS.²⁴ In response to comments received on the proposed rule, the CFTC also amended (i) Regulation 4.7(b)(2)(v) to permit the use of Additional Alternative GAAP for periodic financial statements prepared and distributed for a pool for which the CPO has claimed relief under Regulation 4.7(b) and (ii) Regulation 4.27(c)(2) to provide that a CPO who has elected to use Additional Alternative GAAP for its pool's Annual Report may also use that Additional Alternative GAAP in connection with reporting financial information on Form CPO-PQR. The amendments to CFTC Regulation 4.27(c)(2) negate previous guidance issued by the CFTC in its response to the industry's frequently asked questions.

The amendments to CFTC Regulations 4.22(d)(2), 4.7(b)(2)(v), and 4.27(c)(2) became effective on December 27, 2016.

Request for Comment on Proposed Amendment to Instruction 9 on Form CPO-PQR

On November 21, 2016, the CFTC also proposed amendments to revise Item 9 of the Instructions to Form CPO-PQR to match amended CFTC Regulation 4.27(c)(2).²⁵ Currently, the Instruction states that all financial statements filed with Form CPO-PQR must be presented and computed in accordance with GAAP. However, the amendments to CFTC Regulation 4.27(c)(2) are already applicable, notwithstanding anything to the contrary in Form CPO-PQR or its instructions.

Comments on the proposed instruction were due January 24, 2017.

Relief from the Audit Requirement

CFTC Regulation 4.22(g) governs the election of a fiscal year by a CPO. The CFTC amended Regulation 4.22(g)(2) to provide an exemption from the audit requirement applicable to the Annual Report for a pool's first fiscal year when the period from formation of the pool to the end of the pool's first fiscal year is a short period of time. A CPO is able to claim the relief where: (i) the time period from the formation of the pool to the end of the pool's first fiscal year is four months or less; (ii) from the formation of the pool to the end of the pool's first fiscal year the pool had no more than 15 participants; and (iii) from the formation of the pool to the end of the pool's first fiscal year the total gross capital contributions received by the CPO for units of participation in the pool (notwithstanding any subsequent withdrawals) did not exceed \$3 million. In calculating the total gross capital contributions, the following persons and their capital contributions would not be counted: (i) the pool's CPO, its CTA, any person controlling, controlled by, or under common control with the CPO or CTA, and any of their principals; (ii) a child, sibling, or parent of the participants described in category (i); (iii) the spouse of any of the participants described in category (i) or (ii); (iv) any relative of one of the participants described in categories (i) through (iii); and (v) an entity that is wholly owned by one or more of the participants described in categories (i) through (iv).

To claim the relief described above, a CPO must, prior to the date upon which it is required to distribute and submit an audited Annual Report for the pool's first fiscal year, obtain a written waiver of the pool participants' right to receive an audited Annual Report for the pool's first fiscal year from each participant, other than certain insiders. The waiver may be included in the subscription agreement, provided that the waiver is a separate page in the agreement, the participant is required to separately sign and date it, and the waiver appears in substantially the same form as provided for in the regulation. A CPO must also file a notice with the NFA claiming the exemption, along with a certification that it has received the required written waivers.

Relief from the Audit Requirement for Insider Pools

The CFTC also adopted an amendment to CFTC Regulation 4.22(d)(1) to provide an exclusion from the Annual Report audit requirement for any fiscal year during which the only participants in the pool are one or more of the following: (i) the pool's CPO, its CTA, any person controlling, controlled by or under common control with the CPO or CTA or (ii) any principal of the foregoing. A CPO relying on such exclusion must: (i)

obtain written waivers from the participants of their right to receive an audited Annual Report for that fiscal year; (ii) keep those waivers as records pursuant to CFTC Regulation 4.23; and (iii) distribute an audited Annual Report at least once during the life of the pool.

Requirement to Submit an Audited Financial Report at Least Once

CFTC Regulation 4.22(c)(7) makes available various exceptions to Annual Report requirements to the CPO of a pool that ceases operation prior to, or at the end of, the pool's fiscal year. In particular, paragraph (c)(7)(iii) provides that a report distributed and submitted pursuant to CFTC Regulation 4.22(c)(7) is not required to be audited if the CPO complies with the conditions stated in the regulation. However, to ensure that an audit is conducted at least once in the life of a commodity pool, the CFTC amended CFTC Regulation 4.22(c)(7)(iii) to make the audit requirement relief under that paragraph unavailable where a CPO has not previously distributed an audited Annual Report to pool participants or submitted the audited Annual Report to the NFA.

CFTC Proposes Rules Establishing Swap Dealer and Major Swap Participant Capital Requirements

On December 2, 2016, the CFTC proposed rules establishing SD and MSP minimum capital requirements.²⁶ As required by the Dodd-Frank Wall Street Reform Act (Dodd-Frank), the proposed rules would establish minimum levels of qualifying capital for SDs and MSPs that are not subject to the capital rules of a Prudential Regulator (Covered Swap Entities).²⁷ The capital requirements differ based on three categories of Covered Swap Entities: (i) SDs and MSPs that are also FCMs; (ii) SDs that are not FCMs; and (iii) SDs predominantly engaged in non-financial activities and MSPs.

