

THE SAME BUT DIFFERENT: THE CFTC PROPOSES TO RE-CODIFY REGULATION 4.13(A)(4)... SORT OF

Date: 27 August 2026

US Asset Management and Investment Funds Alert

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HOW DID WE GET HERE?

More than 14 years after rescinding former Regulation 4.13(a)(4), the Commodity Futures Trading Commission (CFTC) has proposed a new exemption from commodity pool operator (CPO) registration for certain investment advisers. On 18 August 2026, the CFTC published a Notice of Proposed Rulemaking that, if adopted, would permit investment advisers registered with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940, as amended (RIAs), to claim an exemption from CPO registration with respect to certain commodity pools offered exclusively to qualified eligible persons (QEPs).¹

The proposed exemption (the Proposed RIA-QEP Exemption) would largely codify relief previously provided through CFTC No-Action Letters No. 25-50 and No. 26-06.² The proposal would also implement inflation-based adjustments to certain pool-level eligibility thresholds to align them with corresponding thresholds in the QEP definition.³

Although the proposal would restore a regulatory exemption that has been unavailable since 2012, it does not simply reinstate former Regulation 4.13(a)(4). Instead, it incorporates several important features of the recent no-action relief and leaves certain issues unresolved. The principal implications of the proposal are summarized below, followed by a more detailed discussion of the proposed exemption, how it differs from former Regulation 4.13(a)(4), and considerations for RIAs and other market participants.

KEY TAKEAWAYS

Exempt Reporting Advisers Remain Excluded

The proposed exemption would be available only to SEC-registered investment advisers.

Form PF Condition Narrowed

Certain RIAs could benefit from the proposal's revised Form PF requirement.

Commodity Trading Advisor Relief Codified

The proposal would expressly extend related Commodity Trading Advisor (CTA) registration relief for advisers providing commodity interest trading advice to eligible pools, addressing an issue that was not covered by CFTC No-Action Letter No. 25-50.

Important Compliance Questions Remain Unresolved

The proposal leaves open certain fund-of-funds, aggregation, and related interpretive issues that may warrant comment before adoption.

CONDITIONS FOR PROPOSED RIA-QEP EXEMPTION

The conditions of the Proposed RIA-QEP Exemption are discussed below.

The Exemption Is Limited to RIAs

Consistent with Letter No. 25-50, the Proposed RIA-QEP Exemption would be limited to RIAs.⁴ This represents a significant departure from former Regulation 4.13(a)(4), which, prior to its rescission in 2012, was not conditioned on SEC registration. As a result, the Proposed RIA-QEP Exemption would not be available to advisers relying on an exemption from SEC registration, including exempt reporting advisers (ERAs), family offices, and state-registered investment advisers.⁵

Investor Requirements

The CFTC proposes to require participants to be limited to (a) natural persons who are not subject to the portfolio requirement, as described in CFTC Regulation 4.7(a)(6)(i); and (b) nonnatural persons that are QEPs under CFTC Regulation 4.7(a) or accredited investors listed under Rule 501(a)(1)–(3), (a)(7), or (a)(8) of Regulation D.⁶ Notably, the Proposed RIA-QEP Exemption tracks the now-rescinded 4.13(a)(4) exemption and does not include all types of accredited investors—specifically, entities that the SEC added when it amended the accredited investor definition in 2020.⁷ Furthermore, Letter No. 25-50 did not differentiate between natural and nonnatural persons or restrict those natural persons that are QEPs by virtue of satisfying the portfolio requirement.⁸ Through this distinct treatment, according to the CFTC, participation will be tailored between natural persons and fund complexes, financial entities, and large institutional investors consistent with the prior regulation and CFTC opinions.⁹ Moreover, the CFTC explains that these nonnatural person investors “require less customer protection or intervention from CFTC regulations.”¹⁰

Form PF Reporting

Unlike Letter No. 25-50, which required Form PF to be filed in all cases as a condition to relief, the proposal would require an RIA to file Form PF with respect to an eligible pool only to the extent required under applicable securities laws.¹¹ As a result, RIAs could rely on the Proposed RIA-QEP Exemption even if they fall below the Form PF reporting thresholds. Because the Proposed RIA-QEP Exemption would be available only to RIAs, however, this modification would not extend relief to ERAs or other advisers exempt from SEC registration or registered with a state.

