Regulatory Relief: The CFTC Proposes to Codify the QEP Exemption

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The Commodity Futures Trading Commission (the "CFTC") has proposed to convert the temporary relief granted under existing no-action letters into permanent regulation and to reinstate the Original QEP Exemption which, if finalized, provides commodity pool operators and advisors with durable, rule-based compliance pathways in place of the current staff-level accommodations. More specifically, on August 18, 2026, the CFTC published a Notice of Proposed Rulemaking (the "Proposal") that, if adopted, would codify no-action relief previously provided by the CFTC in No-Action Letter 25-50 and No-Action Letter 26-06 (together, the "No-Action Letters"[1]), and re-instate an exemption most commonly relied upon by private fund sponsors prior to its rescission in 2012. This exemption, CFTC Rule 4.13(a)(4), was commonly referred to as the QEP Exemption, because it was available to operators of privately offered commodity pools whose participants were limited to qualified eligible persons ("QEPs") (the "Original QEP Exemption").

Key Takeaways:

- The Proposal, if adopted, would formally reinstate the Original QEP Exemption, including both the pool-level exemption (for commodity pool operators, or "CPOs") and the adviser-level exemption (for commodity trading advisors, or "CTAs").
- The interim no-action framework put in place by the No-Action Letters would be substantially codified by the Proposal, with certain differences. Most notably, (i) the Proposal would impose a requirement to offer investors a right of redemption, prior to deregistering, and (ii) the Proposal adopts the Original QEP Exemption's participant limitations rather than the No-Action Letters' approach, and as a result, would apply a narrower eligibility standard for natural person investors: To qualify, a natural person must be a QEP who is not required to satisfy the Portfolio Requirement (as defined below), rather than any QEP regardless of Portfolio Requirement status. These differences may cause parties to consider deregistering today based on the No-Action Letters.
- Currently registered CPOs should consider whether to deregister based on the No-Action Letters (and therefore be exempt from statutory requirements to offer redemptions to pool participants) or wait until the Proposal is finalized (and have the certainty that comes from relying on a final rule but be required to first offer redemptions to all pool participants prior to deregistering).
- The relief from the No-Action Letters will be superseded and replaced by the Proposal, if finalized and adopted.
- For managers using CPO delegation arrangements under CFTC Staff Letter 14-126, the Proposal clarifies that both Delegating and Designated CPOs may rely on the exemption with respect to funds eligible for deregistering pursuant to a finalized rule, addressing concerns raised after No-Action Letter 25-50 was issued regarding the interplay with CFTC Staff Letter 14-126's delegation no-action relief.
- Managers seeking to take advantage of the flexibility offered by the Proposal should consider a legal review of their regulatory posture and offering documentation.

Analysis:

Under the Proposal, managers would be able to qualify for the proposed registration exemption with respect to a pool so long as they meet the following requirements, which generally align with those set forth in the No-Action Letters:

- The manager is registered with the U.S. Securities and Exchange Commission (the "SEC") as an investment adviser.
- The interests of the pool(s) operated by the manager are exempt from registration under the Securities Act of 1933, as amended, and sold without marketing to the public in the United States (except as permitted under SEC Regulation D Rule 506(c)).
- Unlike the No-Action Letters, which conditioned relief on filing Form PF (the private fund reporting form under the Investment Advisers Act of 1940, as amended) for the relevant fund, pool or other collective investment vehicle, the Proposal would require the adviser to file Form PF only if required to do so under SEC securities regulations and Form PF. The CFTC explains that this conditional approach would allow regulators to obtain data for market oversight and systemic-risk monitoring without imposing separate, potentially duplicative reporting. The release notes that the CFTC and SEC have jointly proposed raising Form PF filing thresholds, which, if adopted, would likely reduce the number of advisers required to file Form PF. The CFTC also requests comment as to what regulatory risk might arise if certain advisers and private funds were no longer required to file Form PF and were also exempt from Form CPO-PQR (the CFTC's commodity pool operator quarterly reporting form) reporting. Qualifying managers would thus be exempt from both Form PF (if not otherwise required by SEC regulations) and Form CPO-PQR, significantly reducing ongoing compliance obligations.
- The Proposal creates a two-track investor eligibility test, similar to the Original QEP Exemption:

Type of Investor	Under the No-Action Letters	Under the Proposal
Individuals (natural persons)	All investors must be qualified eligible persons.	A **narrower** class: Individuals must be QEPs of the type that do not have to satisfy the CFTC's "Portfolio Requirement."[2] Generally, that means sophisticated, industry-affiliated individuals and qualified purchasers, rather than individuals who qualify only by meeting an investment-size test.
Entities and other non-natural persons	All investors must be qualified eligible persons.	A **broader** class: An entity may be either a QEP *or* an accredited investor within certain specified categories (broadly, institutional categories like banks, insurance companies and registered investment companies, certain tax-exempt organizations and entities owned exclusively by accredited investors).

