

October 27, 2025

The Hon. Caroline Pham
Acting Chairman
Commodity Futures Trading Commission
Three Lafayette Centre - 1155 21st Street, NW
Washington, DC 20581

VIA EMAIL

Re.: *Ending CFTC Registration For SEC-Registered Private Fund Advisers*

Dear Acting Chairman Pham:

The Committee on Capital Markets Regulation (“Committee”) is writing to recommend that the Commodity Futures Trading Commission (“CFTC”) reinstate the exemption from CFTC registration for private fund advisers that are registered with the Securities and Exchange Commission (“SEC”).

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-three leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Introduction

In February 2025, President Trump issued an executive order directing agencies to identify and rescind regulations that “impose significant costs upon private parties that are not outweighed by public benefits.”¹ In this letter, we explain how reinstating an exemption from CFTC registration for certain SEC-registered investment advisers to private funds would advance the executive order’s goal of reducing unwarranted regulatory burdens, while maintaining the necessary protections for investors. Doing so would also align with the recommendation of the Treasury

¹ EXECUTIVE OFFICE OF THE PRESIDENT, *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*, 90 FED. REG. 10583 (Feb. 19, 2025), <https://www.federalregister.gov/documents/2025/02/25/2025-03138/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency>.

Department under the first Trump Administration, which recognized the need for this reform in 2017.²

In 2012, in the aftermath of the financial crisis, the CFTC rescinded an exemption from CFTC registration for the managers of funds investing in commodity derivatives (“commodity pools”) that are exclusively offered to sophisticated investors that meet the definition of “qualified eligible persons” under the Commodity Exchange Act. As a result, SEC-registered investment advisers to private funds that invest in both securities and commodity derivatives were required *also* to register with the CFTC and comply with the regulatory obligations under the CFTC’s Commodity Pool Operator (“CPO”) and Commodity Trading Adviser (“CTA”) regulatory frameworks. These advisers were also required to become members of a self-regulatory organization, the National Futures Association (“NFA”), an organization that had historically regulated futures commission merchants and introducing brokers (i.e., firms that execute customer futures trades or solicit and route customer orders in futures markets). In its final rulemaking rescinding the exemption, the CFTC stated, with little supporting analysis, that this “dual registration” regime was necessary to protect investors in private funds from derivatives-related risks and to ensure the CFTC had sufficient information about these funds to conduct regulatory oversight of private fund advisers’ derivatives market activities.³

Following more than a decade of experience with dual registration, it has become clear that the CFTC and NFA regulatory compliance frameworks do not meaningfully advance public policy goals beyond the SEC’s comprehensive registration and compliance framework. As we explain below, the SEC’s registration and compliance framework adequately protects investors and clients of private fund advisers with respect to their commodity derivatives investments. It also provides the CFTC with sufficient transparency into the activities of these funds to enable the CFTC to carry out its oversight responsibilities regarding the derivatives markets. Dual registration has instead increased costs for investors, interfered with ordinary private fund business arrangements, and imposed conflicting, unnecessary, and redundant compliance and administrative obligations on private fund advisers. In addition, as the CFTC recognized in 2003, exempting private advisers removes “barriers to participation in the commodity interest markets, resulting in greater liquidity and market efficiency.”⁴ We therefore urge the CFTC to issue a rule reinstating the registration exemption for private fund advisers that are registered with the SEC.

Part I of our letter provides further background on the dual registration framework. Part II explains why dual registration is unnecessary and costly. Part III concludes.

² U.S. DEPARTMENT OF THE TREASURY, *A Financial System That Creates Economic Opportunities: Asset Management and Insurance* at 47-48 (2017), https://home.treasury.gov/system/files/136/archive-documents/A-Financial-System-That-Creates-Economic-Opportunities-Asset_Management-Insurance.pdf.

³ COMMODITY FUTURES TRADING COMMISSION [“CFTC”], *Commodity Pool Operators and Commodity Trading Advisers: Compliance Obligations*, 77 FED. REG. 11,252 at 11,280 (Feb. 24, 2012), <https://www.govinfo.gov/content/pkg/FR-2012-02-24/pdf/2012-3390.pdf> [“2012 Rule”].

⁴ CFTC, *Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisers; Past Performance Issues*, 68 FED. REG. 47,221 at 47,230 (Aug. 8, 2003), <https://www.cftc.gov/sites/default/files/files/foia/fedreg03/foi030808a.pdf>.