Notice Filing and Annual Affirmation

Under the proposal, persons claiming an exemption under the Proposed RIA-QEP Exemption would need to do so through the National Futures Association's (NFA) Online Registration System.¹² In the future, persons claiming an exemption under the Proposed RIA-QEP Exemption would be required to provide the annual affirmation (i.e., representations regarding statutory disqualifications, annual notices of exemption with the NFA confirming continued reliance on the Proposed RIA-QEP Exemption), necessary updates to ensure exemption notices are

accurate and complete, and compliance with the recordkeeping requirements of Regulation 4.13(c).¹³ Similarly, CTAs relying on the new relief (described below) would need to adhere to the notice filing and annual affirmation requirements under CFTC Regulation 4.14(a)(8)(iii)(B) and (D).

ADDITIONAL CONSIDERATIONS

CTA Exemption

CFTC Regulation 4.14(a) provides various exemptions from CTA registration. The CFTC proposes amending Regulation 4.14(a) to exempt investment advisers whose commodity interest trading advice is directed to, among others, a CPO that has claimed an exemption under the Proposed RIA-QEP Exemption with respect to eligible pools.¹⁴ This is welcome relief, particularly because Letter No. 25-50 was silent on this type of CTA relief.¹⁵

Proposed Redemption Requirement

Generally, when a fund manager operating a pool subject to CPO registration subsequently elects to rely on Regulation 4.13(a)(3) (known as the *de minimis* exemption), investors must be afforded a redemption right. Letter No. 25-50 expressly did not require such a redemption right. The proposal would depart from that aspect of the no-action relief by requiring a CPO relying on the Proposed RIA-QEP Exemption to offer investors a redemption right as a condition of the exemption.¹⁶ Existing funds operated in reliance on Letter No. 25-50 generally would be grandfathered from this requirement.

Delegation Arrangements for CPOs

The proposal makes clear that the Proposed RIA-QEP Exemption would be available in delegated CPO structures, including where a commodity pool operator delegates its responsibilities and functions (a Delegating CPO) to another commodity pool operator (a Designated CPO) with respect to an eligible pool.¹⁷ This clarification is significant because, following the issuance of Letter No. 25-50, questions arose as to whether a Designated CPO's reliance on the relief could jeopardize a Delegating CPO's ability to rely on the class delegation relief set forth in CFTC No-Action Letter No. 14-126. The CFTC subsequently resolved that issue through additional no-action relief and has now reflected the same approach in the proposal. The CFTC nevertheless solicits comment from Delegating CPOs and Designated CPOs on this aspect of the proposed exemption.¹⁸

Increased Limit to the Small Pool Exemption

Finally, and unrelated to the codification of Letter No. 25-50, the CFTC proposes to amend the small pool exemption in Regulation 4.13(a)(2) that currently exempts from CPO registration managers of small pools (i.e., pools with no more than 15 participants and total gross capital contributions across all pools not exceeding US\$400,000).¹⁹ The amendment would raise the threshold of total gross capital contributions from US\$400,000 to US\$800,000, but it would not change the 15-participant limit.²⁰

NEXT STEPS

The proposal introduces far-reaching implications for various CPOs and their funds, including the following:

- CPOs operating fund-of-funds structures in reliance on CFTC No-Action Letter No. 12-38 should carefully consider the implications of the Proposed RIA-QEP Exemption. A manager relying on Letter No. 12-38

based on investments in funds operated by registered CPOs may no longer satisfy the conditions of that relief if those underlying funds become operated by CPOs relying on Letter No. 25-50 or the Proposed RIA-QEP Exemption.²¹ As a result, the manager could be required either to identify another exemption from CPO registration or to register as a CPO. While the issue is limited to managers that are not themselves eligible to rely on the Proposed RIA-QEP Exemption, it highlights a potential inconsistency created by the proposal. Clarification from the CFTC regarding the application of former Appendix A to Part 4 could eliminate this concern.

