

October 5, 2026

Via online submission: <https://www.regulations.gov>

Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Commodity Pool Operators and Commodity Trading Advisors: Reduction of Duplicative Regulation Through Intermediary Registration Exemptions; Expansion of the Exemption for Small Commodity Pools, RIN 3038-AF78

Dear Secretary Kirkpatrick:

MFA¹ appreciates the opportunity to comment on the proposal of the Commodity Futures Trading Commission (the “**Commission**” or “**CFTC**”) to reduce duplicative regulation by restoring an exemption from commodity pool operator (“**CPO**”) registration for certain investment advisers registered with the Securities and Exchange Commission (“**SEC**”) and restoring related commodity trading advisor (“**CTA**”) relief (the “**Proposal**”).²

MFA strongly supports the Commission’s proposal to restore a CPO registration exemption for SEC-registered investment advisers (“**RIAs**”) operating pools offered to “qualified eligible persons” (“**QEPs**”) and certain other sophisticated investors (the “**Proposed RIA-QEP Exemption**”; and any such pool an “**Eligible Pool**”), and to restore the related CTA exemption in Regulation 4.14(a)(8). The Proposed RIA-QEP Exemption

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 CFTC, *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) (the “**Proposal**”), available at <https://www.govinfo.gov/content/pkg/FR-2026-08-21/pdf/2026-17079.pdf>.

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largely codifies the no-action relief that the Commission’s Market Participants Division (“**MPD**”) provided in CFTC Staff Letter No. 25-50 (“**Letter 25-50**”)³ and CFTC Staff Letter No. 26-06 (“**Letter 26-06**”)⁴.

The Proposal is an important and welcome step in the Commission’s and the Administration’s efforts to eliminate unnecessary and duplicative regulation while maintaining appropriate protections for investors.⁵ QEPs possess the resources and expertise to evaluate investment risks and exempting qualifying CPOs, including those already regulated by the SEC as RIAs, will reduce overlapping regulatory requirements. RIAs are comprehensively regulated by the SEC, and the Proposed RIA-QEP Exemption is limited to privately offered pools whose participants meet specified sophistication standards. The Proposal appropriately eliminates the manager-level duplication while preserving the CFTC’s critical authority to oversee derivatives markets, monitor market activity, and police fraud, manipulation, and other misconduct.

The Proposal also advances the Commission’s current efforts to harmonize the CFTC and SEC regulatory frameworks by reducing overlapping registration requirements.⁶ Requiring an RIA to register separately with the CFTC as a CPO imposes significant additional compliance obligations with little corresponding benefit. Eliminating duplicative requirements can reduce costs ultimately borne by investors while providing sophisticated investors greater flexibility to invest through funds that use futures, swaps, and other commodity interests as part of their investment and risk-management strategies. At the same time, the Proposal leaves intact the Commission’s oversight of the commodity interest markets, including its antifraud, anti-manipulation, market surveillance, and enforcement authorities, and it is consistent with the Department of the Treasury’s 2017 recommendation that the Commission exempt RIAs operating qualifying pools from CPO registration.⁷

³ CFTC Staff Letter No. 25-50 (Dec. 19, 2025) (“**Letter 25-50**”), available at <https://www.cftc.gov/csl/25-50/download>. In Letter 25-50, MPD stated that it would not recommend enforcement action against an SEC-registered investment adviser that does not register, or withdraws its registration, as a CPO or CTA with respect to privately offered pools whose participants are QEPs, subject to specified conditions, pending Commission action on reinstating former Regulation 4.13(a)(4).

⁴ CFTC Staff Letter No. 26-06 (Feb. 26, 2026) (“**Letter 26-06**”) (amending and reissuing Letter 25-50 to add a no-action position under which a delegating CPO may continue to rely on CFTC Staff Letter No. 14-126 where its designated CPO is not registered with the Commission but instead relies on the no-action position in Letter 25-50), available at <https://www.cftc.gov/csl/26-06/download>. See *infra* note 17 (discussing Staff Letter No. 14-126).

⁵ See Letter 25-50, *supra* note 3, at 5 (describing efforts to eliminate regulations that are unnecessary or impose costs that exceed their benefits).

⁶ See Joint Statement from the Chairman of the SEC and the Acting Chairman of the CFTC, CFTC Release No. 9115-25 (Sept. 5, 2025), available at <https://www.cftc.gov/PressRoom/PressReleases/9115-25>.

⁷ See U.S. Dep’t of the Treasury, *A Financial System That Creates Economic Opportunities: Capital Markets* 47–48 (Oct. 2017) (recommending that the Commission exempt from CPO registration SEC-registered investment advisers operating commodity pools that otherwise would be subject to former Regulation 4.13(a)(4)), available at

The considerations the Commission advanced to rescind former Regulation 4.13(a)(4) in 2012 — regulatory visibility, systemic-risk monitoring, and harmonization — do not support retaining duplicative registration.⁸ As a result of sustained rulemaking to address systemic risk since 2012, regulatory visibility and systemic-risk monitoring are now both achievable without a second registration regime: RIAs are comprehensively regulated and examined by the SEC, and where applicable, report detailed fund-level data on Form PF, which is a joint CFTC-SEC form on which the Proposal itself appropriately relies.⁹ Further, systemic-risk concerns do not turn on an adviser’s CPO registration status, and the available evidence does establish that duplicative CPO registration would materially enhance the Commission’s ability to monitor for systemic risk.¹⁰ The SEC and the Commission also have entered into a historic memorandum of understanding to increase cooperation across various areas of regulatory concern including examinations and enforcement.¹¹ Lastly, requiring an RIA to register separately as a

<https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf>; see also Letter 25-50, *supra* note 3, at 4 (describing the Treasury recommendation).

⁸ See CFTC, *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11,252, 11,253–54, 11,268–71 (Feb. 24, 2012) (“**2012 Adopting Release**”) (rescinding Regulation 4.13(a)(4) and discussing regulatory visibility, systemic-risk monitoring, and coordination of CFTC and SEC data collection), available at <https://www.govinfo.gov/content/pkg/FR-2012-02-24/pdf/2012-3390.pdf>. The 2012 Adopting Release did not identify a statutory provision requiring rescission of Regulation 4.13(a)(4). See *id.* at 11,252–53.

⁹ RIAs are subject to SEC registration, examination, compliance-program, books-and-records, fiduciary, antifraud, and reporting requirements and, where applicable, report detailed fund-level information on Form PF, a joint CFTC-SEC form on which the Proposal itself relies. See Proposal, *supra* note 2, at 54,268–71, 54,274–76. The Office of Financial Research publishes regularly updated data on hedge-fund size, leverage, counterparty concentration, and liquidity drawn substantially from Form PF. See Office of Financial Research, *Hedge Fund Monitor*, <https://www.financialresearch.gov/hedge-fund-monitor/> (last visited Oct. 4, 2026).

¹⁰ See 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) (observing that, for investment funds, “any losses are passed through to and borne solely by the investors themselves”), available at <https://home.treasury.gov/news/press-releases/jy2355>; Bd. of Governors of the Fed. Reserve Sys., *2025 Federal Reserve Stress Test Results* (June 2025) (reporting that the largest banking organizations remained well capitalized under an exploratory analysis that included the hypothetical failure of five large hedge funds), available at <https://www.federalreserve.gov/publications/2025-june-stress-test-results.htm>; see also Craig M. Lewis & Ron Alquist, MFA, *Hedge Funds and Financial Stability: A Review of the Evidence* (Oct. 22, 2025), available at <https://www.mfaalts.org/industry-research/research-paper-hedge-funds-are-not-a-source-of-systemic-risk/>.