For MSPs, the proposed rules would require that such entities maintain "positive tangible net worth or the minimum amount of capital required by the NFA." The term "tangible net worth" is proposed to be defined as the net worth of an MSP as determined in accordance with GAAP, excluding goodwill and other intangible assets. The proposed rules would require an MSP in computing its tangible net worth to include all liabilities or obligations of a subsidiary or affiliate that the MSP guarantees, endorses, or assumes, either directly or indirectly, to ensure that the tangible net worth of the MSP reflects the full extent of the MSP's potential financial obligations. The proposed definition would further provide that in determining net worth, all long and short positions in swaps, security-based swaps and related positions must be marked to their market value to ensure that the

tangible net worth reflects the current market value of the MSP's swaps and security-based swaps, including any accrued losses on such positions. The CFTC is specifically seeking comments as to whether the proposed tangible net worth test is an appropriate standard for MSPs, whether the proposed minimum capital requirement for MSPs should include a minimum fixed-dollar amount of tangible net worth, and whether the rules should require an MSP to maintain positive tangible net worth in an amount in excess of the market risk and credit risk charges on the MSP's swaps and security-based swap positions.²⁸

The proposed rules would also require Covered Swap Entities to report monthly financial statements and keep current books and records in accordance with GAAP or, if permitted, in accordance with IFRS. In addition, Covered Swap Entities would be required to submit annual certified financial reports with an opinion expressed by an independent certified public accountant. SDs and MSPs subject to regulation by a Prudential Regulator would be required to submit certain quarterly financial information to the CFTC. All SDs and MSPs would be subject to certain notification requirements pertaining to the changes in the respective capital positions and required to provide weekly position and margin information.

Comments on the proposal are due March 16, 2017.

CROSS-BORDER TOPICS

CFTC Signs Memoranda of Understanding with UK and Canada

On October 6, 2016, the CFTC announced that Chairman Timothy Massad and the UK Financial Conduct Authority (FCA) Chief Executive Andrew Bailey had signed a Memorandum of

Understanding (MOU) regarding the exchange of information and cooperation in the supervision and oversight of certain regulated firms operating on a cross-border basis in the United States and the UK.²⁹ The MOU encompasses 20 firms currently registered with the CFTC as SDs and additionally operating in, or authorized to operate in, derivatives-related activities on a cross-border basis in the UK under the FCA's regulatory supervision.

On November 2, 2016, the CFTC announced that Chairman Timothy Massad, Canada's Securities of Newfoundland and Labrador (SNL) Superintendent John O'Brien, and Canada's Intergovernmental Affairs Deputy Minister Patricia Hearn had signed a counterpart to a 2014 MOU adding the SNL to the MOU.³⁰ The 2014 MOU was signed by the CFTC and Canada's Alberta Securities Commission, the British Columbia Securities Commission, the Ontario Securities Commission, and the Québec Autorité des marchés financiers. Other counterparts have been signed since 2014. The counterpart with the SNL extends the agreement between the CFTC and the named Canadian authorities to cover the SNL with regard to exchanging information and cooperating in the supervision and oversight of regulated entities operating on a cross-border basis in the United States and Canada. The scope of the MOU includes markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers, and other market participants.

CFTC Proposes Rule on the Application of Certain Swap Provisions of the CEA in Cross-Border Transactions

On October 11, 2016, the CFTC issued a proposed rule addressing the application of certain swap provisions of the

If you would like more information about the topics discussed in this alert, contact:



Peter M. Hong
202.419.8429
phong@stradley.com



Nicole Simon
215.564.8001
nsimon@stradley.com



Matthew R. DiClemente
215.564.8173
mdiclemente@stradley.com



Ruth S. Epstein
202.292.4522
repstein@stradley.com



Kevin P. Kundra
215.564.8183
kkundra@stradley.com

CEA and CFTC regulations to cross-border transactions.³¹ The proposed rule defines key terms for purposes of applying the CEA's swap provisions on a cross-border basis and addresses the cross-border application of the registration thresholds and external business conduct standards for SDs and MSPs, including the extent to which they would apply to swap transactions that are arranged, negotiated, or executed using personnel located in the United States (ANE transactions). The CFTC has stated that it expects to address the cross-border application of other swap requirements, including their application to ANE transactions and the availability of substituted compliance, in subsequent rulemakings.

Significantly, the proposed rule defines the terms "U.S. person" and "Foreign Consolidated Subsidiary" (FCS) based on the definition of these terms in the CFTC's recent cross-border margin rulemaking.³² The CFTC has stated that the definitions "would apply not only for purposes of this proposed rule, but also for future cross-border rulemakings," suggesting that the CFTC has moved closer to a uniform "U.S. person" definitional standard (however, the definition of a "U.S. person" set forth in CFTC Regulation 4.7(a) remains different, and there has been no suggestion that the CFTC is considering its revision at this time).³³

Comments on the proposal were due December 19, 2016.