I. Requiring SEC-Registered Advisers to Register with the CFTC Was Misguided

In 1979, the CFTC adopted its initial rules requiring managers of commodity pools to register as CPOs with the CFTC and adhere to a CFTC-administered disclosure and compliance framework.⁵ The 1979 rulemaking did not provide any exemptions from CFTC registration for advisers to private funds. However, in 2000, the Commodity Futures Modernization Act directed the CFTC to study its registration framework with the goal of streamlining regulation and encouraging participation in derivatives markets.⁶ In response, the CFTC exempted from CPO registration the managers of commodity pools limited to sophisticated investors consisting of “qualified purchasers” under the Investment Company Act of 1940 or “accredited investors” under Regulation D under the Securities Act of 1933.⁷ The CFTC concluded that exempting these managers from registration would remove barriers to participation in derivatives markets by alleviating compliance burdens while having “no effect” on the CFTC’s ability to “protect market participants and the public” in view of the “financial sophistication” of the investors in these commodity pools.⁸ The exemption parallels the exemption from SEC registration that Congress created for advisers to private funds, which is based on the same premise that investment vehicles limited to sophisticated investors do not require the same degree of regulation as vehicles available to retail investors.⁹

In 2010, the Dodd-Frank Act (“Dodd-Frank”) narrowed the SEC’s registration exemptions for private fund advisers.¹⁰ These changes were designed to provide SEC oversight of advisers to large private funds to address concerns that they could pose risks to investors and the broader financial system.¹¹ At the same time, Congress, in Dodd-Frank, expanded the CFTC’s jurisdiction over commodity-linked swaps and other over-the-counter derivatives in response to concerns that

⁵ CFTC, *Commodity Pool Operators and Commodity Trading Advisors*, 44 FED. REG. 1918 (Jan. 8, 1979), <https://www.govinfo.gov/content/pkg/FR-1979-01-08/pdf/FR-1979-01-08.pdf>.

⁶ Pub. L. No. 106-554, Appendix E, § 125, 114 Stat. 2763A-365 (2000). See also WILLKIE FARR & GALLAGHER, *Amendments to CFTC Rules for CPOs and CTAs* (2003), https://www.willkie.com/~media/Files/Publications/2003/08/Amendments%20to%20CFTC%20Rules%20for%20CPOs%20and%20CTAs/Files/AmendmentstoCFTCRulespdf/FileAttachment/Amendments_to_CFTC_Rules.pdf.

⁷ CFTC, *supra* note 4.

⁸ *Id.* at 47,230.

⁹ DIVISION OF INVESTMENT MANAGEMENT U.S. SECURITIES AND EXCHANGE COMMISSION, *Protecting Investors: A Half Century of Investment Company Regulation* (May 1992), <https://www.sec.gov/divisions/investment/guidance/icreg50-92.pdf> (“In contrast to the existing private investment company exception, an exception for funds owned by sophisticated investors would be premised on the theory that such investors can adequately safeguard their interests in a pooled investment vehicle without extensive federal regulation.”).

¹⁰ Section 403 of the Dodd-Frank Act amended Section 203(b) of the Investment Advisers Act of 1940 to repeal the exemption from registration for private fund advisers with fewer than 15 clients, and Section 408 added Section 203(m) to the Advisers Act to exempt from registration advisers to private funds with less than \$150 million in assets under management. DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT, P.L. 111-203 (Jul. 21, 2010) [“DODD-FRANK”] §§ 403, 408, <https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>. See also INVESTMENT ADVISERS ACT OF 1940 § 203 *et seq.*, <https://www.govinfo.gov/content/pkg/COMPS-1878/pdf/COMPS-1878.pdf>.

¹¹ HOUSE OF REPRESENTATIVES, *House Report 111-686, Private Fund Investment Advisers Registration Act of 2009* at 5 (Dec. 16, 2010), <https://www.govinfo.gov/content/pkg/CRPT-111hrpt686/html/CRPT-111hrpt686-pt1.htm> (the bill “addresses the threat of systemic and investor risks posed by private pools of capital [by] eliminat[ing] the existing ‘private adviser’ exemption . . .”).

inadequate oversight of these products had contributed to the financial crisis.¹² Notably, however, despite these concerns, Congress *did not* narrow or direct the CFTC to rescind the CFTC’s exemption for managers of commodity pools limited to sophisticated investors.

Nonetheless, in 2012, the CFTC adopted a rule (“2012 Rule”) that significantly expanded the CFTC’s registration framework and rescinded the exemption for managers of commodity pools limited to sophisticated investors.¹³ The 2012 Rule also narrowed an existing exemption for advisers to public investment funds registered with the SEC. The CFTC explained that it intended its expanded registration requirements to improve oversight of derivatives markets and to align its requirements more closely with the SEC’s expanded post-Dodd-Frank framework.¹⁴ As a result, private fund advisers that Dodd-Frank required to register with the SEC and that invest more than a *de minimis* amount in commodity-linked derivatives were also required to register with the CFTC as CPOs and become members of the NFA. In rescinding this exemption, the CFTC failed to conduct a meaningful cost-benefit analysis, disregarding the cumulative burdens of dual registration and failing to identify a policy rationale for requiring dual registration. The dual registration requirement has remained in effect since the 2012 Rule.