The manager would claim the CPO exemption by filing an electronic notice with the National Futures Association (the "NFA") and, like other exempt operators, would need to renew that notice annually. The Proposal would also restore the ability for an investment adviser whose commodityinterest trading advice is directed solely to the operator of a qualifying exempt fund, pool or other collective investment vehicle to avoid separate CTA registration. The adviser would still need to make the required notice filing to claim the CTA exemption.

In addition to granting no-action relief, the Proposal confirms that CPOs who withdrew their registration in reliance on the No-Action Letters are not required to comply with the redemption right requirements at CFTC Rule 4.13(e)(2), which would require the relevant fund to offer a redemption right to all investors prior to deregistering their CPO status. Managers who do not deregister pursuant to the No-Action Letters, but instead intend to wait until the No-Action Letters' process is replaced by the Proposal, will be required to comply with the Proposal's requirements, as outlined above. Notably, the Proposal would reinstate the regulatory redemption requirement for pools transitioning from registered to exempt registration status under the amended 4.13(a)(4). Managers may want to balance two competing interests: (i) deregistering without the resources and potential confusion to investors that may come from a redemption offer tied to CPO deregistration, and (ii) basing structural and regulatory determinations on final regulations rather than temporary no-action relief. To address this concern, the CFTC is considering a later effective date for the application of CFTC Rule 4.13(e)(2) with respect to such pools. The CFTC has specifically requested public comment on whether a separate, later effective date for Rule 4.13(e)(2) would appropriately address this concern and how long such a delayed effective date should be. Managers may wish to provide comments to the CFTC outlining any concerns about this proposal and how to strike the right balance (e.g., how long would it take for a fund to consider any final rule, requirements/processes required by the fund's own governing documents, and communications a manager may determine are necessary or appropriate for its investors regarding any of these decisions).

Separately, the Proposal would effect an inflation adjustment to the total gross capital contributions threshold under the small pool exemption in CFTC Rule 4.13(a)(2). Under CFTC Rule 4.13(a)(2), a person who operates one or more pools with total gross capital contributions under a certain threshold, and with a cap on certain kinds of participants, is exempted from CPO registration. The inflation adjustment in the Proposal would double the capital contributions threshold from $400,000 to $800,000.

The CFTC is requesting comment on all aspects of the Proposal, including whether other categories of "accredited investor," including the natural person accredited investor categories, should be added to the list of eligible investors in their fund, pool or other collective investment vehicle under the proposed exemption. If adopted, adding natural person accredited investor categories would significantly broaden individual investor eligibility beyond the current QEP-only requirement. Comments must be received by Oct. 5, 2026.

As noted in our previous client alerts, the No-Action Letters were temporary in nature and had effect only until the CFTC adopted a final rule or decided against doing so. Accordingly, relying managers were subject to the risk that the relief would be modified or eliminated. Now, it appears certain that the No-Action Letters will expire, based either on this Proposal being finalized or formally withdrawn, with the latter seemingly unlikely given the lack of market/legislative resistance to the No-Action Letters. If adopted, the Proposal would create a final rule and provide the comfort that comes from deregistering based on a formal regulation. However, the No-Action Letters may provide a more straightforward deregistration process due to no requirement to first offer investors a right of redemption. Managers interested in deregistering, whether pursuant to the No-Action Letters or in anticipation of a final rule, should consider a review of their investor base and offering documentation to see if such an approach is viable.

The Haynes Boone Investment Management Group will continue to provide updates on the rulemaking process and is available to review offering documentation and provide counsel on CFTC rulemaking. The group also regularly assists with initial notice filings and subsequent reaffirmations of exemption reliance. Contact the authors below or another member of the Investment Management group.

Read the Proposal here.

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[1] Previously discussed in client alerts HERE and HERE.

[2] The requirement under CFTC Rule 4.7(a)(1)(v) that certain QEPs either (x) own a securities portfolio of at least $4 million (y) have $400,000 deposited as initial margin and/or option premiums with certain persons (e.g., a futures commissions merchant), or (z) have certain combinations of these two (e.g., a composite portfolio acceptable under this paragraph (a)(5)(iii) would consist of $2 million in securities and other property (50 percent of clause (x)) and $200,000 in initial margin, option premiums and minimum security deposits (50 percent of clause (y)).