ADDITIONAL CFTC STAFF LETTERS AND GUIDANCE

Practical Application of No-Action Letter No. 16-68 Regarding Investments in Money Market Mutual Funds

In our quarterly alert for the third quarter of 2016, we reported that on August 8, 2016, the CFTC's Division of Clearing and Risk (DCR) and DSIO issued separate interpretative and no-action letters regarding permissible investments in money market funds (MMFs) by derivatives clearing organizations (DCOs) and FCMs following final implementation of the U.S. Securities and Exchange Commission's (SEC) money market reform rules.³⁴ The August 8 letters stated the CFTC's view that following implementation of the SEC's MMF reform, all prime MMFs and those government MMFs that elect to impose redemption fees and gates (electing government MMFs) no longer meet the necessary redemption and liquidity requirements to serve as permitted investments under CFTC rules that strictly limit the types of instruments in which FCMs and DCOs may invest customer funds, or in which DCOs may hold certain other funds. On October 18, 2016, DSIO issued a follow-up letter providing guidance on these points (the October letter).

Among other things, the October letter clarified that a prime MMFs or electing government MMF may adjust the CFTC Regulation 1.26 form acknowledgment letter to state that the fund may suspend redemptions or impose liquidity fees consistent with SEC Rule 2a-7.³⁵ CFTC Letter No. 16-68 provides limited relief to FCMs to invest the amount of residual interest that exceeds their targeted residual interest amounts held in customer segregated accounts in prime MMFs and electing government MMFs. The relief is limited only to the amount of funds that the FCM would otherwise be permitted to withdraw from the segregated accounts. Accordingly, in order to give effect to the relief provided by CFTC Letter No. 16-68, the acknowledgment letter that the FCM executes with the prime or electing government MMF may contain a provision that the fund may suspend redemptions or impose liquidity fees consistent with SEC Rule 2a-7. The prospectus of the prime or electing government MMF also may include a statement that the fund may suspend redemptions or impose liquidity fees consistent with SEC Rule 2a-7. FCMs, however, are not required by CFTC Letter No. 16-68 to obtain new acknowledgment letters for existing prime or electing government MMF accounts.

The October letter also outlined how asset-based and issuer-based concentration limits are applied to government MMFs. Specifically, it states that current issuer-based concentration limits apply only to MMFs that are not comprised exclusively of U.S. government securities, and CFTC Letter No. 16-68 did not provide relief from the issuer-based concentration limits for government MMFs. Therefore, the guidance explains, an FCM must limit its investment in a single government MMF to no more than 10 percent of the FCM's total assets held in segregation.

The October letter also addresses the scenario when an FCM's investment in a MMF exceeds applicable limitations set forth in CFTC Letter No. 16-68. Specifically, the FCM "must promptly act to come back into compliance" with the letter, either by moving proprietary money into the segregated account, or by initiating the liquidation of the prime MMF or electing government MMF in an amount necessary to come into compliance.

As noted in our quarterly review for the third quarter of 2016, while these requirements and related guidance apply to FCMs and DCOs rather than to the MMFs in which they invest, they may have a substantial impact on MMFs as a result of redemption activity and demand for shares.³⁶

Extension of No-Action Relief for Swaps Executed as Part of Certain Package Transactions

On November 1, 2016, the staff of the CFTC's Division of

Market Oversight (DMO) issued an extension of its existing no-action relief, as set forth in CFTC Letter No. 15-55, from the trade execution requirements of the CEA and CFTC regulations for swaps executed as part of certain package transactions.³⁷

A package transaction is a transaction involving two or more instruments and: (i) that is executed between two or more counterparties; (ii) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (iii) that has at least one component that is a swap that is made available to trade and, therefore, subject to the trade execution requirement under section 2(h)(8) of the CEA; and (iv) where the execution of each component is contingent upon the execution of all other components.

Since the imposition of trade execution requirements for swaps, SEFs and DCMs have faced technological and operational challenges in facilitating the execution of swaps that are components of package transactions. In recognition of that difficulty, the CFTC granted (and continues to extend) no-action relief for certain package transactions under certain circumstances, to “enable [DMO] to continue assessing the appropriate response for applying the trade execution requirement to swaps in certain types of package transactions.”

The relief that applies in a particular scenario depends on the components of the package transaction. A summary chart of the relief provided for each type of package transaction is available in the CFTC’s recent press release.³⁸

No-Action Relief to Counterparties Clearing Swaps With DCOs Operating Under Exemptive or No-Action Relief

On December 19, 2016, DMO granted time-limited no-action relief regarding certain reporting obligations under Part 45 of the CFTC Regulations in connection with the clearing of swaps with DCOs acting pursuant to: (i) exemptive orders issued by the CFTC, or to (ii) no-action relief granted by DCR (collectively, Relief DCOs).³⁹ Specifically, DMO would not recommend enforcement action against any market participant, not acting as a derivatives clearing organization or central counterparty, that is a counterparty to a swap cleared by a Relief DCO (Relief DCO Counterparty) for failure to (i) report continuation data on the original swap cleared by the Relief DCO; (ii) report creation or continuation data on swaps between the Relief DCO and Relief DCO Counterparty; or (iii) generate unique swap identifiers for swaps created through the clearing process.