II. Dual Registration Is Unnecessary and Costly

This Part II discusses in detail three reasons why dual registration is unnecessary and costly: (i) SEC registration already addresses derivatives-related risks; (ii) the CFTC retains broad jurisdiction over derivatives markets without dual registration; and (iii) dual registration has increased compliance and administrative costs for market participants.

i. SEC Registration Already Addresses Derivatives-Related Risks

The SEC’s registration and compliance framework for private fund advisers that invest in a combination of securities and derivatives already addresses potential risks to investors and clients from an adviser’s derivatives activities. In particular, SEC rules require registered advisers to provide investors with full and fair disclosure of a fund’s investment strategies, risks, and potential conflicts of interest¹⁵ and regulate an adviser’s marketing representations of performance and risk, with respect to all of the adviser’s portfolio activities including derivatives.¹⁶ SEC-registered advisers must also file Form ADV, which discloses information on an adviser’s investment strategies, risks, potential conflicts of interest, and also covers the use of derivatives.¹⁷

¹² CONGRESSIONAL RESEARCH SERVICE, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives* (Nov. 6, 2012), https://www.congress.gov/crs_external_products/R/PDF/R41398/R41398.7.pdf.

¹³ 2012 Rule at 11,275.

¹⁴ *Id.* at 11,257 (“In order to ensure that the Commission can adequately oversee the commodities and derivatives markets and assess market risk associated with pooled investment vehicles under its jurisdiction, the Commission is re-evaluating its regulation of CPOs and CTAs. Additionally, the Commission does not want its registration and reporting regime for pooled investment vehicles and their operators and/or advisers to be incongruent with the registration and reporting regimes of other regulators, such as that of the SEC for investment advisers.”).

¹⁵ ADVISERS ACT § 206 (prohibiting fraudulent and misleading statements by investment advisers); *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 at 191–92 (1963) (holding that investment advisers owe a fiduciary duty of full and fair disclosure to clients).

¹⁶ 17 CFR § 275.206(4)-8.

¹⁷ ADVISERS ACT §§ 203-204. Form ADV Schedule D, Section 7.B.

Furthermore, SEC-registered advisers owe general fiduciary duties of loyalty and care to clients, which also apply to all portfolio activities regardless of asset class.¹⁸ The SEC has the authority to bring enforcement actions against advisers that violate these requirements.¹⁹

The SEC has sufficient expertise to apply its registration framework to derivatives activities of private fund advisers. The SEC has long regulated options on securities, structured notes, and, since Dodd-Frank, security-based swaps and thus has the technical capacity to supervise derivatives activities.²⁰ SEC examiners regularly review derivatives strategies of private fund advisers and SEC staff review disclosure relating to advisers’ use of derivatives for adequacy and accuracy.²¹

ii. *The CFTC Retains Broad Jurisdiction Over Derivatives Markets Without Dual Registration*

The CFTC’s 2012 Rule asserted that dual registration is also necessary so that the CFTC can “adequately oversee the derivatives trading activities of entities in which the Commission has a regulatory interest.”²² However, the CFTC retains its core oversight and enforcement authorities over derivatives markets regardless of participants’ registration status. This includes the broad authority to prohibit fraud, manipulation, and deceptive practices in derivatives markets.²³ Market participants also must comply with CFTC rules on clearing and position reporting, even if they are not CFTC-registered.²⁴ The CFTC also regulates derivatives market intermediaries such as futures commission merchants and swap dealers, which report information on trades and enforce CFTC margin and collateral rules, including for the trades of unregistered participants.²⁵ The CFTC has the authority to bring enforcement actions against market participants that violate these requirements, regardless of registration status.²⁶

With regard to data on the specific derivatives activities of private fund advisers, the SEC and CFTC have entered into a memorandum of understanding granting the CFTC unrestricted access

¹⁸ *Id.* § 206; SECURITIES AND EXCHANGE COMMISSION [“SEC”], *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, 84 FED. REG. 33,669 at 33,670 (Jul. 12, 2019), <https://www.federalregister.gov/documents/2019/07/12/2019-12208/commission-interpretation-regarding-standard-of-conduct-for-investment-advisers> (clarifying that fiduciary duty encompasses a duty of care and a duty of loyalty).

¹⁹ ADVISERS ACT §§ 203, 206, 209.

²⁰ SECURITIES EXCHANGE ACT of 1934 § 3(a)(10); DODD-FRANK § 761(a); SEC, *Investor Bulletin: Structured Notes* (Jan. 12, 2015), <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-76>.