¹¹ See CFTC & SEC, Memorandum of Understanding Between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), available at <https://www.sec.gov/files/mou-sec-cftc-2026.pdf>; Press Release, SEC, SEC and CFTC Announce Historic Memorandum of Understanding Between Agencies, No. 2026-26 (Mar. 11, 2026) (announcing a Joint Harmonization Initiative to coordinate the agencies’ policymaking, examination, and enforcement functions, including by “[c]oordinating cross-market examinations, economic analyses, risk monitoring, surveillance, and enforcement”), available at <https://www.sec.gov/newsroom/press-releases/2026-26-sec-cftc-announce-historic-memorandum-understanding-between-agencies>; see also Press Release, CFTC, CFTC and SEC Announce Historic

CPO, join the National Futures Association (“NFA”), and maintain parallel compliance programs layers one framework on another rather than harmonizing them. The rescission of Regulation 4.13(a)(4) represented a step away from the “minimum effective dose” of regulation to achieve the Commission’s aims,¹² and the Proposal reflects the sounder approach.

Codifying Letter 25-50 and Letter 26-06 will also provide important regulatory certainty. Many advisers have already withdrawn their CPO registrations and restructured their compliance programs in reliance on those letters. A Commission rule adopted through notice and comment is more durable, transparent, and uniform than Staff relief, and will allow the Commission and NFA to administer the exemption more efficiently. MFA therefore encourages the Commission to finalize the Proposed RIA-QEP Exemption as soon as practicable, with the modifications described below, which are intended to preserve the practical benefits of the Staff letters and avoid unintended consequences as firms transition to the final rule.

Executive Summary

As a strong supporter of the approach in Letter 25-50 and Letter 26-06, MFA offers recommendations that are intended to ensure that codification does not create new burdens or narrow relief recently determined to be appropriate. In summary:

- **The Regulation 4.13(b)(2) and Regulation 4.13(e)(2) redemption offer requirement should not apply to existing pools.** Consistent with the determination in Letter 25-50, a change in the exemption on which an operator relies does not alter a pool’s strategy, portfolio, governance, or negotiated liquidity terms and, accordingly, should not require mandatory redemption offers.
- **The final rule should resolve discrete interactions with other Commission rules and Staff positions.** These include the Commission’s stated position on delegation, position-limit aggregation under Regulation 150.4(b)(1)(iii), the fund-of-funds interpretation in Letter 12-38, eligible contract participant (“ECP”) status under Regulation 1.3, the scope of the related CTA relief, and ancillary reporting by CPOs that operate both registered and exempt pools.
- **The final rule should retain a uniform QEP standard consistent with Letter 25-50 and accommodate employees’ securities companies (“ESCs”).** Natural persons who are QEPs under Regulation 4.7(a)(6)(ii) or who participate in an ESC should not be excluded from investing in an Eligible Pool, and any accredited-investor cross-reference should track the SEC’s definition,

Memorandum of Understanding Between Agencies, No. 9192-26 (Mar. 11, 2026), *available at* <https://www.cftc.gov/PressRoom/PressReleases/9192-26>.

¹² Proposal, *supra* note 2, at 54,267-68.

given the Proposal’s goals to streamline oversight where other federal regulators already provide robust coverage.

- **MFA supports several other aspects of the Proposal**, including the “if required” Form PF condition, the Rule 506(c) accommodation, an orderly transition from the Staff letters, and increasing the small pool exemption threshold to \$800,000 with periodic inflation adjustments.

To assist the Commission and the Staff, MFA has set out its recommendations in suggested rule text and release text. Appendix A sets out suggested rule text and release text for the recommendations that require amendments to the proposed or existing rule text. Appendix B sets out suggested release text for the remaining clarifications and confirmations.

I. The Regulation 4.13(b)(2) and Regulation 4.13(e)(2) redemption offer requirement should not apply to pools in existence on the effective date of the final rule

Consistent with Letter 25-50, MFA recommends that the final rule provide existing QEP pools the opportunity to convert to reliance on Regulation 4.13(a)(4) without providing participants a special right to redeem. Regulation 4.13(e)(2) permits a registered CPO to operate exempt pools alongside its registered pools, but requires the CPO to offer each existing participant in a pool converting to exempt status a right to redeem.¹³ Similarly, Regulation 4.13(b)(2) requires a CPO that intends to withdraw from registration in order to claim exemption under Regulation 4.13 to provide pool participants with a right to redeem. The Proposal appropriately recognizes that applying this requirement to pools that have already relied on Letter 25-50 could create unnecessary disruption and contemplates preserving their existing treatment.¹⁴ MFA recommends extending similar treatment to other existing pools that transition to Regulation 4.13(a)(4), which would be consistent with the Commission’s goals to harmonize applicable regulatory standards where possible.

Treating all existing pools that transition to the exemption under Regulation 4.13(a)(4) in the same manner is reasonable and appropriate. A pool’s transition to Regulation 4.13(a)(4) does not itself change its investment strategy, portfolio, governance, or contractual terms. Further, many of the existing pools that transition to relying on the exemption under Regulation 4.13(a)(4) will be those currently relying on Regulation 4.7, which similarly limits investors to QEPs. Investors in such pools are sophisticated and have invested on the basis that the pool’s CPO is exempt from many Part 4 requirements. The transition from Regulation 4.7 to Regulation 4.13(a)(4) will not deprive them of meaningful protection on which such investors are relying today.

Requiring a special redemption opportunity solely because the operator changes its CPO registration status could disrupt agreed liquidity terms and require a fund to sell assets to accommodate potential redemptions,

¹³ See 17 C.F.R. § 4.13(e)(2) (2026) (prescribing notice, recordkeeping, and redemption-related conditions for specified conversions to exempt status), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.13>.

¹⁴ Proposal, *supra* note 2, at 54,271.

imposing costs on investors and potentially altering the fund’s liquidity profile and strategy. For a closed-end pool with liquidity restrictions over a multi-year term, the concept may be incompatible with the fund’s structure, its assets, and/or the expectations on which investments were made. As MPD recognized in Letter 25-50, limited relief from the redemption requirement avoids these foreseeable adverse consequences for investors, and the absence of such relief could reduce adoption of the Regulation 4.13(a)(4) exemption with respect to existing pools.¹⁵

MFA therefore recommends that the Commission revise Regulation 4.13(b)(2) and Regulation 4.13(e)(2)(iii) as set forth in Appendix A-1 to provide relief from the redemption requirement for existing pools that transition to the Regulation 4.13(a)(4) exemption.

II. Targeted clarifications and conforming amendments to facilitate implementation

A. Reiterate the Commission’s stated position on delegation arrangements

MFA strongly agrees with the Commission’s view, stated in the Proposal, that “the [Proposed RIA-QEP Exemption] would be broadly available to both Delegating and Designated CPOs with respect to an Eligible Pool, and more broadly, that a no-action position on CPO delegation, like that in Letter 14-126, is not necessary where the pool for which responsibility is being delegated is an exempt pool, including an Eligible Pool under the [Proposed RIA-QEP Exemption], rather than one requiring CPO registration.”¹⁶ MFA understands this position to mean that, if an RIA CPO appropriately claims an exemption under Regulation 4.13(a)(4), another CPO of the same pool that delegates its CPO responsibilities to the RIA CPO is not required to register as a CPO, regardless of whether it is registered with the SEC as an investment adviser or whether its delegation meets the requirements of Letter 14-126.

