



December 3, 2025

Via Electronic Mail: MPDLetters@cftc.gov

U.S. Commodity Futures Trading Commission
Market Participants Division
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Attn: Thomas J. Smith
Acting Director
Market Participants Division

Re: Request for Exemption from Commodity Pool Operator Registration for Certain Investment Managers to Qualified Eligible Persons

Dear Mr. Smith:

MFA¹ writes today on behalf of its members, most of which are private fund managers that are currently registered as commodity pool operators (“CPO”) and commodity trading advisors (“CTAs”) with the Commodity Futures Trading Commission (“CFTC” or “Commission”) and National Futures Association (“NFA”). We are writing in furtherance of the priorities of both the Commission and the Administration to reduce duplicative regulation and agree with recent Commission leadership statements that the CFTC “must eliminate unnecessary cost burdens and unleash a golden age for markets through regulatory certainty and harmonization.”²

A key burden of private fund managers to funds to institutional or ultra-high net worth individuals is the duplicative, overlapping, and conflicting regulatory regime that resulted from the Commission’s 2012 rescission of CFTC Rule 4.13(a)(4) (the “QEP Exemption”). MFA is requesting that the CFTC Staff issue exemptive relief pursuant to CFTC Rule 4.12(a) permitting private funds, subject to various conditions, to withdraw from CPO and CTA registration in anticipation of formal rulemaking to reinstate the QEP Exemption. The relief MFA seeks today

¹ Managed Funds Association (“MFA”), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA’s mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

² Caroline D. Pham, Acting Chairman, Innovation and Market Structure: Keynote Address at the Piper Sandler Global Exchange and Trading Conference, CFTC (June 5, 2025), avail. at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham16>.

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would restore regulatory certainty for sophisticated pool operators, align CFTC policy with investor protection principles, and address competitive disadvantages for U.S. managers in global markets.

We previously submitted a request to Acting Chairman Pham requesting that the CFTC take necessary action to reinstate the QEP Exemption, which exempted from registration operators of commodity pools (“**QEP Exemption Pools**”) offered solely to qualified eligible persons (“**QEPs**”).³ MFA continues to believe that a durable, Commission-approved exemption that is subject to the rigors of notice and comment under the Administrative Procedures Act is the optimal long-term solution to eliminating duplicative, overlapping, and conflicting regulations that currently apply to private fund managers to institutional and ultra high-net worth individuals. We also recognize that the timeline for formal rulemaking procedures can take several months and often times years before rulemakings are finalized.

For this reason, MFA requests that the Commission Staff, during the interim period before the QEP Exemption is formally reinstated, grant exemptive relief from the CPO and CTA registration requirements, subject to conditions that we discuss below. Our request is limited to a narrow subset of investment managers: those private fund managers that could previously avail themselves of the QEP Exemption. Prompt Commission Staff action is warranted pursuant to the Commission’s exemptive authority under CFTC Rule 4.12(a), which permits the Commission to exempt persons or classes of persons from registration as a CPO or CTA, in relevant part, under Part 4 of the CFTC Rules if the exemption is not contrary to the public interest and subject to conditions as the Commission may deem appropriate. CFTC Rule 140.93(a)(1) delegates this authority to CFTC Staff, and CFTC Rule 140.99 permits the Staff of a CFTC Division to issue an exemptive letter pursuant to delegated authority from the Commission.

Reinstatement of the QEP Exemption is warranted given the burdens imposed on institutional investment managers by rules that overlap with, and often contradict, the comprehensive regulatory framework under the Investment Advisers Act of 1940 (the “**Advisers Act**”).⁴ Reinstatement of the QEP Exemption is of key importance

³ See CFTC Rule 4.7(a).