In addition, DMO granted time-limited no-action relief to entities reporting any swap which, at the time it is executed, is intended by the counterparties to be cleared by a Relief DCO (Relief ITBC Swaps) with respect to the reporting of the primary economic terms (PET) data elements “Clearing indicator” and “Clearing venue” pursuant to Part 45. DMO will not recommend enforcement action against an entity reporting Relief ITBC Swaps for identifying such swaps as intended to be cleared in the “Clearing indicator” PET data field, or for identifying the LEI of the Relief DCO in the “Clearing venue” PET data field. Likewise, DMO will not recommend enforcement action against an entity reporting Relief ITBC Swaps for identifying such swap as intended to be cleared in the “Cleared or Uncleared” data field to be reported pursuant to Part 43 of the CFTC Regulations. The no-relief will expire on the earlier of (i) January 31, 2018; (ii) the effective date of any CFTC modification to regulations regarding the reporting obligations with respect to Relief DCO swaps; or (iii) the revocation or expiration of any exemptive order or no-action letter issued to that Relief DCO.

FINANCIAL OVERSIGHT STABILITY COUNCIL DEVELOPMENTS

Update on Review of Asset Management Products and Activities; Hedge Fund Working Group

Dodd-Frank requires that the Financial Stability Oversight Council (FSOC) convene for meetings no less frequently than quarterly. FSOC opens its meetings to the public whenever possible. At its meeting on November 16, 2016, Jonah Crane, Deputy Assistant Secretary for FSOC at the U.S. Department of the Treasury, provided an update on progress made by FSOC’s interagency hedge fund working group.⁴⁰

According to Mr. Crane, the hedge fund working group has three objectives: (i) to use regulatory and supervisory data to evaluate the use of leverage; (ii) to assess the sufficiency and accuracy of existing data and information; and (iii) to consider potential enhancements to measurements of leverage. Most recently, the working group conducted an analysis of position-level data for interest rate derivatives, provided by the CFTC, and found that positions held by a relatively small group of funds constituted what the working group considered to be a meaningful share of certain key markets, relative to both market size and trading volume. Mr. Crane stated that, with respect to correlation, more detailed reporting of asset class exposures or more frequent returns data “would greatly improve [FSOC’s] ability to identify correlated strategies.”

Mr. Crane outlined the working group's five categories of recommendations regarding data: (i) improved data harmonization and sharing, particularly that swap data repositories should continue working with the CFTC to establish consistent standards for reporting swaps data; (ii) more detail regarding hedge funds' portfolio exposures (e.g., information on the tenor and asset class of their fixed income investments) and historical volatility, which would allow better estimates of netting and provide insights into fund strategies and correlations between funds, helping FSOC assess both fire sale and counterparty risks; (iii) more information about the terms of the financing hedge funds rely on, such as the maturities of their obligations and the extent to which they use overnight funding, which would allow better estimates of asset/liability matching, particularly with respect to assessment of the risk of asset fire sales caused by funding stress; (iv) the collection of bilateral repurchase agreement data, which is important to understand the cash positions of hedge funds and the terms on which the positions are financed; and (v) comprehensive information on hedge funds' posted initial margin and unencumbered cash, which would provide insights into potential counterparty exposures and the ability of funds to withstand margin calls without resorting to forced asset sales. Mr. Crane said that there are likely also opportunities to refine the SEC's Form PF to reduce firms' compliance burdens without undermining FSOC's ability to monitor financial stability risks.

OTHER DEVELOPMENTS

CFTC Staff Issues Results of Supervisory Stress Test of Clearinghouses

On November 16, 2016, the CFTC staff released a report detailing the results of the first ever Supervisory Stress Test of Clearinghouses.⁴¹ The test, designed and administered internally by the CFTC staff, measures whether actual margin amounts posted by clearing members, along with other pre-funded financial resources held by the clearinghouses, are sufficient to cover losses that the clearinghouse may suffer under a series of extreme stress scenarios. This analysis included five clearinghouses registered with the CFTC located in the U.S. and the UK, as well as the largest clearing members at each clearinghouse.

The test found that all clearinghouses that participated in the test either met or exceeded the required resiliency levels. CFTC Chairman Timothy Massad commented on the test results, stating that the results show "that clearinghouses had ample

resources to withstand extremely stressful market conditions on the test date" and that "risk was diversified across all clearing members – a loss at one clearinghouse does not mean a loss at all."

The CFTC staff noted, however, that while the test does provide a good indicator of clearinghouses' ability to withstand extreme stress scenarios, it does not account for all types of risk that a clearinghouse may face, such as liquidity risk, operational risk, or cybersecurity risk.

Electronic Submission Requirements for Forms 40/40S and 71 Commenced

As of November 18, 2016, trader identification and market participant data are required to be submitted electronically on new and updated reporting forms including an amended Form 40/40S and a new Form 71.⁴² Previously, Form 40 (which requests information about futures trading) and Form 40S (which requests information about trading in certain physical commodity swaps) were PDFs that would be submitted via e-mail in response to a "special call" from DMO. Now, all filings will be submitted electronically through a new database. Most notably, the new forms request significantly more data and are required to be updated if (and every time) the information changes. Furthermore, each update requires the entire form to be resubmitted, as there is no function which permits a filer to update only a portion of the form.