Reiterating that position in detail in the adopting release would eliminate any residual uncertainty. Because Regulation 4.13(a)(4) by its terms conditions relief on the person claiming it being SEC-registered, the release should state expressly that a delegating CPO, such as a general partner, managing member, trustee, director, or similar person need not itself be an RIA and need not satisfy the conditions of Letter 14-126 to be exempt from CPO registration,¹⁷ provided the pool and the designated CPO qualify under Regulation 4.13(a)(4).

B. Avoid unintended position-limit aggregation

Reliance on Regulation 4.13(a)(4) should not create new position-limit aggregation obligations for investors. Under Regulation 150.4(b)(1), a passive investor in a commodity pool generally need not aggregate the pool’s positions with its own. Regulation 150.4(b)(1)(iii) makes that exemption unavailable for any passive pool

¹⁵ See Letter 25-50, *supra* note 3, at 6-7.

¹⁶ Proposal, *supra* note 2, at 54,271.

¹⁷ CFTC Staff Letter No. 14-126, *CEA Section 4m(1) — Self-Executing Registration No-Action Relief for Delegating CPOs When Certain Requirements Are Satisfied* (Oct. 15, 2014) (“**Letter 14-126**”), available at <https://www.cftc.gov/csl/14-126/download>.

participant that owns 25 percent or more of a pool if “the operator ... is exempt from registration under § 4.13.”¹⁸ Because Letter 25-50 is a Staff position rather than a Regulation 4.13 exemption, it does not trigger that provision; codifying the relief in Regulation 4.13(a)(4), however, would do so.

As a result, an investor that owns 25 percent or more of a pool could be required to aggregate the pool’s positions with its own solely because the pool’s operator transitions from Letter 25-50 to Regulation 4.13(a)(4). That could cause positions over which the investor has no investment discretion or control to count against the investor’s own position limits, reducing its capacity to trade or hedge and potentially requiring it to reduce otherwise permissible positions. Such an investor may not even have granular information about the underlying pool’s positions, which could make compliance difficult or impracticable. This consequence would arise even though nothing about the investor’s ownership, the pool’s trading, or the allocation of investment discretion has changed. Anticipating that result, a CPO with a concentrated institutional investor base could be deterred from relying on Regulation 4.13(a)(4), or could determine to rely on Regulation 4.13(a)(4) but be deterred from future participation in commodity interest markets.

Nor does the rationale for Regulation 150.4(b)(1)(iii) support applying it to Regulation 4.13(a)(4) pools. To the extent the provision reflects an anti-avoidance concern by the Commission that a large investor could effectively control a pool’s trading, a pool operated by an RIA under Regulation 4.13(a)(4) does not present that concern. The pool is reported on Form PF where required, and the RIA is registered with, and subject to examination by, the SEC, and it serves as an independent decision-maker with respect to the pool’s trading.

The fact that the CPO would no longer be registered with the Commission should not raise concerns for the Commission regarding lack of visibility or oversight in the context of Regulation 4.13(a)(4). With respect to a pool operated by an RIA under Regulation 4.13(a)(4), the RIA is registered with, and subject to examination by, the SEC; the pool (if required) is reported on Form PF where required, and readily accessible to the Commission; and the RIA remains subject to the recordkeeping and inspection requirements of Regulation 4.13(c).¹⁹ We also note that large traders, including pools, are also subject to the Commission’s large trader reporting rules and to Form 40 upon special call.²⁰ Accordingly, investors in such a pool should be treated, for aggregation purposes, in the same manner as investors in a pool operated by a registered CPO.

¹⁸ 17 C.F.R. § 150.4(b)(1)(iii) (2026), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-150/section-150.4>.

¹⁹ See 17 C.F.R. § 4.13(c) (2026) (prescribing recordkeeping and inspection requirements applicable to persons claiming exemption under Regulation 4.13), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.13>.

²⁰ See 17 C.F.R. § 18.04 (2026) (subjecting traders that hold reportable positions to large trader reporting and, upon special call, to Form 40), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-18/section-18.04>; 17 C.F.R. pt. 18 (2026) (reports by traders), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-18>; 17 C.F.R. pt. 17 (2026) (large trader reports by reporting markets, futures commission merchants, clearing members, and foreign brokers), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-17>; 17 C.F.R. pt. 20 (2026)

MFA requests that the Commission amend Regulation 150.4(b)(1)(iii) as set forth in Appendix A-2 or, if amending Part 150 is not practical in this rulemaking, add a provision to Regulation 4.13 stating that, solely for purposes of Regulation 150.4(b)(1)(iii), a pool operated in reliance on Regulation 4.13(a)(4) shall not be treated as a pool for which the operator is exempt from registration under Regulation 4.13.

C. Preserve the longstanding fund-of-funds interpretation

Operators of funds of funds have relied for more than a decade on CFTC Staff Letter No. 12-38 (“**Letter 12-38**”), which permits the CPO of a fund that invests in other funds to determine its eligibility for a CPO registration exemption by reference to the “situations” described in former Appendix A to Part 4, which the Commission rescinded in 2012.²¹ Several of those situations, and market practice under them, distinguish between investee funds operated by registered CPOs (without regard to their level of commodity interest trading) and investee funds operated under the *de minimis* exemption in Regulation 4.13(a)(3). When the CPO of an investee fund deregisters in reliance on Letter 25-50 or Regulation 4.13(a)(4), a fund-of-funds operator that structured its allocations around the investee CPO’s registration status may fall outside the applicable situation through no action of its own, and with no change in the strategy or level of commodity interest exposure of the fund in which it invests. The fund-of-funds operator therefore could be forced to register, restructure, or seek alternative relief solely because of a change in the exemption claimed by an underlying fund’s CPO. As with other items discussed in this letter, that concern could limit the willingness of CPOs whose pools have fund-of-funds investors to rely on Regulation 4.13(a)(4), or have the unintended consequence of discouraging participation in commodity interest markets.

The former Appendix A situations turn on the investee operator’s CFTC registration status, which changes when the CPO elects to rely on Regulation 4.13(a)(4), but this change occurs for reasons wholly outside the fund-of-funds operator’s knowledge or control. Because the premise of Regulation 4.13(a)(4) is that SEC registration and examination render CPO registration duplicative, a fund-of-funds operator should not face a different exemption analysis depending on whether an investee pool’s operator is registered with the Commission or is an RIA relying on the new exemption. To preserve the status quo, MFA requests that the Commission confirm in the adopting release, or direct the Staff to confirm, that the operator of a fund of funds that relies on Letter 12-38 will continue to be eligible for that relief notwithstanding an investee fund CPO’s reliance on Regulation 4.13(a)(4).

D. Preserve the ECP status of pools relying on Regulation 4.13(a)(4)

Reliance on Regulation 4.13(a)(4) should not cause a pool to lose its status as an ECP for off-exchange foreign currency (“**forex**”) trading. There is a risk of that result, however, because the Regulation 1.3 definition of

(large trader reporting for physical commodity swaps), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-20>.