⁴ MFA and several other groups commented in opposition of the CFTC’s unnecessary rescission of the QEP Exemption. See, e.g., letter from Stuart J. Kaswell, General Counsel, MFA, to David A. Stawick, Secretary, CFTC (Apr. 12, 2011), avail. at <https://comments.cftc.gov/Handlers/PdfHandler.ashx?id=22418>. MFA also subsequently requested to then Acting Chairman Giancarlo that the Rule 4.13(a)(4) exemption be reinstated. See letter from Stuart Kaswell, MFA to Ch. Giancarlo, CFTC (June 6, 2017), avail. at <https://www.mfaalts.org/wp-content/uploads/2017/06/MFA-Letter-to-Acting-Chair-Giancarlo-Appendix.pdf>.

to MFA member firms and well-aligned with the priorities of this Administration.

MFA requests exemptive relief from the registration requirements imposed by Section 4m of the Commodity Exchange Act and the rules thereunder for a limited class of commodity pool operators that:

- (a) are registered with the Securities and Exchange Commission (“**SEC**” and, together with the CFTC, the “**Commissions**”) as investment advisers,
- (b) offer pool interests pursuant to a nonpublic offering under the Securities Act of 1933 (“**Securities Act**”), and
- (c) offer pool interests solely to sophisticated, often institutional investors that meet the QEP definition under the CFTC’s rules (a manager meeting (a) through (c), a “**QEP Manager**”).⁵

The reinstatement of the QEP Exemption was recommended in the Department of the Treasury’s 2017 report titled *A Financial System That Creates Economic Opportunities: Asset Management and Insurance*.⁶ The report identified the rescission of the QEP Exemption as a regulatory action that had reduced investor choice and increased regulatory burdens without a commensurate benefit to investor protection, and recommended exemption from CPO and CTA registration for investment advisers registered with the SEC.⁷ This recommendation also aligns with the regulatory philosophy articulated in Executive Order 13777, which directed agencies to “identify regulations that eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; or implement more stringent standards than required by law”⁸ (i.e., “gold plating” of regulations). MFA strongly supports the CFTC leadership’s stated, shared priorities with SEC Chairman Atkins to reduce overlapping and duplicative regulation.⁹

The Commission has numerous rules and reporting requirements, such as large trader reports, position limits, and swap reporting requirements, which enable it to oversee the commodities markets. These tools provide

⁵ We note that the Commission recently amended the QEP standard by doubling the applicable securities ownership threshold from \$2 million to \$4 million and the initial margin and premium threshold from \$200,000 to \$400,000. Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools Operated: Updating the ‘Qualified Eligible Person’ Definition; Adding Minimum Disclosure Requirements for Pools and Trading Programs; Permitting Monthly Account Statements for Fund of Funds; Technical Amendments, 89 Fed. Reg. 78793 (Sept. 26, 2024), <https://www.cftc.gov/sites/default/files/2024/09/2024-21682a.pdf>.

⁶ U.S. Dep’t of the Treasury, *A Financial System That Creates Economic Opportunities: Capital Markets* (Oct. 2017), <https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>.

⁷ *Id.* at 47-48.

⁸ Exec. Order No. 13,777, Enforcing the Regulatory Reform Agenda, 82 Fed. Reg. 10,285 (Feb. 24, 2017), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2017/M-17-23.pdf.

⁹ See Joint Statement from the Chairman of the SEC and Acting Chairman of the CFTC, CFTC Rel. No. 9115-25 (Sept. 5, 2025), avail. at <https://www.cftc.gov/PressRoom/PressReleases/9115-25>.

critical information about the activities of all types of market participants and therefore are more effective tools than ones like the QEP Exemption which target only one specific type of market participant. Broad market oversight and information that provides in-depth analysis of market activity provides the Commission with key tools to promote its public policy mandate.

Executive Summary

MFA recommends that the Commission Staff exempt from CPO registration QEP Managers (again, SEC-registered investment managers offering pool interests solely to QEPs through a nonpublic offering) in anticipation of formal rulemaking to reinstate the QEP Exemption. A QEP Manager claiming this exemption from CPO registration would also be eligible for exemption from CTA registration under CFTC Rule 4.14(a)(5).

