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CLIENT ALERT

From No-Action to Rulemaking: CFTC Proposes to Adopt CPO and CTA Relief for RIAs

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The Commodity Futures Trading Commission has proposed to amend its registration exemptions for commodity pool operators and commodity trading advisors.[1] The proposal is intended to codify, with key modifications, the interim relief provided to CPOs and CTAs in CFTC No-Action Letters 25-50 and 26-06.[2] The proposal would (1) add a new exemption from CPO registration for certain SEC-registered investment advisers who operate commodity

[1] Commodity Pool Operators and Commodity Trading Advisors: Reduction of Duplicative Regulation Through Intermediary Registration Exemptions; Expansion of the Exemption for Small Commodity Pools, 91 Fed. Reg. 54264 (Aug. 21, 2026) (to be codified at 17 C.F.R. pt. 4).

[2] CFTC Staff Letter No. 25-50, No-Action Position for Commodity Pool Operator Registration for Certain Investment Managers to Qualified Eligible Persons (Dec. 19, 2025), available at https://www.cftc.gov/csl/25-50/download (hereinafter, "Letter No. 25-50"); CFTC Staff Letter No. 26-06, Amending and Reissuing CFTC Staff Letter 25-50 with Additional No-Action Position Regarding CPO Delegation Arrangements Under CFTC Letter 14-126 (Feb. 26, 2026), available at https://www.cftc.gov/csl/26-06/download (hereinafter, "Letter No. 26-06"); Gabriel Acri, Steven C. Matos, Rita M. Molesworth & Deborah A. Tuchman, CFTC Permits Registered Investment Advisers to Avoid Registration, Willkie Farr & Gallagher LLP Client Alert (Dec. 29, 2025), available at https://www.willkie.com/-/media/files/publications/2025/12/cftc-permits-registered-investment-advisers-to-avoid-registration.pdf.

pools offered to sophisticated investors, (2) add a related CTA registration exemption, and (3) increase the small pool exemption threshold from $400,000 to $800,000. Comments are due October 5, 2026.

Background

In 2003, the CFTC adopted its initial Rule 4.13(a)(4), which exempted from registration CPOs that operated privately offered pools that were available exclusively to certain sophisticated investors, among other conditions.[3] The exemption was widely utilized by managers of hedge funds and private equity funds. In the wake of the Dodd-Frank Act, the CFTC rescinded that version of Rule 4.13(a)(4).[4]

Beginning in late 2025, the CFTC revisited this prior exemptive relief and issued no-action letters ("NALs") 25-50 and 26-06. These NALs granted interim relief to SEC-registered investment advisers operating pools limited to "qualified eligible persons" ("QEPs"). With several key changes, the Commission has issued a notice of proposed rulemaking (the "Proposal") that would codify the relief provided in NALs 25-50 and 26-06 into a new Rule 4.13(a)(4).

Proposed Rule 4.13(a)(4)—the RIA-QEP Exemption

Proposed Rule 4.13(a)(4) would exempt a person from CPO registration with respect to the operation of a commodity pool if each of the following conditions is satisfied:

- **SEC Registration.** The CPO must be registered with the SEC as an investment adviser under the Investment Advisers Act of 1940.

- **Exempt Offering.** Pool interests must be exempt from registration under the Securities Act and must not be marketed to the general public in the U.S., except for pools offered pursuant to Rule 506(c) of Regulation D (which permits general solicitation provided that all purchasers are accredited investors and the issuer takes reasonable steps to verify accredited investor status).

- **Participant Eligibility.** NAL 25-50 requires all pool participants to be QEPs without differentiating between individuals and entities. The Proposal restores the tiered eligibility standard from the original Rule 4.13(a)(4), permitting a broader range of entities (including certain accredited investors), while maintaining a more restrictive standard for natural persons.

    — **Non-Natural Persons:** Each non-natural person participant must be a QEP *or* an accredited investor.[5]

[3] *See* Commodity Pool Operators and Commodity Trading Advisors: Registration Exemptions, 68 Fed. Reg. 47,221 (Aug. 8, 2003).