²¹ CFTC Staff Letter No. 12-38 (Nov. 29, 2012) (“**Letter 12-38**”), *available at* <https://www.cftc.gov/csl/12-38/download>; see also 17 C.F.R. pt. 4, app. A (2011), *removed by* 2012 Adopting Release, *supra* note 8.

ECP in this regard refers to registered CPOs and to existing CPOs exempt from registration under Regulation 4.13(a)(3) but lacks a conforming reference to CPOs exempt under proposed Regulation 4.13(a)(4).

For certain forex transactions, a commodity pool qualifies as an ECP without a look-through as to whether each participant is itself an ECP only if it satisfies paragraph (8) of the “eligible contract participant” definition in Regulation 1.3, which requires, among other things, that the pool be “formed and operated by a registered commodity pool operator or by a commodity pool operator who is exempt from registration as such pursuant to § 4.13(a)(3).”²² Because that provision does not reference Regulation 4.13(a)(4), a pool whose operator transitions to the new exemption would qualify as an ECP for forex only if every participant were itself an ECP, a look-through that is impractical for pools with outside investors.²³ A CPO’s reliance on Regulation 4.13(a)(4) could thus strip a pool of its ECP status, and its access to the institutional forex market, even though nothing about its assets, investment strategy, or participants has changed. That is particularly anomalous because Regulation 4.13(a)(4), unlike Regulation 4.13(a)(3), is available only to comprehensively regulated SEC-registered advisers.

MFA therefore requests that the Commission amend paragraph (8)(iii) of the “eligible contract participant” definition in Regulation 1.3 as set forth in Appendix A-3 or, at minimum, confirm in the adopting release that a pool operated by an RIA under Regulation 4.13(a)(4) is treated the same as one operated by a registered CPO for this purpose.

E. Confirm the scope of the related CTA relief

MFA supports restoring the reference to Regulation 4.13(a)(4) in Regulation 4.14(a)(8)(i)(D).²⁴ The CTA relief was adopted alongside the QEP pool exemption in 2003 and was removed when that exemption was rescinded in 2012; restoring the pool exemption without ensuring that the CTA provision functions in parallel would leave an avoidable gap.²⁵ The Commission should confirm that relief under Regulation 4.14(a)(8) is available where the

²² Commodity Exchange Act § 1a(18), 7 U.S.C. § 1a(18) (2018); 17 C.F.R. § 1.3 (2026) (definition of “eligible contract participant”), available at <https://www.ecfr.gov/current/title-17/chapter-I/part-1/section-1.3>.

²³ Even if all outside investors of a pool were themselves ECPs, the pool’s CPO would likely not have sufficient information to support a position that the pool is an ECP on a look-through basis, as investors typically do not complete ECP-specific suitability representations in fund subscription materials. Accordingly, even large funds operated exclusively for a sophisticated institutional investor base (e.g., in reliance on Section 3(c)(7) of the Investment Company Act) generally will not be positioned to draw a conclusion as to ECP status on a look-through basis.

²⁴ See Proposal, *supra* note 2, at 54,279–80 (proposing to restore the reference to Regulation 4.13(a)(4) in Regulation 4.14(a)(8)(i)(D)); 17 C.F.R. § 4.14(a)(8) (2026), available at <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.14>.

²⁵ See CFTC, *Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues*, 68 Fed. Reg. 47,221, 47,223, 47,230 (Aug. 8, 2003) (“**2003 Adopting Release**”) (explaining that the additional exemptions were intended to encourage participation in the commodity interest markets by additional collective investment vehicles and their advisers, and would promote competition and market

CTA's advice is directed solely to, and for the sole use of, Eligible Pools and their operators and the other conditions of that provision are met, without regard to whether the CTA and the CPO are the same legal entity, affiliates, or unaffiliated service providers.

Finally, the Commission should consider whether comparable relief is appropriate for RIAs that provide commodity trading advice outside the pool context, including to separately managed accounts, which can present the same duplication concern the Proposal seeks to address. MFA does not suggest that this question delay the present rulemaking and would welcome the opportunity to engage with the Commission on it separately.

F. Clarify ancillary reporting for mixed registered-and-exempt operations

A CPO claiming the exemption under Regulation 4.13(a)(4) with respect to one pool may remain registered because it operates other pools, advises through affiliated entities, or is in the process of completing a staged transition toward deregistration. The Commission should confirm that retaining CPO registration does not, by itself, cause a pool operated in reliance on Regulation 4.13(a)(4) to be treated as a pool for which pool-level reporting is required. Consistent with the exempt status of each pool, Regulation 4.27(b)(2) and the Form CPO-PQR instructions should be applied on a pool-by-pool basis, and a registered CPO should not be required to report pool-level information on Form CPO-PQR for an exempt pool merely because it retains registration.²⁶ That clarification implements the Proposal's reliance on Form PF where otherwise required and avoids duplicative reporting.

III. The final rule should retain a uniform QEP standard and accommodate ESCs

A. Uniform QEP standard

MFA recommends that the Commission continue to permit pools under Regulation 4.13(a)(4) to admit any participant that is a QEP under Regulation 4.7(a)(6), whether a natural person or an entity. That is the standard under Letter 25-50, and continuing it would provide a consistent and administrable rule. MFA does not object to the Proposal's separate provision permitting non-natural-person participants that are accredited investors within the categories enumerated in proposed Regulation 4.13(a)(4)(iii)(B); MFA's concern is that natural persons who are QEPs under Regulation 4.7(a)(6)(ii) should not be excluded.

The Proposal would limit participation by natural persons to persons who are QEPs by virtue of Regulation 4.7(a)(6)(i), that is, QEPs who are not required to satisfy the "portfolio requirement" of Regulation 4.7(a)(5) (the "**Portfolio Requirement**"). By contrast, an entity may participate if it is a QEP under either paragraph (i) or (ii) of Regulation 4.7(a)(6) or is an accredited investor. As a result, a natural person who qualifies as a QEP by satisfying

efficiency without impairing the Commission's ability to protect market participants or the public), *available at* <https://www.govinfo.gov/content/pkg/FR-2003-08-08/pdf/03-20094.pdf>; 2012 Adopting Release, *supra* note 8.

²⁶ See 17 C.F.R. § 4.27(b)(2) (2026), *available at* <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.27>.

the Portfolio Requirement could not invest in a Regulation 4.13(a)(4) pool unless the person independently qualifies under Regulation 4.7(a)(6)(i).

The Commission should not apply a bifurcated participant eligibility standard for natural persons and entities under Regulation 4.13(a)(4). Doing so would not only disadvantage CPOs that have relied on Letter 25-50 using the full QEP definition, but also substantially complicate the process of CPOs seeking to rely on Regulation 4.13(a)(4) because they will likely have to re-confirm investor qualifications since subscription representations were written using the full QEP definition and did not contemplate the narrower standard. The Commission recalibrated the Portfolio Requirement in 2024, doubling its thresholds to \$4 million in investments and \$400,000 in margin as a considered measure of the sophistication a natural person needs to invest in a commodity pool without the full protections of Part 4.²⁷ A natural person who meets that standard may today invest in a Regulation 4.7 pool operated by a registered CPO that has claimed relief from the Part 4 disclosure, reporting, and recordkeeping requirements,²⁸ and may invest on the basis of accredited investor status alone in a Regulation 4.13(a)(3) pool whose operator likewise is not registered with the Commission.²⁹ MFA therefore recommends that the Commission adopt the uniform QEP standard of Regulation 4.7(a)(6), consistent with Letter 25-50, as described in Appendix A-4.