A summary of our arguments to permit the withdrawal from CPO and CTA registration for QEP Managers is that:

- Exemptive relief permitting QEP Managers to withdraw from CPO and CTA registration would eliminate duplicative, overlapping regulation and is wholly aligned with the Administration's efforts in this regard;
- The policy goals furthered by permitting withdrawal from CPO and CTA registration for QEP Managers recognizes the sophistication of QEP investors and better harmonize regulation with the SEC, thereby reducing unnecessary expenses and burdens; and
- The policy arguments to rescind the QEP Exemption either have been disproven over time, have been addressed through other regulations, or simply do not withstand scrutiny.

Permitting QEP Managers to withdraw from CPO and CTA registration would:

- Improve the efficiency and the integrity of the commodity and financial markets;
- Lower costs for investors and market participants thereby promoting liquidity in the commodity interest markets and facilitating hedging activities for investors;
- Streamline federal regulations and eliminate unnecessary and overreaching regulations; and
- Reduce waste, promote innovation, and enhance American competitiveness.

A. MFA Recommends that the Commission reduce unnecessary regulatory burdens and promote greater flexibility for investors by permitting QEP Managers to withdraw from CPO and CTA registration

The Commission under the new Administration has an opportunity to support U.S. economic growth and the financial well-being of all Americans by fine-tuning and reducing duplicative, redundant regulations that unnecessarily increase costs and burdens on registrants. MFA members manage complex, multi-entity strategies, often on a global basis, that are generally available only to the most sophisticated and experienced institutional

and high-net worth investors. In doing so, private fund managers are subject to comprehensive regulation by the SEC pursuant to the Advisers Act and are fiduciaries to the private funds they manage.

Since the CFTC rescinded the QEP Exemption, however, these same private fund managers have also been required to register with the CFTC as CPOs and/or CTAs, subject to CFTC regulations as market participants exempt from registration, and to NFA rules and reporting requirements. The U.S. is unique among securities regulators in developed countries in that it imposes this dual regulatory system over QEP Managers, effectively creating a disincentive to use derivatives for hedging and other purposes and creating a competitive disadvantage compared to similarly situated, non-U.S. private funds.

The Commission under the current Administration is encouraged to reduce regulatory overhang and revisit regulations and policies that have proven ill-conceived, or that harm markets, investors, and the economy. Permitting QEP Managers to withdraw from CPO and CTA registration and ultimately reinstating the QEP Exemption are both consistent with the President's executive orders,¹⁰ and would rectify a Commission action that has led to excessive and unnecessary costs and that has not meaningfully advanced the Commission's mission. We request that Commission Staff exempt QEP Managers from CPO and CTA registration until the QEP Exemption is fully restored.

MFA members favor smart, right-sized, and effective regulation of derivatives markets and market participants, and have a strong interest in thoughtful and efficient regulation of private fund managers. We have long sought to provide constructive input to the CFTC's and NFA's regulatory processes with a view towards improving proposed regulations and making them more efficient for market participants and their investors.¹¹

The Commission originally adopted the QEP Exemption in 2003 to encourage and facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit of increased liquidity for all market participants.¹² The QEP Exemption from CPO registration was designed

¹⁰ See Presidential Executive Order, Reducing Anti-Competitive Regulatory Barriers (Apr. 9, 2025), avail. at <https://www.govinfo.gov/content/pkg/FR-2025-04-15/pdf/2025-06463.pdf>; See Presidential Executive Order, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (Feb. 19, 2025), avail. at: <https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/>; Presidential Executive Order, Regulatory Freeze Pending Review (Jan. 20, 2025), avail. at: <https://www.whitehouse.gov/presidential-actions/2025/01/regulatory-freeze-pending-review/>.

¹¹ We also have been supportive of the CFTC's efforts over the years to rethink its regulations and practices to make them simpler, less burdensome, and less costly. See, e.g., Letter from MFA to CFTC Secretary Kirkpatrick re: Project KISS (Sept. 29, 2017), avail. at https://www.mfaalts.org/wp-content/uploads/2020/04/MFA-Proj.KISS_.final_.appendix.9.29.17.pdf.