[4] *See* Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 Fed. Reg. 11,252 (Feb. 24, 2012).

[5] The Proposal includes only certain categories of "accredited investor" as defined under Rule 501(a) of Regulation D under the Securities Act. Such accredited investor categories include certain regulated entities, private business development companies, entities and certain trusts with over $5 million in total assets not formed to acquire the offered securities, and any entity whose equity owners are all themselves accredited investors. Rule 501(a)(1)–(3), (a)(7), and (a)(8) of Regulation D under the Securities Act.

— **Natural Persons:** Each natural person participant must be a QEP who is *not* required to satisfy the portfolio requirement in Rule 4.7.[6]

- **Form PF.** The CPO must file Form PF with respect to the pool for which it is claiming exemptive relief, to the extent it is required to do so under applicable securities regulations.

The CFTC also clarified other ambiguities in NALs 25-50 and 26-06, though the Proposal remains generally consistent with the relief provided by the NALs. Some notable differences and clarifications follow:

- **Annual Reaffirmation Filings.** Proposed Rule 4.13(a)(4) would require claimants to file annual notices with the NFA confirming their continued reliance on the exemption, consistent with the existing annual-notice framework applicable to certain other 4.13 exemptions. NAL 25-50 did not address annual reaffirmation filings.

- **Redemption Rights.** Under the Proposal, CPOs claiming exemptive relief pursuant to Rule 4.13(a)(4) will be required to notify pool participants and offer them a right to redeem their interests.[7] NAL 25-50 did not include a redemption right requirement. The CFTC is requesting comments related to, among other things, prior claims under NAL 25-50 in light of the Proposal.

- **Delegation Arrangements.** Under NAL 14-126, a CPO that delegates pool management functions to a registered "designated CPO" is not required to separately register as a CPO, provided that certain conditions are met—including that the designated CPO maintains its registration.[8] NAL 26-06 addressed the concern that a designated CPO deregistering in reliance on NAL 25-50 would make the related delegating CPO ineligible to rely on NAL 14-126. In the Proposal, the CFTC confirmed that NAL 14-126 delegation relief is not necessary where the pool for which CPO responsibility is being delegated is itself an exempt pool.

<u>**Other Key Proposed Amendments**</u>

The Proposal would also amend CFTC Rules 4.14(a)(8) and 4.13(a)(2).

- **CTA Exemption—Rule 4.14(a)(8).** The Proposal would make technical amendments to restore 4.13(a)(4) CPOs to the list of permissible clients for purposes of this CTA registration exemption. Accordingly, an investment adviser whose commodity interest trading advice is directed solely to a CPO operating a pool exempt under 4.13(a)(4) would also be exempt from CTA registration.

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6 17 C.F.R. § 4.7(a)(6)(i). This includes qualified purchasers (as defined in Section 2(a)(51) of the Investment Company Act), knowledgeable employees, certain registered financial professionals, and non-U.S. persons.

7 17 C.F.R. § 4.13(e)(2).

8 CFTC Staff Letter No. 14-126, No-Action, CEA Section 4m(1) – Self-Executing Registration No-Action Relief for Delegating CPOs when Certain Requirements are Satisfied (Oct. 15, 2014), available at https://www.cftc.gov/sites/default/files/idc/groups/public/@lrlettergeneral/documents/letter/14-126.pdf.

- **Small Pool Exemption.** The Proposal doubles the gross capital contributions threshold in Rule 4.13(a)(2) from $400,000 to $800,000, accounting for cumulative inflation since the threshold was last adjusted in 2003. The 15-participant limit and the existing exclusions from the contribution calculation remain unchanged.

Conclusion

Comments must be received by October 5, 2026, and may be submitted through the CFTC Comments Portal, referencing 3038-AF78. Market participants considering comments should focus on the features of the proposal that will most directly shape fund structuring and compliance: the recalibrated investor eligibility standard for natural versus non-natural persons and the treatment of redemption rights for pools already claimed under NAL 25-50.

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If you have any questions regarding this client alert or would like assistance in preparing comments, please contact one of the authors, any member of our CFTC team listed below, or the Willkie attorney with whom you regularly work.

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