²¹ See, e.g., SEC DIVISION OF EXAMINATIONS, *2024 Examination Priorities* at 7 (2024), <https://www.sec.gov/files/2024-exam-priorities.pdf> (“In reviewing advisers’ adherence to this fiduciary standard, the Division continues to focus on [i]nvestment advice provided to clients with regard to products, investment strategies, and account types, particularly those regarding . . . complex products, such as derivatives . . .”).

²² 2012 Rule at 11,280.

²³ COMMODITY EXCHANGE ACT [“CEA”] § 4b, § 6(c)(1) (prohibiting manipulative or deceptive devices in connection with any swap or commodity contract); 17 C.F.R. § 180.1 (implementing § 6(c)(1) and applying broadly to “any person” in covered markets).

²⁴ CEA § 2(h)(1) (clearing requirement applying to all “persons” entering into covered swaps); 17 C.F.R. Part 150 (position limits and related compliance obligations applying to all market participants).

²⁵ 17 C.F.R. §§ 23.150–.161.

²⁶ CEA § 6c.

to all Form PF data collected by the SEC, which include detailed information on registered private fund advisers' derivatives-related exposures.²⁷ Furthermore, the Form PF requirements were developed through a joint rulemaking between the SEC and CFTC, and thus reflect the CFTC's views as to the information necessary to oversee the market risks from the commodity derivatives activities of these funds.²⁸ Dual registration thus serves only to subject advisers to an additional set of CFTC disclosure and fund management requirements aimed at investor protection, a goal which is already served by SEC registration.

iii. Dual Registration Has Increased Compliance and Administrative Costs

Dual registration imposes unnecessary compliance costs for market participants and administrative costs for the CFTC without corresponding public benefits. In particular, CFTC registration and NFA membership increase costs to fund investors, interfere with ordinary course business transactions, and require private fund advisers to comply with numerous requirements that are not tailored or appropriate for the types of businesses private funds engage in. For example, NFA requirements subject private fund associated persons to licensing and supervision frameworks that are not tailored to their business,²⁹ prohibit private funds from engaging in ordinary course loans between affiliates,³⁰ and impose unnecessary and burdensome regulatory reporting obligations on private fund advisers.³¹ Registration also increases the CFTC's monitoring costs and strains the agency's limited resources. The increase in the number of CFTC-registered entities stemming from dual registration has been substantial. In the first year after the 2012 Rule was implemented, an estimated 200-450 SEC-registered private advisers that were previously exempt from CFTC registration were required to register with the CFTC, representing an increase of between 17%-38% in the number of CFTC registrants.³² The increased administrative burden on the CFTC resulting from the expansion of the regulatory requirement is reflected in the doubling of the CFTC's annual budget requests for registration and registration compliance expenses following the implementation of the 2012 Rule.³³ Moreover, dual registration requires the filing of systemic risk reports on both Form PF and Form CPO-PQR, an additional layer of reporting that imposes additional costs without corresponding benefits. Rescinding dual registration would eliminate this costly redundancy without depriving the CFTC of critical information.

²⁷ SEC & CFTC, *Memorandum of Understanding Between the SEC and the CFTC Regarding the Use of Form PF Data* (Feb. 8, 2024), <https://www.sec.gov/files/mou-sec-cftc-form-pf.pdf>.

²⁸ SEC & CFTC, *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF*, 76 FED. REG. 71,128 (Nov. 16, 2011), <https://www.federalregister.gov/documents/2011/11/16/2011-28549/reporting-by-investment-advisers-to-private-funds-and-certain-commodity-pool-operators-and-commodity>.

²⁹ See National Futures Association ["NFA"] Rule 2-9.

³⁰ See NFA Rule 2-45.

³¹ See NFA Rule 2-52.

³² Based on SEC Form ADV data, there was an increase of roughly 668 SEC-registered advisers reporting CFTC registration between 2011 and 2012.

³³ CFTC, *President's Budget FY 2013* at Appendix 6, <https://www.cftc.gov/sites/default/files/reports/presbudget/2013/2013presidentsbudgetapp06.html>.

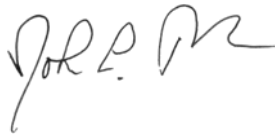
III. Conclusion

As demonstrated above, dual registration imposes significant and unnecessary costs on market participants without providing corresponding benefits. The Committee therefore recommends that the CFTC issue a rule eliminating the dual registration mandate by reinstating the exemption from CFTC registration for advisers to private funds that are registered with the SEC. Doing so would align with the President’s executive order directing agencies to eliminate regulations that burden private parties without commensurate public gain.

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Thank you very much for your consideration of the Committee’s position. Should you have any questions or concerns, please do not hesitate to contact the Committee’s President, Professor Hal S. Scott (hscott@capmksreg.org) or its Executive Director, John Gulliver (jgulliver@capmksreg.org) at your convenience.

Respectfully submitted,



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