¹² See Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues, 68 FR 47221 (Aug. 8, 2003), at n. 14 and related text (internal citations omitted), avail. at: <https://www.cftc.gov/sites/default/files/files/foia/fedreg03/foi030808a.pdf>.

for investment managers that manage private funds that are offered solely to sophisticated, often institutional investors. It was enacted over two decades ago to promote participation in commodity markets by eliminating duplicative, overlapping, and conflicting regulatory requirements applicable to SEC-registered private fund managers.

Now is an ideal time to assess how various rulemakings, including those mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“**Dodd-Frank**” or the “**Dodd-Frank Act**”)¹³ are working – for private funds, their investors, and the broader markets. The same is doubly true for a prior Commission’s rescission of the QEP Exemption: its deletion was *not* specifically mandated by the Dodd-Frank Act, but was nevertheless pursued by a prior Commission.¹⁴ Indeed, while the Commission’s authority over commodity and swaps markets was previously expanded, the SEC, not the CFTC, was statutorily authorized to register large private fund managers.

Rescission of the QEP Exemption resulted in the imposition of a new, largely duplicative regulatory regime for CPOs of pools comprised of sophisticated QEPs. Many such managers are already registered with and regulated by the SEC as investment advisers; duplicative regulation with the CFTC/NFA is unnecessary and exceedingly burdensome. The Commission and its Staff have a unique opportunity to address the burdens associated with unnecessary duplicative regulation by permitting QEP Managers to withdraw from CPO and CTA registration before formally reinstating the QEP Exemption.

B. Permitting QEP Managers to withdraw from CPO and CTA registration would reduce duplication, risks, and enable managers to leverage existing compliance and risk management infrastructures

The 2012 rescission of the QEP Exemption was based on policy concerns that either no longer apply or, in some respects, at the time were overstated or simply mistaken. The CFTC as early as 2002 recognized the benefits of streamlining registration and reporting requirements for CPOs and CTAs, particularly where other agencies provide overlapping supervision.¹⁵ Private fund advisers that previously relied on the QEP Exemption invariably are registered as investment advisers with the SEC, and already report voluminous data to the SEC on Form PF that is

¹³ Pub. L. 111-203, 124 Stat. 1376 (July 21, 2010), avail. at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm>.

¹⁴ Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations, 77 FR 11252 (Feb. 24, 2012), avail. at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2012-3390a.pdf>.

¹⁵ CFTC, Report on the Study of the Commodity Exchange Act and the Commission’s Rules and Orders Governing the Conduct of Registrants Under the Act 23–24 (June 2002), avail. at <https://www.cftc.gov/sites/default/files/files/opa/opaintermediarystudy.pdf> (“**Intermediary Study**”).

readily available to the CFTC. The CFTC, as a joint owner of Form PF with the SEC, can recommend additions or amendments to Form PF to ensure that it receives data in furtherance of its market oversight functions.

A prior Commission's rescission of the QEP Exemption created unnecessary regulatory burdens for advisers already subject to rigorous SEC oversight.¹⁶ Eliminating the QEP Exemption also imposed a dual reporting regime that requires CPOs that also are SEC-registered investment advisers to report, a second time, information that is substantially similar to the information collected on Form PF to the CFTC and NFA through Form CPO-PQR. In addition, the filing cadence for Form CPO-PQR is on the same quarterly basis as the SEC's Form PF filings.

The QEP Exemption applied to operators of pools offered solely to QEPs, as defined in Rule 4.7.¹⁷ Unlike the *de minimis* exemption of CFTC Rule 4.13(a)(3), which imposes a derivatives usage limit as a condition of the exemption, the QEP Exemption recognized that operators of pools marketed exclusively to sophisticated investors did not require the same level of regulatory oversight. The Commission recognized that QEPs – such as institutional investors, family offices, and high-net-worth individuals – possess the resources and expertise to evaluate investment risks without the need for prescriptive regulatory protections.¹⁸ The rule was grounded in the Commission's longstanding principle that regulatory burdens should be tailored to investor sophistication and risk exposure.¹⁹

1. A prior Commission's policy rationales for rescinding the QEP Exemption were flawed and do not support its continued removal from the CFTC rulebook

In the 2012 CFTC rescission of the QEP Exemption, the prior Commission cited several policy concerns that either were not accurate at the time or that, taken in the most favorable light, no longer apply because of

¹⁶ See MFA, Comment Letter on Proposed Amendments to Rule 4.13(a)(4) (June 2011), <https://www.mfaalts.org/wp-content/uploads/2017/06/MFA-Letter-to-Acting-Chair-Giancarlo-Appendix.pdf>.