Regulation 4.7 currently uses the term “exempt pool” in the “Portfolio Requirement”³⁰ and the lead-in to the QEP definition,³¹ as well as extensively in Regulation 4.7(a)(6)(i)(J) describing, among other things, the ability of

²⁷ See CFTC, *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 Funds of Funds; Technical Amendments*, 89 Fed. Reg. 78,793, 78,803–09 (Sept. 26, 2024) (“**2024 QEP Adopting Release**”), available at <https://www.govinfo.gov/content/pkg/FR-2024-09-26/pdf/2024-21682.pdf>. MFA supported that modernization as a considered and current measure of investor sophistication for purposes of Part 4 relief. See Letter from MFA to Christopher Kirkpatrick, Secretary, CFTC (June 26, 2024), available at <https://www.mfaalts.org/wp-content/uploads/2024/07/FINAL-RULE-4.7.pdf>; Letter from MFA to Christopher Kirkpatrick, Secretary, CFTC (Dec. 11, 2023), available at <https://www.mfaalts.org/letter/mfa-submits-comments-to-cftc-on-cpo-and-cta-rulemaking/>.

²⁸ See 17 C.F.R. § 4.7 (2026) (permitting registered CPOs and CTAs to claim relief from specified Part 4 disclosure, reporting, and recordkeeping requirements for pools offered solely to, and accounts of, QEPs), available at <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.7>.

²⁹ See 17 C.F.R. § 4.13(a)(3) (2026), available at <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.13>.

³⁰ See 17 C.F.R. § 4.7 (2026) (“Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the *exempt pool* or the date that the person opens an exempt account with the commodity trading advisor...” (emphasis added)), available at <https://www.ecfr.gov/current/title-17/chapter-I/part-4/section-4.7>.

³¹ See 17 C.F.R. § 4.7 (2026) (“Qualified eligible person means any person, acting for its own account or for the account of a qualified eligible person, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the *exempt pool*, or who the commodity trading advisor reasonably believes, at the

certain employees to be QEPs. The term “exempt pool” is, however, defined as “a pool that is operated pursuant to an effective claim for exemption under this section” – *i.e.*, a pool operated pursuant to Regulation 4.7. As a pool under Regulation 4.13(a)(4) would not be operated pursuant to Regulation 4.7 but nonetheless would require that participants be QEPs, MFA suggests that the Commission clarify that the definition of “exempt pool” includes pools exempt under Regulation 4.13 (except for 4.13(a)(3)) and Letter 25-50.

B. ESCs

To further harmonize CFTC and SEC regulation, the final rule should adjust the applicability of QEP requirements for ESCs under the new exemption. ESCs operate under a specialized framework under Section 6(b) of the Investment Company Act and the rules thereunder to facilitate investments by employees who need not meet certain suitability thresholds that may otherwise be required (e.g., status as a qualified purchaser) due to their status as informed insiders.³² ESC participants will not necessarily be QEPs within the categories enumerated in proposed Regulation 4.13(a)(4)(iii)(A). For an ESC that is also a commodity pool, that mismatch could require an adviser to exclude certain employees from participating in the ESC due to CFTC suitability requirements, notwithstanding that Congress specifically authorized the SEC to exempt ESCs from requirements otherwise applicable to investment companies in recognition of their unique employer-employee character.³³ Accordingly, the imposition of QEP requirements on ESCs in some cases may frustrate the statutory purpose of ESCs.

time that person opens an exempt account...” (emphasis added)), *available at* <https://www.ecfr.gov/current/title-17/chapter-II/part-4/section-4.7>.

³² See Investment Company Act of 1940 § 6(b), 15 U.S.C. § 80a-6(b) (2018); 17 C.F.R. § 270.6b-1 (2026), *available at* <https://www.ecfr.gov/current/title-17/chapter-II/part-270/section-270.6b-1>.

Central to the fundamental purpose of an ESC is the close alignment of employer and employee interests. Accordingly, SEC-approved ESC applications repeatedly emphasize the “community of interest” between employee-investors, on the one hand, and the employer/ESC sponsor, on the other hand, as “the best insurance against any risk of abuse.” This alignment of interests is a key reason why the qualified purchaser suitability requirement is not needed for ESC investors, and the same analysis applies to QEP requirements.

³³ See Investment Company Act of 1940 § 6(b), 15 U.S.C. § 80a-6(b) (2018) (directing the SEC to exempt employees’ securities companies from provisions of the Act to the extent consistent with the protection of investors); SEC Div. of Inv. Mgmt., *Employees’ Securities Companies and Escheatment*, IM Guidance Update No. 2015-04, at 1 (Oct. 2015) (explaining that ESCs “are employer-sponsored investment companies, the beneficial owners of which, by definition, generally include only current and former employees and employer retainers,” and that “[i]n recognition of the unique nature of ESCs, Congress specifically authorized the Commission to exempt them from the provisions of the 1940 Act to the extent consistent with the protection of investors”), *available at* <https://www.sec.gov/investment/im-guidance-2015-04.pdf>; 17 C.F.R. § 270.6b-1 (2026), *available at* <https://www.ecfr.gov/current/title-17/chapter-II/part-270/section-270.6b-1>.

MFA recommends that the Commission add to Regulation 4.13(a)(4)(iii)(A), as set forth in Appendix A-4, a category covering any natural person who is a participant in an ESC operating pursuant to the exemption in Section 6(b) of the Investment Company Act and the rules thereunder. Adding this category would further harmonize CFTC and SEC regulation of ESCs that are also commodity pools.

C. Modernize the accredited-investor cross-reference

To the extent the Commission retains an accredited-investor category for non-natural persons, the cross-reference should track Rule 501(a) as amended from time to time, rather than a fixed list drawn from the historical version of Regulation 4.13(a)(4).³⁴ A static cross-reference omits categories the SEC has since determined are appropriate and would become outdated again following future SEC amendments. The Commission should also confirm how entities formed to acquire pool interests, family offices and family clients, trusts, and employee investment vehicles are treated to the extent they fall within the QEP or accredited-investor frameworks, so that RIAs and fund administrators can apply the rule consistently.

IV. MFA supports additional aspects of the Proposal

MFA supports several additional aspects of the Proposal that will help reduce duplicative regulatory requirements and facilitate efficient implementation of the new exemption, with several targeted recommendations to ensure they operate as intended.

A. Form PF

MFA supports requiring Form PF only where an adviser is otherwise required to file it for the relevant pool. If an adviser is not required to file Form PF, or a pool is not required to be included in an adviser's Form PF, that should not make the adviser ineligible for Regulation 4.13(a)(4) with respect to that pool. This approach appropriately relies on existing SEC-CFTC reporting rather than creating duplicative CFTC reporting, and the final rule should confirm that advisers may apply Form PF's existing consolidation rules to master-feeder and parallel structures.

B. Rule 506(c) offerings

MFA supports the Proposal's accommodation for offerings conducted under Rule 506(c).³⁵ Harmonization with Regulation D is the central point: an adviser should not be required to observe CFTC-specific marketing restrictions when its offering complies with an SEC framework designed expressly for offerings using general

³⁴ See 17 C.F.R. § 230.501(a) (2026) (accredited-investor definition, which the SEC amends from time to time), *available at* <https://www.ecfr.gov/current/title-17/chapter-II/part-230/section-230.501>.