The new Form 71 will be used in conjunction with new Form 102B. Form 102B requires the transaction-based reporting of trading accounts that have daily trading volume that exceeds a specified level on a DCM or SEF in a single trading day, regardless of whether the accounts maintain positions at the end of the day. Form 102B also requires identifying information with respect to the owners and controllers of those volume threshold accounts. Form 71 will be used to solicit information from omnibus accounts, for purposes of identifying the same ultimate owner and controller of those accounts.⁴³

FinCEN Advisory and Frequently Asked Questions to Financial Institutions on Cyber-Events and Cyber-Enabled Crime

On October 25, 2016, the Financial Crimes Enforcement Network (FinCEN) issued an Advisory and supplementary Frequently Asked Questions (FAQs) to financial institutions on cyber-events and cyber-enabled crime. FinCEN intended the Advisory to assist financial institutions in understanding their

Bank Secrecy Act (BSA) obligations regarding cyber-events and cyber-crime. FinCEN notes that the Advisory does not change existing BSA requirements or other regulatory obligations and that firms should continue to follow federal and state regulatory guidance and requirements on cyber-related reporting and compliance obligations.

The Advisory provides specific guidance regarding how BSA regulations and requirements apply to cyber-events, cyber-enabled crime and cyber-related information. In summary, the Advisory:

- Describes mandatory suspicious activity reporting (SAR) requirements for cyber-related events and cyber-crime and encourages voluntary reporting of egregious, significant or damaging cyber-related events;
- Identifies cyber-related information that should be included in a SAR filing (if available) and encourages firms to incorporate cyber-related information into their BSA/anti-money laundering (AML) monitoring efforts;
- Encourages collaboration between BSA/AML compliance staff and cyber-security staff to help identify suspicious activity and help financial institutions conduct a more comprehensive threat assessment and develop appropriate risk management strategies; and
- Encourages financial institutions to share cyber-related information to better guard against money laundering, terrorism financing and cyber-enabled crime.

In its Notice to Members U-16-24, the NFA advised registered FCMs and IBs to closely review the Advisory and FAQs, consider whether any changes to their AML programs are necessary in order to comply with BSA obligations regarding cyber-events, and ensure their programs contain all relevant information and guidance regarding cyber-events and cyber-enabled crime.

NFA UPDATE

Effective Date of Interpretive Notice to NFA Compliance Rule 2-46: Reporting Financial Information on NFA Forms PQR and PR

On December 19, 2016, the NFA announced that amendments to NFA Compliance Rule 2-46, along with an interpretive notice, will be effective for Forms CPO-PQR and CTA-PR as

of the quarter ending June 30, 2017.⁴⁴ The amendment requires CPO filers to report “any additional information in a form and manner prescribed by NFA,” and the interpretive notice requires registered CPOs and CTAs to report two financial ratios: (i) current assets over current liabilities as of the reporting quarter end, which would serve as a measure of the firm’s liquidity, and (ii) total revenue earned over total expenses incurred during the prior 12 months, which would serve as a measure of the firm’s operating margin. A CPO or CTA that is part of a holding company/subsidiary structure may elect to report the ratios at the parent level. CPOs and CTAs would be required to maintain records that support their ratio calculations, which would be subject to inspection by NFA during an examination or upon request.

To help CPO and CTA members understand the new reporting requirements and the calculation of the ratios:

- NFA will produce a webinar early this year;
- Forms PQR and PR will include help text providing additional guidance regarding how to complete the new data fields; and
- NFA staff will work with members during examinations to ensure that the firm is calculating the ratios correctly.

LOOKING AHEAD: DEVELOPMENTS SO FAR IN 2017

Since the close of 2016, regulatory developments have continued. Those particularly worthy of note are:

- **Recordkeeping.** Proposed amendments to CFTC Regulation 1.31 which would, among other things, remove the “write once, read many” or “WORM” requirement, as well as the requirement to engage a technical consultant.⁴⁵
- **Delegation.** The issuance of CFTC Letter No. 17-01, which provides no-action relief with respect to CPO delegation pursuant to the same conditions outlined in CFTC Letter No. 14-126, but for the requirement that the “Delegating CPO” and “Designated CPO,” if non-natural persons, must be in a control relationship.⁴⁶
- **New Acting Commissioner of the CFTC.** On Friday, January 20, 2017, the CFTC named Republican Commissioner Christopher Giancarlo acting chairman of the

CFTC. Commissioner Giancarlo succeeded former CFTC Chairman Timothy Massad, who was appointed by President Obama in June 2014 and who resigned in early January 2017, in connection with the change of administration. In a prepared speech on January 18, 2017, Commissioner Giancarlo outlined what he believed to be “five key elements” of market reform: (i) providing customer choice in trade execution; (ii) fixing swaps data reporting; (iii) achieving cross-border harmonization; (iv) encouraging FinTech innovation; and (v) cultivating a regulatory culture of forward thinking.⁴⁷

These and other developments that take place in the first quarter of 2017 are expected to be covered in greater detail in our next quarterly review.

¹ Position Limits for Derivatives, 81 Fed. Reg. 96704 (Dec. 30, 2016) (Reproposing Release), <https://www.gpo.gov/fdsys/pkg/FR-2016-12-30/pdf/2016-29483.pdf>. See also CFTC Press Release 7495-16, CFTC Reproposes Position Limits Rule (Dec. 5, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7495-16>; Fact Sheet – Reproposal of Regulations on Position Limits for Derivatives and Final Regulations on Aggregation of Positions (Dec. 5, 2016), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/plreproposalfactsheet120516.pdf>; Position Limits for Derivatives: Certain Exemptions and Guidance, 81 Fed. Reg. 38458 (June 13, 2016) (Supplemental Release), <http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2016-12964>; Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013) (Proposing Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-27200a.pdf>.