¹⁷ See *supra* note 12, at 47721, 47,722.

¹⁸ See *supra* note 12, at 47721, 47722.

¹⁹ See, e.g., CFTC, Staff Letter No. 04-13, at 4 (Apr. 14, 2004) (noting the intent and purpose of CFTC Rule 4.13(a)(3) was to provide relief from registration requirements "where the specific disclosure, recordkeeping and reporting safeguards that result from registration are not needed"), avail. at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrllettergeneral/documents/letter/04-13.pdf>.

subsequent regulatory actions. The prior Commission justified its unilateral regulatory action by claiming that rescinding the QEP Exemption was necessary because of:

- a. *Systemic Risk*: The Commission argued that exempt CPOs could pose systemic risk due to the size, leverage, and interconnectedness of the pools they operate;
- b. *Transparency*: The Commission expressed concern about the lack of visibility into pools operated by exempt CPOs; and
- c. *Regulatory Harmonization*: The Commission stated that it sought to align its oversight with post-Dodd-Frank reforms.²⁰

These concerns, while plausibly understandable given the post-global financial crisis regulatory climate, were overstated, inaccurate, and insufficient to justify the burdens attendant to rescinding the QEP Exemption.

a. QEP Exemption Pools do not pose systemic risk

The notion that QEP Exemption Pools pose systemic risk is simply without support. The QEP Exemption applied only with respect to pools offered to QEPs -- investors with substantial assets and experience. These pools were not available to non-QEPs or “retail” investors and, today, are invariably managed by SEC-registered advisers subject to Form PF reporting and SEC regulatory oversight. Private funds are not backed by depositor assets and are not subject to federal insurance or other government backstop. Losses are born by private fund investors – not taxpayers, and as such there simply is no systemic risk.²¹

The Financial Stability Oversight Council (“**FSOC**”) has emphasized that systemic risk arises from size, leverage, and interconnectedness, not from regulatory status.²² The rationale for rescinding the QEP Exemption based on systemic risk concerns appears to conflate registration with risk mitigation, ignoring the fact that many QEP Exemption Pools were already subject to robust oversight and are not inherently systemically risky. When QEP Exemption Pools used derivatives, they are already subject to a broad range of CFTC risk mitigation rules indirectly due to the margin requirements imposed on derivatives clearing organizations (for futures and cleared

²⁰ See *supra* note 14, at 11253-4.

²¹ See Fin. Stability Oversight Council, *2024 Annual Report* 61–62 (Dec. 6, 2024), <https://home.treasury.gov/system/files/261/FSOC2024AnnualReport.pdf> (noting that while certain investment fund activities may contribute to financial vulnerabilities, “the Council continues to assess that private funds, in aggregate, do not currently pose a systemic risk to U.S. financial stability”); see also Nellie Liang, Under Sec’y for Domestic Fin., U.S. Dep’t of the Treasury, *Remarks at the Central Bank of Ireland Conference on Macroprudential Policy for Investment Funds* (May 20, 2024), <https://home.treasury.gov/news/press-releases/jy2355> (“A key argument against [the view that investment funds pose systemic risk] is that investment funds reflect the preferences of investors and with assets that are marked-to-market, any losses are passed through to and borne solely by the investors themselves.”).