³⁵ See 17 C.F.R. § 230.506(c) (2026) (permitting general solicitation and general advertising in offerings under Regulation D, provided that all purchasers are accredited investors and the issuer takes reasonable steps to verify their accredited-investor status), *available at* <https://www.ecfr.gov/current/title-17/chapter-II/part-230/section-230.506>.

solicitation, and the accommodation does not broaden participation because Regulation 4.13(a)(4) imposes its own participant-eligibility conditions.

C. Transition from Staff relief

MFA supports replacing Letters 25-50 and 26-06 with a durable Commission rule once equivalent relief is fully operational. The Commission should coordinate supersession of the letters with the availability of the new exemption and preserve existing claims and related relief during the transition, so that firms are not required to reverse actions taken in reliance on the Staff letters or to re-register temporarily. As is typical with new regulations, questions may arise after the final rule is codified. The final rule should therefore make clear that the Staff may continue to issue interpretations, FAQs, or other guidance to address implementation questions as they arise, without implying that the exemption is incomplete or temporary.

D. Small pool exemption

MFA supports increasing the Regulation 4.13(a)(2) small pool exemption threshold from \$400,000 to \$800,000 to account for inflation and preserve the exemption's intended scope.³⁶ MFA also encourages the Commission to provide for periodic inflation adjustments so that the threshold does not again become outdated over time.

* * * * *

Conclusion

MFA appreciates the Commission's thoughtful and constructive Proposal. Restoring durable CPO and CTA registration exemptions for SEC-registered advisers operating pools for sophisticated investors, with the reasonable modifications and clarifications we suggest, will reduce unnecessary regulatory overlap while preserving appropriate investor and market protections. MFA therefore encourages the Commission to adopt the rule as soon as practicable.

³⁶ See Proposal, *supra* note 2, at 54,279–80 (proposing to increase the gross capital contribution threshold of the Small Pool Exemption from \$400,000 to \$800,000).

We appreciate the opportunity to comment. Should the Commission or the Staff have questions or require additional information, please contact Jeff Himstreet (jhimstreet@mfaalts.org) or the undersigned (jhan@mfaalts.org).

Respectfully submitted,

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Appendix A

Requested Amendments to Rule Text and Suggested Release Text

To effectuate the recommendations in this letter, MFA respectfully offers the following suggested rule text and release text. Additions are shown in bold underline; deletions in strikethrough. Capitalized terms align with the defined terms used in the Proposal.

A-1. Exclude existing Regulation 4.13(a)(4) pools from the redemption offer requirement (Regulation 4.13(b)(2) and Regulation 4.13(e)(2))

MFA-recommended revision (redline) to Regulation 4.13(b)(2):

(2) The person must file the notice by no later than the time that the pool operator delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided, however*, that in the case of a claim for relief under § 4.13(a)(5), the person must file the notice by the later of the effective date of the pool's registration statement under the Securities Act of 1933 or the date on which the person first becomes a director or trustee; and *Provided, further*, that where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and, **except in the case of pools that commenced operations prior to [the effective date of the final rule] that the person elects to operate under § 4.13(a)(4),** it must provide each such participant a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration.

MFA-recommended revision (redline) to proposed Regulation 4.13(e)(2)(iii):

Provides each existing participant in a pool that the person elects to operate as described in paragraph (a)(3) ~~or (a)(4)~~ of this section, **or in a pool that commenced operations on or after [the effective date of the final rule] that the person elects to operate as described in paragraph (a)(4) of this section,** a right to redeem the participant's interest in the pool, and informs each such participant of that right no later than the time the person commences to operate the pool as described in paragraph (a)(3) or (a)(4) of this section.

Suggested release text:

Redemption offers under § 4.13(b)(2) and § 4.13(e)(2). The Commission proposed to preserve the treatment of pools operated in reliance on Staff Letter 25-50 but otherwise to apply the notice and redemption offer provisions of § 4.13(e)(2) to a registered CPO converting a pool to reliance on § 4.13(a)(4). Commenters requested that the

Commission extend comparable treatment to all pools in existence on the effective date of the final rule, so that an existing pool may convert to reliance on § 4.13(a)(4) without affording participants a special right to redeem.¹

The Commission agrees, and is adopting § 4.13(e)(2)(iii) with a modification that limits the redemption offer requirement, as applied to § 4.13(a)(4), to pools that commence operations on or after the effective date of this rule. Similarly, the Commission is adopting § 4.13(b)(2) with a corresponding modification to limit the redemption offer requirement to exclude a deregistering CPO's claim for exemption under § 4.13(a)(4) on behalf of pools that commenced operations prior to the effective date of this rule. The redemption offer requirement is directed at circumstances in which a change in a pool's operation warrants affording participants an opportunity to redeem. A pool's transition to § 4.13(a)(4) does not itself alter its investment strategy, portfolio, governance, or contractual terms; the operator remains an SEC-registered investment adviser, and every participant must satisfy the applicable sophistication standard. That distinguishes a conversion to § 4.13(a)(4) from a conversion to the *de minimis* exemption in § 4.13(a)(3), which is conditioned on trading limitations and therefore reflects a change in the pool's commodity interest exposure.² Further, many of the existing pools that transition to relying on the exemption under § 4.13(a)(4) will be those currently relying on § 4.7, which similarly limits investors to QEPs. Investors in such pools are sophisticated and have invested on the basis that the pool's CPO is exempt from many Part 4 requirements. The transition from § 4.7 to § 4.13(a)(4) will not deprive them of meaningful protection on which such investors are relying today. Participants in the affected pools, moreover, invested pursuant to negotiated governing documents that establish the pool's liquidity terms, and a mandatory redemption offer could disrupt those terms, require asset sales to fund potential redemptions, and impose costs on participants who remain invested.

The Commission is not extending relief from the redemption offer requirement to pools that commence operations on or after the effective date of this rule. Investors in those pools will subscribe with knowledge of the exemption on which the operator relies, and the transition concerns described above are not present. Retaining the requirement for newly formed pools also preserves the protection that § 4.13(b)(2) and § 4.13(e)(2) afford where an operator elects exempt status for a pool organized after the rule takes effect. This determination addresses only

¹ CFTC Staff Letter No. 25-50, at 8 (Dec. 19, 2025) ("**Letter 25-50**"), available at <https://www.cftc.gov/csl/25-50/download>. In Letter 25-50, MPD stated that it would not recommend enforcement action against an SEC-registered investment adviser that does not register, or withdraws its registration, as a CPO or CTA with respect to privately offered pools whose participants are QEPs, subject to specified conditions, pending Commission action on reinstating former Regulation 4.13(a)(4).

² See CFTC, *Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues*, 68 Fed. Reg. 47,221, 47,224–25 (Aug. 8, 2003) ("**2003 Adopting Release**") (adopting the *de minimis* exemption and describing its trading limitations), available at <https://www.govinfo.gov/content/pkg/FR-2003-08-08/pdf/03-20094.pdf>.

the redemption offer requirement occasioned by reliance on § 4.13(a)(4). It does not affect an operator's obligations under a pool's governing documents or the antifraud provisions of the Act.