² On October 18, 2011, the CFTC passed final rules on position limits for futures and swaps. Position Limits for Futures and Swaps, 76 Fed. Reg. 71626 (Oct. 28, 2011) (Adopting Release), <https://www.gpo.gov/fdsys/pkg/FR-2011-11-18/pdf/2011-28809.pdf>. On September 28, 2012, the United States District Court for the District of Columbia vacated those final rules and remanded the matter to the CFTC. *International Swaps and Derivatives Association v. United States Commodity Futures Trading Commission*, 887 F. Supp. 2d 259 (D.D.C. 2012) (stating that the Commodity Exchange Act (CEA) required the CFTC to make a necessity finding before imposing position limits). In November 2013, the CFTC repropose position limits for derivatives, and in May 2016, the CFTC issued a supplemental proposal including certain exemptions and guidance. Position Limits for Derivatives, 78 Fed. Reg. 75680 (Dec. 12, 2013) (Proposing Release), <https://www.gpo.gov/fdsys/pkg/FR-2013-12-12/pdf/2013-27200.pdf>; Position Limits for Derivatives: Certain Exemptions and Guidance, 81 Fed. Reg. 38458 (June 13, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-06-13/pdf/2016-12964.pdf>. For a more detailed discussion of the 2016 supplemental proposal, refer to our quarterly review for the second quarter of 2016. Peter M. Hong and Nicole Simon, Quarterly Review: CFTC & NFA Developments For CPOs, CTAs and Other Asset Managers (July 2016), <http://www.stradley.com/insights/publications/2016/07/cftc-alert-july-2016>.

³ The eight enumerated categories of exempt bona fide hedging

positions are: (1) hedges of inventory and cash commodity purchase contracts; (2) hedges of cash commodity sales contracts; (3) hedges of unfilled anticipated requirements (including a new category for public utilities to hedge based on their customers’ anticipated needs); (4) hedges by agents; (5) hedges of unsold anticipated production; (6) hedges of offsetting unfixed-price cash commodity sales and purchases; (7) hedges of anticipated royalties; and (8) hedges of services. See Proposed Regulation 150.1(3)-(4) and proposed Appendix C to Part 150 of the CFTC’s Regulations, which sets forth a non-exhaustive list of examples of bona fide hedging positions in physical commodities. 81 Fed. Reg. 96984-88.

⁴ Proposed Appendix A to Part 150 of the CFTC’s Regulations. 81 Fed. Reg. 96981-82.

⁵ Id.

⁶ Peter M. Hong and Nicole Simon, Quarterly Review: CFTC & NFA Developments For CPOs, CTAs and Other Asset Managers (July 2016), <http://www.stradley.com/insights/publications/2016/07/cftc-alert-july-2016>.

⁷ Aggregation of Positions, 81 Fed. Reg. 91454 (Dec. 16, 2016) (Adopting Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-29582a.pdf>. See also CFTC Press Release 7495-16, CFTC Reproposes Position Limits Rule (Dec. 5, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7495-16>; Fact Sheet – Reproposal of Regulations on Position Limits for Derivatives and Final Regulations on Aggregation of Positions (Dec. 5, 2016), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/plreproposalfactsheet120516.pdf>; Aggregation of Positions, 80 Fed. Reg. 58365 (Sept. 29, 2015) (Supplemental Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2015-24596a.pdf>; Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013) (Proposing Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2013-27339a.pdf>.

⁸ After the CFTC’s position limits rules were vacated by the United States District Court for the District of Columbia, the CFTC in November 2013 proposed to amend the aggregation provisions in CFTC Regulation 150.4 and certain related regulations. See 887 F. Supp. 2d 259, *supra* note 2; Aggregation of Positions, 78 Fed. Reg. 68946 (Nov. 15, 2013) (Proposing Release), <https://www.gpo.gov/fdsys/pkg/FR-2013-11-15/pdf/2013-27339.pdf>. Then, in September 2015, the CFTC issued a supplemental proposal. Aggregation of Positions, 80 Fed. Reg. 58365 (Sept. 29, 2015) (Supplemental Release), <https://www.gpo.gov/fdsys/pkg/FR-2015-09-29/pdf/2015-24596.pdf>.

⁹ The nine legacy contracts are CBOT Corn and Mini-Corn, Oats, Soybeans and Mini-Soybeans, Wheat and Mini-Wheat, Soybean Oil, and Soybean Meal, Minneapolis Grain Exchange Hard Red Spring Wheat, ICE Futures U.S. Cotton No. 2, and Kansas City Board of Trade Hard Winter Wheat. 17 C.F.R. §150.2.

¹⁰ 17 C.F.R. §150.4(a)(1).

¹¹ 17 C.F.R. §150.4(a)(2).

¹² 81 Fed. Reg. 91454, supra note 7.

¹³ For further details, see CFTC Regulation 150.4.

¹⁴ 17 C.F.R. §150.4(b)(8).