²² See, e.g., U.S. Dep’t of the Treasury, Readout: Financial Stability Oversight Council Meeting (Sept. 10, 2025), <https://home.treasury.gov/system/files/261/FSOC-20250910-Readout.pdf>.

swaps) and swap dealers (for uncleared swaps). QEP Exemption Pools trading uncleared swaps with swap dealers likewise are subject indirectly to trading relationship documentation, confirmation, portfolio reconciliation and portfolio compression rules, and all of their swaps must be reported to a swap data repository. These rules, not registration as a CPO and CTA, were mandated by Dodd-Frank and designed to achieve systemic risk mitigation objectives.

b. Any perceived lack of transparency has been addressed through multiple Form PF amendments

Since 2012 Form PF has provided the SEC, CFTC, and other regulators with detailed pool-level data. The SEC, CFTC, and FSOC use this data to monitor systemic risk. Requiring CPO and CTA registration for advisers already filing Form PF is duplicative and does not enhance systemic risk oversight. Form PF has been amended several times since its adoption to require private funds to report even more data to the CFTC, SEC, and FSOC.²³

QEP Managers are already subject to a comprehensive regime of regulator disclosure, reporting, and systemic risk monitoring under Form PF. These advisers must report detailed pool-level data, including leverage, liquidity, and counterparty exposures, with increasing frequency and granularity depending on assets under management.²⁴ The SEC's recent amendments to Form PF, while at best only tangentially related to systemic risk, further underscore the depth of regulatory oversight, introducing real-time reporting obligations for large hedge fund advisers and expanded, more granular quarterly regulatory disclosures.²⁵ The CFTC is a joint owner of Form PF with the SEC, and will continue to have access to PF data if the QEP Exemption is reinstated.

We recognize that permitting QEP Managers to withdraw from CPO and CTA registration, and the eventual reinstatement of the QEP Exemption, would mean that private fund managers would no longer be required to file *both* the Form PF with the CFTC and SEC and the CPO-PQR with the NFA. The CPO-PQR filing is highly duplicative of Form PF and wholly unnecessary given the voluminous information and data that is reported on Form PF.

²³ Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers, 89 Fed. Reg. 17984 (Mar. 12, 2024) (“Event Reporting Amendments”), <https://www.govinfo.gov/content/pkg/FR-2024-03-12/pdf/2024-03473.pdf>; Form PF: Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting, 88 Fed. Reg. 38146 (June 12, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-06-12/pdf/2023-09775.pdf>; Money Market Fund Reform; Amendments to Form PF, Securities Act Release No. 9616, Investment Advisers Act Release No. 3879, Investment Company Act Release No. 31166, 79 Fed. Reg. 47,736 (Aug. 14, 2014), <https://www.sec.gov/files/rules/final/2014/33-9616.pdf>.

²⁴ See Form PF (Apr. 2025), avail. at <https://www.sec.gov/files/formpf.pdf>.

²⁵ Event Reporting Amendments, *supra* note 23.

c. The perception of fostering regulatory harmonization is misplaced: duplication does not equal harmonization

The previous Commission's suggestion that the rescission of the QEP Exemption serves the goal of regulatory harmonization, particularly considering post-Dodd-Frank reforms such as Form PF reporting, is misplaced. When viewed through the lens of existing SEC registration requirements and the collateral burdens and consequences of duplicative regulatory burdens, imposing overlapping and redundant regulatory requirements did not "harmonize" regulatory oversight. Investment advisers remain subject to all registered investment adviser requirements *in addition* to a new CFTC and NFA regulatory registration, examination, and reporting regime.

In this context, rescinding the QEP Exemption moreover did not eliminate regulatory gaps – it merely created regulatory overlap. Many SEC-registered advisers already filing Form PF were now required to register as CPOs, notwithstanding the fact that their pools were composed entirely of sophisticated investors and subject to robust SEC supervision. This dual registration imposes redundant compliance obligations, including duplicative reporting on Form CPO-PQR, even where substantively the same data is already furnished to the SEC, and NFA examination, supervision and regulation. Rather than harmonizing oversight, the rescission of the QEP Exemption introduced fragmentation, requiring advisers to navigate two regulatory regimes with overlapping but not identical requirements, and increased compliance and regulatory risk.

