Proskauer

CFTC Moves to Formalize CPO and CTA Registration Relief for Certain SEC-Registered Investment Advisers

August 20, 2026

On August 18, 2026, the Commodity Futures Trading Commission ("CFTC") announced a Notice of Proposed Rulemaking seeking comment on amendments to its commodity pool operator ("CPO") and commodity trading advisor ("CTA") registration framework. The proposal would introduce Rule 4.13(a)(4) (the "Proposed Rule"), a new exemption from registration as a CPO for certain investment advisers registered with the Securities and Exchange Commission ("SEC") that operate privately offered commodity pools limited to specified sophisticated investors. It would also restore related relief from CTA registration and increase the capital contribution threshold for the small-pool CPO exemption from $400,000 to $800,000.

Consistent with the CFTC's stated objective of applying the "minimum effective dose" of regulation, the Proposed Rule is intended to reduce duplicative oversight while preserving appropriate protections for sophisticated investors. If adopted, it would provide qualifying SEC-registered investment advisers with relief from CPO and CTA registration with respect to qualifying pools, potentially lowering barriers to participation in the commodity interest markets.

Background

From 2003 to 2012, a previous version of Rule 4.13(a)(4) exempted CPOs of certain privately offered commodity pools limited to qualified eligible persons ("QEPs") and specified accredited investors from CPO registration. The CFTC rescinded that exemption in 2012, requiring affected investment advisers either to register as CPOs or to qualify for another exemption, such as the *de minimis* exemption under Rule 4.13(a)(3). In December 2025, the CFTC's Market Participants Division issued Staff Letter 25-50, temporarily restoring relief similar to the rescinded exemption for qualifying SEC-registered investment advisers while the CFTC considered whether to codify the relief by rule.[1] The Proposed Rule would replace this interim framework with a formal CPO registration exemption and related CTA relief. The CFTC preliminarily intends for the final rule to supersede Staff Letter 25-50.

Overview of the Proposed Exemptions

1. **CPO Registration Exemption**

The Proposed Rule would permit an SEC-registered investment adviser to claim an exemption from CPO registration on a pool-by-pool basis, allowing the adviser to rely on other exemptions (or remain registered as a CPO) for its other pools. Unlike the *de minimis* exemption in Rule 4.13(a)(3), the Proposed Rule would not condition relief on the amount of commodity interest trading conducted by the pool. Instead, each pool for which the exemption is claimed (an "Eligible Pool") would be required to satisfy the following conditions:

- **SEC registration.** The person claiming the exemption must be registered with the SEC as an investment adviser. As drafted, exempt reporting advisers, such as venture capital advisers, onshore private fund advisers with less than $150 million under management and offshore private fund advisers, as well as state-registered investment advisers, would not qualify for the exemption.
- **Private offering.** Pool interests must be exempt from registration under the Securities Act of 1933 and offered and sold without marketing to the public in the United States.[2]
- **Investor Qualifications.** The adviser must reasonably believe, at the time of investment,[3] that:
  - each natural-person participant is a QEP within one of the categories specified in Rule 4.7(a)(6)(i). Those categories generally include, among others, qualified purchasers, knowledgeable employees, certain regulated financial

professionals and principals, and non-U.S. persons; and
    - each entity investor is either a QEP under Rule 4.7(a)(6) or an accredited investor under Rule 501(a)(1)–(3), (7) or (8) of Regulation D.[4]

- **Form PF.** The adviser must file Form PF with respect to the pool only if otherwise required to do so under Form PF or related securities regulations.

Although the Proposed Rule would exempt an Eligible Pool from CPO registration and the registered-CPO compliance regime, the pool and its adviser would remain subject to certain other CFTC requirements. An adviser relying on the exemption would, among other things, be required to file and annually affirm an exemption notice with the National Futures Association, make applicable statutory disqualification representations, maintain required books and records, and disclose the pool's exempt status to prospective investors.

A registered CPO converting an existing pool to exempt status generally would also be required to notify investors and provide them with an opportunity to redeem their interests in the pool. The CFTC preliminarily intends not to impose these transition requirements on pools already relying on Staff Letter 25-50 and has requested public comment on the appropriate transition mechanics.

2. **Related CTA Registration Relief**

The CFTC also proposes to amend Rule 4.14(a)(8)(i)(D) to restore its former cross-reference to Rule 4.13(a)(4). As a result, the CTA registration exemption would be available to an investment adviser whose commodity interest trading advice is directed solely to, and for the sole use of, permitted clients, including a CPO relying on the Proposed Rule. The existing conditions of Rule 4.14(a)(8) would continue to apply, including that the commodity interest advice be solely incidental to the adviser's securities or other investment advice and that the adviser not otherwise hold itself out as a CTA.

3. **Increase to the Small-Pool Exemption Threshold**

The Notice of Proposed Rulemaking includes a proposed increase to the aggregate gross capital contributions threshold in the small-pool exemption under Rule 4.13(a)(2) from $400,000 to $800,000. This change is to account for inflation since the threshold was last adjusted in 2003. The amendment would not change the exemption's existing limit of 15 participants per pool or the existing exclusions for certain contributions from the calculation of aggregate gross capital contribution. The threshold would continue to apply across all pools operated or intended to be operated by the person relying on the exemption.

Next Steps

The Proposed Rule would generally take effect on the final rule's publication date, though the CFTC is seeking comment on a potential later effective date for the increase to the small-pool exemption threshold with respect to pools already relying on Staff Letter 25-50.

Comments will be due 45 days after publication in the Federal Register. Private fund managers should consider the Proposed Rule's potential implications for their existing and planned pools, including whether the proposed exemption could affect a pool's commodity interest trading strategy, offering structure, participant eligibility requirements or the manager's CFTC registration posture. Managers should also consider whether to submit a comment letter addressing the scope, conditions or transition mechanics of the proposed relief.

---

[1] In February 2026, the Division issued Staff Letter 26-06, which reissued Staff Letter 25-50 and addressed certain CPO delegation arrangements. The CFTC is seeking comment on the treatment of the delegation relief addressed in Staff Letter 26-06.

[2] A Rule 506(c) offering is treated by the SEC as a private offering and the restriction on marketing to the public would not apply to pools relying on Rule 506(c) allowing such pools to qualify for the exemption.

[3] For existing pools transitioning to reliance on the exemption, the investor qualification requirements would apply at conversion.

[4] CFTC Rule 4.7(a)(6) defines QEP broadly to include, among others, certain regulated institutions and intermediaries (e.g., futures commission merchants, swap dealers, brokers or dealers, investment advisers), employee benefit plans, trusts, and exempt pools. An entity that is an investor must fall within an enumerated category and, for certain categories, satisfy the Portfolio Requirement under CFTC Rule 4.7(a)(5).

Related Professionals

- **Nathan R. Schuur**
  Partner
- **Elanit Snow**
  Senior Counsel
- **Tazia Statucki**
  Associate