¹⁵ Regulation Automated Trading, 81 Fed. Reg. 85334 (Nov. 25, 2016) (Supplemental Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-27250c.pdf>. See also CFTC Press Release 7479-16, CFTC Approves Supplemental Proposal to Automated Trading Regulation (Nov. 4, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7479-16>; Fact Sheet – Supplemental Notice of Proposed Rulemaking on Regulation Automated Trading (Nov. 4, 2016), http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/regat_factsheet110316.pdf.

¹⁶ Regulation Automated Trading, 80 Fed. Reg. 78824 (Dec. 17, 2015) (Proposing Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2015-30533a.pdf>.

¹⁷ Peter M. Hong and Nicole Simon, Quarterly Review: CFTC & NFA Developments For CPOs, CTAs and Other Asset Managers (April 2016), <http://www.stradley.com/insights/publications/2016/04/cftc-alert-april-2016>.

¹⁸ CFTC Release Regulation Automated Trading (Jan. 23, 2017) (Extension of Comment Period), <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister012317.pdf>.

¹⁹ Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, Amendments to Filing Dates, 81 Fed. Reg. 80563 (Nov. 16, 2016) (Adopting Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-27525a.pdf>. See also Press Release, CFTC Approves Final Rule Amending the Timing for Filing Chief Compliance Officer Annual Reports by Certain Registrants (Nov. 10, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7482-16>; Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, Amendments to Filing Dates, 81 Fed. Reg. 53343 (Aug. 12, 2016) (Proposing Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-19231a.pdf>.

²⁰ CFTC Letter No. 15-15 (March 27, 2015), <http://www.cftc.gov/idc/groups/public/@lrlattergeneral/documents/letter/15-15.pdf>.

²¹ Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, Amendments to Filing Dates, 81 Fed. Reg. 80563 (Nov. 16, 2016) (Adopting Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-27525a.pdf>. See also Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants, Amendments to Filing Dates, 81 Fed. Reg. 53343 (Aug. 12, 2016) (Proposing Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-19231a.pdf>.

²² Commodity Pool Operator Financial Reports, 81 Fed. Reg. 85147

(Nov. 25, 2016) (Adopting Release), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-28388a.pdf>. See also CFTC Press Release 7487-16, CFTC Unanimously Approves Final Rule Amendments to its Regulations Regarding CPO Financial Reports (Nov. 21, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7487-16>; Commodity Pool Operator Annual Report, 81 Fed. Reg. 51828 (Aug. 5, 2016), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-18400a.pdf>.

²³ Peter M. Hong and Nicole Simon, Quarterly Review: Proposed Amendments to CPO Annual Report Requirements in CFTC Regulation 4.22 (October 2016), <http://www.stradley.com/insights/publications/2016/10/cftc-alert-october-2016>.

²⁴ A CPO seeking to use IFRS must file a notice with the NFA representing that:

- the pool is organized under the laws of a foreign jurisdiction;
- the Annual Report will include a schedule of investments (condensed unless a full schedule is required under IFRS);
- the use of IFRS to prepare the Annual Report is not inconsistent with representations set forth in the pool's disclosures to participants;
- any special allocations of ownership equity will be reported in accordance with CFTC Regulation 4.22(e); and
- in the event that IFRS requires consolidated financial statements for the pool (e.g., in a master-feeder fund structure), all applicable disclosures required by U.S. generally accepted accounting principles will be provided.

²⁵ Agency Information Collection Activities: Comment Request— Proposal To Amend Collection 3038–0005: Instructions to CFTC Form CPO–PQR, 81 Fed. Reg. 85209 (Nov. 25, 2016), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-28389a.pdf>.

²⁶ Capital Requirements of Swap Dealers and Major Swap Participants, 81 Fed. Reg. 91252 (Dec. 16, 2016), <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-29368a.pdf>. See also Press Release, CFTC Unanimously Approves Proposed Rules Establishing Swap Dealer and Major Swap Participant Capital Requirements (Dec. 2, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7494-16>; Fact Sheet – Proposed Rules Regarding Capital Requirements of Swap Dealers and Major Swap Participants (Dec. 2, 2016), http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/sdcapital_factsheet120216.pdf.

²⁷ The “Prudential Regulators” are the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency.

²⁸ See 81 Fed. Reg. at 91265. For details regarding the specific proposed requirements applicable to other types of Covered Swap Entities, see 81 Fed. Reg. 91252, supra note 26.

²⁹ CFTC Press Release 7466-16, CFTC Signs MOU with UK Financial Conduct Authority to Enhance Supervision of Cross-Border Regulated Firms (Oct. 6, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7466-16>.

³⁰ CFTC Press Release 7478-16, CFTC and Canadian Authority Sign Counterpart to Memorandum of Understanding to Enhance Supervision of Cross-Border Regulated Entities (Nov. 2, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7478-16>. See also CFTC Press Release 6893-14, U.S. Commodity Futures Trading Commission and Canadian Authorities Sign Memorandum of Understanding to Enhance Supervision of Cross-Border Regulated Entities (March 27, 2014), <http://www.cftc.gov/PressRoom/PressReleases/pr6893-14>.