Regulatory harmonization should aim to streamline oversight, reduce unnecessary burdens, and avoid duplicative filings. The rescission of the QEP Exemption has accomplished the opposite. A more effective approach would have been to preserve the QEP Exemption. Such an approach would recognize SEC registration and Form PF compliance as sufficient for this limited class of privately offered investment pools, respect the sophistication of the QEP investors, and more accurately assess the lack of systemic risk posed by QEP Exemption Pools and their managers. This approach would have preserved the Commission's access to an abundance of systemic risk data while respecting the efficiencies of a unified regulatory framework. The Commission would, of course, retain anti-fraud, anti-manipulation, and enforcement authority over exempt CPOs.²⁶

2. Policy reasons supporting an exemption for QEP Managers from CPO and CTA registration necessitate prompt Commission action

Permitting QEP Managers to withdraw from CPO and CTA registration would benefit both regulators and market participants. QEP Managers, and the Commission and its Staff, can reallocate their respective regulatory resources elsewhere. Permitting QEP Managers to withdraw from CPO and CTA registration also more closely

²⁶ See CEA §§ 9, 13b.

aligns the allocation of regulatory and compliance resources with the risks of the regulated activity, reflecting the sophistication level of QEPs.

a. Regulatory Efficiency and Harmonization

Permitting QEP Managers to withdraw from CPO and CTA registration would reduce duplicative and costly compliance burdens for SEC-registered advisers. The CFTC's own Intermediary Study, more than two decades ago, recommended streamlining registration and reporting requirements for CPOs and CTAs, particularly where other agencies provide overlapping supervision.²⁷

b. Investor Sophistication and Risk Allocation

Pools offered exclusively to QEPs do not require the same protections as retail products. The CFTC has long recognized that sophisticated investors can negotiate terms, conduct diligence, and bear risk without regulatory intermediation.²⁸ Rule 4.7 itself is premised on this principle.

c. International Competitiveness

Permitting QEP Managers to withdraw from CPO and CTA registration would place U.S. managers, for the first time since the QEP Exemption was rescinded, on equal footing with their non-U.S. counterparts. The rescission of the QEP Exemption places U.S. managers at a disadvantage relative to non-U.S. firms operating under regimes that do not impose a dual regulatory system for operators of private funds offered only to QEPs or other sophisticated institutional and ultra-high net worth individuals. Permitting QEP Managers to withdraw from CPO and CTA registration would enhance the competitiveness of U.S. asset managers in global markets, consistent with the CFTC's mandate to promote responsible innovation and fair competition.²⁹

²⁷ CFTC Intermediary Study, *supra* note 15, at 25.

²⁸ 77 Fed. Reg. at 11,253–54. See also See CPO and CTA Exemptions and Exclusions, CFTC (visited Sept. 18, 2025), avail. at https://www.cftc.gov/sites/default/files/tm/tmcpo_cta_exemptions.htm (recognizing that certain exemptions from registration and compliance requirements are available where participation is limited to “qualified eligible persons,” including sophisticated investors capable of evaluating risks and negotiating terms without the need for full regulatory oversight).

²⁹ See Statement of Caroline D. Pham, Acting Chairman, CFTC, *Time for CFTC to Get Back to Basics* (Jan. 21, 2025), avail. at <https://www.cftc.gov/PressRoom/PressReleases/9036-25> (“[T]he CFTC must also refocus and change direction with new leadership to fulfill our statutory mandate to promote responsible innovation and fair competition in our markets that have continually evolved over the decades.”); see also Remarks by Acting Chairman Caroline D. Pham, Commodity Futures Trading Comm'n, *Digital Assets Global Forum, UK House of Lords* (June 23, 2025), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opapham17> (“The CFTC has long had a dual mandate to promote responsible innovation and fair competition in our markets.”).

d. Administrative Burden and Resource Allocation

Permitting QEP Managers to withdraw from CPO and CTA registration would allow the Commission to focus on retail-facing products and leveraged strategies that pose genuine risk. This aligns with the CFTC's long-held views to prioritize oversight based on risk and market impact.³⁰ The current approach of requiring registration and compliance for QEP Managers diverts CFTC resources from higher-risk areas.