A-2. Prevent unintended position-limit aggregation (Regulation 150.4(b)(1)(iii))

MFA-recommended revision (redline) to Regulation 150.4(b)(1)(iii):

(iii) Has, by power of attorney or otherwise directly or indirectly, a 25 percent or greater ownership or equity interest in a commodity pool, the operator of which is exempt from registration under § 4.13 of this chapter **(other than § 4.13(a)(4))**.

Alternatively, if amending Part 150 is not practical in this rulemaking: add a provision to Regulation 4.13 stating that, solely for purposes of Regulation 150.4(b)(1)(iii), a pool operated in reliance on Regulation 4.13(a)(4) shall not be treated as a pool for which the operator is exempt from registration under Regulation 4.13.

Suggested release text (to accompany Regulation 150.4 revision):

Aggregation under § 150.4. Commenters observed that § 150.4(b)(1) generally does not require a passive investor in a commodity pool to aggregate the pool's positions with its own, and that § 150.4(b)(1)(iii) makes that exemption unavailable to a passive participant owning 25 percent or more of a pool the operator of which is exempt under § 4.13.³ Because Staff Letter 25-50 is a Staff position rather than a § 4.13 exemption, it does not trigger that provision; codifying the relief in § 4.13(a)(4) would do so, with the result that an investor could be required to aggregate positions over which it has no discretion or control solely because a pool's operator elected the new exemption.

The Commission agrees that such a result would be inconsistent with the purposes of this provision. First, any anti-avoidance concerns that a large investor could effectively control a pool's trading are less applicable in the case of a pool operated by an SEC-registered investment adviser in accordance with § 4.13(a)(4). The investment adviser is registered with, and subject to examination by, the SEC, and it serves as an independent decision-maker with respect to the pool's trading. Further, concerns as to the Commission's reduced visibility into pools whose operators are not registered with the Commission are likewise inapplicable. Such concerns do not apply to a pool operated by an SEC-registered investment adviser that is subject to SEC examination, reports on Form PF where required, and remains subject to the recordkeeping and inspection requirements of § 4.13(c).⁴

The Commission is adopting this conforming amendment notwithstanding that § 150.4 was not among the provisions for which amendatory text was set forth in the Proposal. Section 150.4(b)(1)(iii) operates by cross-reference to § 4.13 as a whole. The Proposal accordingly placed the operation of that cross-reference directly at issue: by proposing to add a new exemption in § 4.13(a)(4), the Commission necessarily proposed to expand the

³ See 17 C.F.R. § 150.4(b)(1)(iii) (2026).

⁴ See 17 C.F.R. § 4.13(c) (2026).

set of pools to which § 150.4(b)(1)(iii) would apply by its existing terms, without addressing whether that expansion was intended. Commenters identified that consequence, and the Commission’s resolution of it is a logical outgrowth of the Proposal. The amendment is also technical and conforming in nature: it does not alter the substantive standards, conditions, exemptions, or anti-evasion provisions of Part 150, and it does not change the aggregation obligations of any person with respect to any pool as those obligations exist today. Its sole effect is to preserve the status quo for investors in pools whose operators transition to the new exemption, consistent with the Commission’s determination that codification of the relief in Staff Letter 25-50 should not impose new burdens on market participants.

A-3. Preserve ECP Status (Regulation 1.3, Paragraph (8)(iii) of the “Eligible Contract Participant” definition)

MFA-recommended revision (redline) to Regulation 1.3:

Eligible contract participant. This term has the meaning set forth in section 1a(18) of the Act, except that:

[...] (8) Notwithstanding section 1a(18)(A)(iv) of the Act and paragraph (5) of this definition, a commodity pool that enters into an agreement, contract, or transaction described in section 2(c)(2)(B)(i) or section 2(c)(2)(C)(i)(I) of the Act is an eligible contract participant with respect to such agreement, contract, or transaction, regardless of whether each participant in such commodity pool is an eligible contract participant, if all of the following conditions are satisfied:

[...]

(iii) The commodity pool is formed and operated by a registered commodity pool operator or by a commodity pool operator who is exempt from registration as such pursuant to § 4.13(a)(3) **or § 4.13(a)(4)** of this chapter.

Alternatively, MFA requests that the Commission, at minimum, confirm in the adopting release that a pool operated by an RIA under Regulation 4.13(a)(4) is treated the same as one operated by a registered CPO for this purpose.

Suggested release text:

Eligible contract participant status. Paragraph (8) of the “eligible contract participant” definition in § 1.3 permits a commodity pool to qualify as an ECP for certain foreign exchange transactions without a look-through to the status of each participant only if, among other things, the pool is formed and operated by a registered commodity pool operator or by a commodity pool operator exempt from registration pursuant to § 4.13(a)(3).⁵ Commenters observed that, absent a conforming reference to § 4.13(a)(4), a pool whose operator elects the new exemption

⁵ See 17 C.F.R. § 1.3 (2026) (definition of “eligible contract participant”).

could lose access to the institutional foreign exchange market even though nothing about its assets, strategy, or participants has changed.

The Commission agrees that this result would be unintended and anomalous, particularly because § 4.13(a)(4), unlike § 4.13(a)(3), is available only to advisers registered with and examined by the SEC. The Commission is therefore amending paragraph (8)(iii) of the definition to add a reference to § 4.13(a)(4). The amendment does not alter the other conditions of the definition.

As with the conforming amendment to § 150.4(b)(1)(iii) discussed above, the Commission is amending § 1.3 notwithstanding that the definition was not among the provisions for which an amendment was set forth in the Proposal. The provision identifies the categories of CPO whose pools qualify for the referenced treatment by enumerating registered operators and operators exempt under a specified paragraph of § 4.13. In proposing to add a further exemption to § 4.13, the Commission placed in issue whether pools operated in reliance on the new paragraph should be treated in the same manner as the categories already enumerated. Commenters identified the omission, and the amendment is a logical outgrowth of the Proposal. The amendment is likewise technical and conforming: it adds a cross-reference so that the enumeration continues to capture the same universe of comprehensively regulated operators it was intended to reach, and it does not alter the asset, participant, or other substantive conditions of the definition, or the treatment of any pool whose operator does not claim the new exemption.

A-4. Retain a uniform QEP standard and accommodate ESCs (Proposed Regulation 4.13(a)(4)(iii))

MFA-recommended revision (redline):

(iii) The person reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(4) of this section), that:

(A) Each natural person participant (including such person's self-directed employee benefit plan, if any) is a natural person ~~who is listed in paragraph (i) of the definition of a "qualified eligible person," in~~ **as that term is defined in § 4.7(a)(6) of this part, or, in the case of pools operated pursuant to the exemption in section 6(b) of the Investment Company Act of 1940 and the rules thereunder, including § 270.6b-1 of this title, a natural person eligible to participate in such pool;** and

(B) Each non-natural person participant is a "qualified eligible person," as that term is defined in ~~§ 4.7(a)(6) of this part, or an "accredited investor," as that term is defined in § 230.501(a)(1)-(3), (a)(7), or (a)(8), of this title,~~ **as amended from time to time (for purposes of this paragraph (a)(4)(iii), references in § 4.7(a) to an "exempt pool" shall include a pool operated pursuant to paragraph (a)(4) of this section);**

Effect: A natural person who is a QEP under either paragraph (i) or (ii) of Regulation 4.7(a)(6) may participate, consistent with Letter 25-50; participants in an employees' securities company are accommodated; and the accredited-investor cross-reference tracks the SEC's definition as amended.