- In a similar vein, other parts of the CFTC's regulations need to be reviewed to determine how the no-action relief's codification would impact those other regulations. This is particularly the case where other regulations refer broadly to "Regulation 4.13" without qualification. For example, CFTC Regulation 150.4(b)(1) generally provides disaggregation relief (subject to conditions), except where a person has a 25% or greater ownership or equity interest in a fund.²² In such a scenario, the operator of the fund is exempt from regulation under CFTC Regulation 4.13. Therefore, CPOs that rely on the Proposed RIA-QEP Exemption would need to consider their aggregation obligations and any other unintended compliance obligations that may arise by virtue of the codification.
- In addition, the proposal does not depart from the approach taken in Letter No. 25-50 with respect to ERAs, which remain ineligible to rely on the exemption. Given industry feedback on this aspect of the relief, commenters may wish to urge the CFTC to expand the exemption's availability to all investment advisers that file Form ADV with the SEC, including ERAs, rather than limiting the exemption to advisers registered under the Investment Advisers Act of 1940, as amended.

The comment period for the Proposed RIA-QEP Exemption closes on 5 October 2026. Market participants that may be affected by the proposal, including RIAs, CPOs, and ERAs, should consider evaluating the proposal's potential impact on their operations and whether to submit comments, either individually or through industry trade associations.

FOOTNOTES

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. 54,264 (Aug. 21, 2026). [hereinafter Proposal].

² See CFTC No-Action Letter No. 25-50 (Dec. 19, 2025); CFTC No-Action Letter No. 26-06 (Feb. 26, 2026). See also Sarah V. Riddell & Pablo J. Man, *The CFTC Reinstates Exemption From CPO Registration for Certain Private Fund Managers*, K&L GATES (Dec. 23, 2025), <https://www.klgates.com/thought-leadership/The-CFTC-Reinstates-Exemption-From-CPO-Registration-for-Certain-Private-Fund-Managers-12-23-2025>; Sarah V. Riddell, Pablo J. Man & Martina Sandoval Iriarte, *United States: Dele-Great!: CFTC Staff Allows CPO Delegation Structures to Remain Intact*, K&L GATES GLOB. INV. L. WATCH (Mar. 2, 2026), <https://www.investmentlawwatch.com/2026/03/02/united-states-dele-great-cftc-staff-allows-cpo-delegation-structures-to-remain-intact/>.

³ See 17 C.F.R. § 4.7.

⁴ Proposal at 54,269. A commodity pool satisfying the conditions in the Proposed RIA-QEP Exemption is an “eligible pool.”

⁵ See *id.* See also CFTC Letter No. 25-50 (Dec. 19, 2025).

⁶ Proposal at 54,269.

⁷ See *id.* at 54,267. See also Accredited Investor Definition, 85 Fed. Reg. 64,234 (Oct. 9, 2020).

⁸ Proposal at 54,269.

⁹ *Id.*

¹⁰ *Id.* at 54,270.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 54,271.

¹⁵ *Id.* See also CFTC Letter No. 25-50 (Dec. 19, 2025).

¹⁶ Proposal at 54,271.

¹⁷ *Id.*

¹⁸ Proposal at 54,271.

¹⁹ *Id.* at 54,271–72.

²⁰ *Id.*

²¹ See CFTC Letter No. 12-38, at 3 (Nov. 29, 2012).

²² 17 C.F.R. § 150.4(b)(1).

KEY CONTACTS



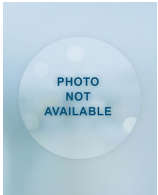
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