C. Requiring private funds to register as CPOs & CTAs has proven unnecessary, costly, and counterproductive

1. Grant exemptive relief to permit managers that would have been able to rely on the QEP Exemption to withdraw from CPO and CTA registration with the Commission and the NFA

In the decade since the CFTC rescinded the QEP Exemption, it has become abundantly clear that removing this exemption was inappropriate and ill-considered. Private fund managers employ diverse and sophisticated investment strategies, and their operations greatly differ from investment vehicles that are offered to the public. As the CFTC previously recognized in 2003, the federal securities laws are appropriately designed to regulate private fund managers.³¹ Imposing duplicative layers of regulation on these asset managers imposes significant costs for investors and has failed to yield measurable corresponding benefits.

The Commission originally adopted the QEP Exemption, again, to encourage and facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit of increased liquidity for all market participants.³² The CFTC stated then that enactment of the QEP Exemption would have no effect on the CFTC's ability to protect market participants and the public, promote efficiency and competition by removing barriers to entry and resulting in greater market efficiency and liquidity, have no effect on markets or price discovery, and promote sound risk management practices.³³

MFA supports reducing regulatory disincentives to engage in hedging and risk mitigating transactions. The repeal of the QEP Exemption requires advisers to register as CPOs and CTAs with the CFTC (unless otherwise exempt) and subjects them to NFA membership, regulation, and oversight. Imposition of these additional

³⁰ See note 15, *supra*.

³¹ See note 12, *supra*, at 47222.

³² See *id.*

³³ See *id.* at 47230.

regulatory regimes creates additional burdens, and MFA member firms are highly sensitive to the additional costs these burdens place on private fund investors.

2. Clarify that QEP Managers withdrawing from CPO and CTA registration would not require mandatory redemptions under Rule 4.13(e)

In connection with permitting QEP Managers to withdraw from CPO and CTA registration, and ultimately restoring the QEP exemption, MFA requests that the CFTC and its Staff to confirm that CPOs that are deregistering solely because of the reinstatement of the QEP Exemption are not subject to the mandatory redemption offer requirements of Rule 4.13(e). CPOs are required by Rule 4.13(e) to offer all participants an automatic right to redeem if the CPO previously was registered as a CPO and is now claiming exemption because it is eligible for the exemption from CPO registration for a *de minimis* use of commodity interests and other derivatives.³⁴

CPOs that can avail themselves of the reinstated QEP Exemption should not be required to offer all investors an automatic redemption. Requiring private fund managers to offer redemption for availing themselves of the reinstated QEP Exemption would serve no meaningful investor protection benefit and be operationally impracticable.³⁵

Conclusion

After the rescission of the QEP Exemption, there is a considerable disparity regarding CFTC regulation of CPOs and CTAs, and SEC regulation of investment advisers. MFA recommends on behalf of its members that the CFTC Staff grant exemptive relief for QEP Managers, recognizing the sophistication of QEP pool investors, the SEC registration and regulation of the adviser, and fact that pool interests are offered only through a nonpublic offering. MFA appreciates the opportunity to provide these comments, and we look forward to continuing to provide useful and constructive comments on pending and future Commission rulemakings.

³⁴ CFTC Rule 4.13(a)(3).

³⁵ It is important to distinguish between a CPO that was registered solely because of the removal of the QEP Exemption and a CPO that was registered because they could not meet either applicable *de minimis* limits of 4.13(a)(3) to becoming eligible for the *de minimis* exemption. A pool that now can claim the *de minimis* exemption where previously it was unable is of a different composition, as its derivative positions, measured as a percentage of margin premiums against its liquidation value, have changed. See 4.13(a)(3)(ii) (*de minimis* calculation tests). There is an argument that allowing pool participants redemption offer rights under these circumstances is appropriate since the composition of the pool has changed. Deregistering as a CPO under 4.13(a)(4), however, is very different: the exemptions available for the pool will have changed solely because of the reinstatement of the QEP Exemption, irrespective of the pool's derivatives exposures.

If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Jeff Himstreet (jhimstreet@mfaalts.org) or the undersigned (jhan@mfaalts.org).

Respectfully submitted,

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