³¹ Cross-Border Application of the Registration Thresholds and External Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants, 81 Fed. Reg. 71946 (Oct. 18, 2016), <http://www.cftc.gov/idx/groups/public/@lrfederalregister/documents/file/2016-24905a.pdf>; Press Release, CFTC Approves Proposed Rule on the Application of Certain Swap Provisions of the Commodity Exchange Act in Cross-Border Transactions (Oct. 11, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7468-16>; Fact Sheet – Proposed Rule Regarding the Cross-Border Application of Certain Swap Provisions (Oct. 11, 2016), http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/crossborder_factsheet101116.pdf.

³² See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Cross-Border Application of the Margin Requirements, 81 Fed. Reg. 34818 (May 31, 2016), <http://www.cftc.gov/idx/groups/public/@lrfederalregister/documents/file/2016-12612a.pdf>. For more information about the cross-border application of those requirements and the definition of a “U.S. person” for this purpose, refer to our quarterly review for the second quarter of 2016. Peter M. Hong and Nicole Simon, Quarterly Review: CFTC & NFA Developments For CPOs, CTAs and Other Asset Managers (July 2016), <http://www.stradley.com/insights/publications/2016/07/cftc-alert-july-2016>.

³³ See Press Release, CFTC Approves Proposed Rule on the Application of Certain Swap Provisions of the Commodity Exchange Act in Cross-Border Transactions, *supra* note 31.

³⁴ Peter M. Hong and Nicole Simon, Quarterly Review: Proposed Amendments to CPO Annual Report Requirements in CFTC Regulation 4.22 (October 2016), <http://www.stradley.com/insights/publications/2016/10/cftc-alert-october-2016>. See also CFTC Press Release 7421-16, CFTC Announces Enhancements to Protect Customer Funds (Aug. 8, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7421-16>; No-Action Relief With Respect to CFTC Regulation 1.25 Regarding Money Market Funds, CFTC Letter No. 16-68 (Aug. 8, 2016) (DSIO Letter), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/16-68.pdf>; Staff Interpretation Regarding CFTC Part 39 in Light of Revised SEC Rule 2a-7, CFTC Letter No. 16-69 (Aug. 8, 2016) (DCR Letter), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/16-69.pdf>.

³⁵ CFTC Staff Advisory No. 16-75 (Oct. 18, 2016), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/16-75.pdf>.

³⁶ Peter M. Hong and Nicole Simon, Quarterly Review: Proposed Amendments to CPO Annual Report Requirements in CFTC Regulation 4.22 (October 2016), <http://www.stradley.com/insights/publications/2016/10/cftc-alert-october-2016>.

³⁷ CFTC Letter No. 16-76 (Nov. 1, 2016), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/16-76.pdf>; Press Release, CFTC Further Implements Trade Execution Requirement (Nov. 1, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7476-16>. See also CFTC Letter No. 15-55 (Oct. 14, 2015), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/15-55.pdf>.

³⁸ Press Release, CFTC Further Implements Trade Execution Requirement (Nov. 1, 2016), *supra* note 37.

³⁹ CFTC Letter No. 16-85 (Dec. 19, 2016), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/16-85.pdf>.

⁴⁰ See Minutes of the Financial Stability Oversight Council (meeting held Nov. 16, 2016), <https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/November-16-2016.pdf>.

⁴¹ See CFTC Staff Issues Results of Supervisory Stress Test of Clearinghouses, Rel. pr7483-16 (Nov. 16, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7483-16>.

⁴² See CFTC Division of Market Oversight Reminds Market Participants of the Upcoming Expiration of Certain No-Action Relief From the Ownership and Control Final Rule, CFTC Press Release 7483-16 (Nov. 16, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7483-16>. See also Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 Fed. Reg. 69178, 69183-69189 (Adopting Release) (Nov. 18, 2013), <https://www.gpo.gov/fdsys/pkg/FR-2013-11-18/pdf/2013-26789.pdf>.

⁴³ CFTC Q&A—Final Rule on Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/ocr_qa_final.pdf.

⁴⁴ NFA Notice to Members I-16-31, Effective Date of Interpretive Notice to NFA Compliance Rule 2-46: Reporting Financial Information on NFA Forms PQR and PR (Dec. 19, 2016), <http://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4772>. See also NFA Compliance Rule 2-46, as amended, <http://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=RULE%202-46&Section=4>; NFA Interpretive Notice 9071—NFA Compliance Rule 2-46: Reporting Financial Information on NFA Forms PQR and PR (Board of Directors, Nov. 17, 2016, effective June 30, 2017), <https://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=9071&Section=9>.

⁴⁵ Press Release, CFTC Unanimously Approves Proposal to Amend Recordkeeping Requirements (Jan. 12, 2017), <http://www.cftc.gov/PressRoom/PressReleases/pr7512-17>; Recordkeeping (Proposed Rule) (Jan. 12, 2017), <http://www.cftc.gov/idx/groups/public/@newsroom/documents/file/federalregister011217.pdf>.

⁴⁶ CFTC Letter No. 17-01 (Jan. 10, 2017), <http://www.cftc.gov/idx/groups/public/@lrlattergeneral/documents/letter/17-01.pdf>.

⁴⁷ See Keynote Address of CFTC Commissioner J. Christopher Giancarlo Before SEFCON VII (Jan. 18, 2017), <http://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-19>.