Suggested release text:

Eligible participants under § 4.13(a)(4)(iii). The Commission proposed to limit the natural person participants of an Eligible Pool to the categories of QEP described in § 4.7(a)(6)(i) — the status-based categories that do not depend on the Portfolio Requirement — while permitting non-natural persons to qualify as QEPs or as accredited investors within specified paragraphs of Securities Act Rule 501(a).⁶

Commenters recommended that the Commission instead permit any participant that is a QEP under § 4.7(a)(6), consistent with Staff Letter 25-50. Commenters observed that the proposed formulation would exclude a natural person who qualifies as a QEP by satisfying the Portfolio Requirement, notwithstanding that the Commission recently recalibrated that requirement, through notice and comment, as a measure of the sophistication appropriate for participation in pools receiving substantial relief under Part 4.⁷ Because eligibility is determined at the pool level, the presence of just one such investor could disqualify a pool that otherwise would be an Eligible Pool.

The exemption is premised on participation by sophisticated investors and on the operator's status as an SEC-registered investment adviser, not on the route by which a natural person satisfies § 4.7(a)(6). Accordingly, the Commission is adopting § 4.13(a)(4)(iii)(A) to permit any natural person who is a QEP under § 4.7(a)(6), conforming the final rule to the standard on which market participants have relied.⁸ The Commission is also adding a category for participants in employees' securities companies operating under section 6(b) of the Investment Company Act and the rules thereunder, including Rule 6b-1, so that an adviser is not required to retain CPO registration solely because it operates an internal employee vehicle. This approach also would further the Commission's longstanding goals of harmonization with the SEC. Commenters also observed that § 4.7 uses the term "exempt pool," which it defines as a pool operated pursuant to an effective claim for exemption under § 4.7, in the Portfolio Requirement, in the lead-in to the QEP definition, and in the provisions under which certain employees and other persons qualify as QEPs.⁹ Because § 4.13(a)(4)(iii) incorporates the QEP definition by cross-reference, the

⁶ CFTC, *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, 54,280 (Aug. 21, 2026) (the "**Proposal**"), available at <https://www.govinfo.gov/content/pkg/FR-2026-08-21/pdf/2026-17079.pdf>. (proposed Regulation 4.13(a)(4)(iii)); see 17 C.F.R. § 230.501(a) (2026).

⁷ See CFTC, *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 Funds of Funds; Technical Amendments*, 89 Fed. Reg. 78,793, 78,803–09 (Sept. 26, 2024) ("**2024 QEP Adopting Release**"), available at <https://www.govinfo.gov/content/pkg/FR-2024-09-26/pdf/2024-21682.pdf>.

⁸ See Letter 25-50, *supra* note 1, at 5–9.

⁹ See 17 C.F.R. § 4.7(a) (2026) (defining "exempt pool" and using the term in the Portfolio Requirement and the "qualified eligible person" definition).

Commission clarifies that, solely for purposes of determining whether a person is a QEP under § 4.7(a)(6) in connection with an investment in an Eligible Pool, references in § 4.7(a) to an "exempt pool" include a pool operated in reliance on § 4.13(a)(4). Absent this clarification, provisions of the QEP definition that turn on participation in an "exempt pool" would not function as intended for Eligible Pools, even though § 4.13(a)(4) itself requires that participants be QEPs. Finally, the Commission is revising the accredited-investor cross-reference in § 4.13(a)(4)(iii)(B) to refer to Rule 501(a) as amended from time to time, so that the provision remains aligned with the SEC's definition without further amendment.

Appendix B

Suggested Release Text for Requested Clarifications and Confirmations

The following language is respectfully offered for inclusion in the SUPPLEMENTARY INFORMATION accompanying the final rule. These items are interpretive and, unlike the recommendations in Appendix A, do not require amendments to rule text.

B-1. Delegated CPO arrangements

The Commission confirms that, where a commodity pool qualifies as an Eligible Pool and has a designated CPO that qualifies for and claims the exemption from registration in § 4.13(a)(4), another CPO of the same pool that has delegated its CPO responsibilities to that designated CPO is not required to register as a CPO. A delegating CPO, such as a general partner, managing member, trustee, director, or similar person, need not itself be registered with the SEC as an investment adviser, and need not separately satisfy the criteria described in CFTC Staff Letter 14-126,¹⁰ for this position to apply. Section 4m(1) registration is not necessary in these circumstances: the pool is operated in reliance on an exemption by a designated CPO that satisfies the conditions of § 4.13(a)(4), while the framework described in Letter 14-126 was developed to address delegation with respect to pools requiring CPO registration. Consistent with the Commission's statement in the Proposal, a separate no-action position of the kind described in Letter 14-126 is not necessary where the pool for which responsibility is delegated is an exempt pool.

B-2. Fund of funds

The Commission confirms that the operator of a fund of funds that relies on the no-action position in CFTC Staff Letter 12-38 remains eligible for that relief notwithstanding that the CPO of an investee fund claims the exemption in § 4.13(a)(4).¹¹ A fund-of-funds operator that determines its eligibility for an exemption by reference to the situations described in former Appendix A to Part 4 may continue to treat an investee fund operated by an SEC-registered investment adviser in reliance on § 4.13(a)(4) in the same manner as an investee fund operated by a registered CPO. The Commission does not intend the adoption of § 4.13(a)(4) to alter a fund-of-funds operator's exemption analysis, to require it to obtain position-level transparency it does not otherwise receive, or to cause it to be treated as operating a commodity pool on a look-through basis, solely by reason of an investee fund CPO's

¹⁰ CFTC Staff Letter No. 14-126, *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/csl/14-126/download>.

¹¹ CFTC Staff Letter No. 12-38 (Nov. 29, 2012), available at <https://www.cftc.gov/csl/12-38/download>; see also 17 C.F.R. pt. 4, app. A (2011), removed by CFTC, *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11,252, 11,253–54, 11,268–71 (Feb. 24, 2012) (rescinding Regulation 4.13(a)(4) and discussing regulatory visibility, systemic-risk monitoring, and coordination of CFTC and SEC data collection), available at <https://www.govinfo.gov/content/pkg/FR-2012-02-24/pdf/2012-3390.pdf>. The 2012 Adopting Release did not identify a statutory provision requiring rescission of Regulation 4.13(a)(4). See *id.* at 11,252–53.

election of the new exemption. Nor does the Commission intend the new exemption to discourage fund-of-funds investment in pools that participate in the commodity interest markets.

B-3. Related CTA relief

The final rule restores the reference to § 4.13(a)(4) in § 4.14(a)(8)(i)(D). The Commission confirms that the exemption in § 4.14(a)(8) is available, where its conditions are otherwise satisfied, to a CTA whose advice is directed solely to, and for the sole use of, one or more Eligible Pools and their operators. Consistent with the parallel adoption of the CPO and CTA exemptions in 2003, the availability of relief does not depend on whether the CTA and the pool's operator are the same legal entity, are affiliates, or are unaffiliated service providers.¹² The Commission may separately consider the appropriate treatment of SEC-registered advisers that provide commodity trading advice outside the commodity pool context, including to separately managed accounts, and does not by this rule foreclose relief for such advice in a future action.

B-4. Ancillary reporting and mixed registered-and-exempt operations

The Commission confirms that a person's retention of CPO registration — whether because it operates other pools, advises through affiliated entities, or is completing a staged transition — does not, by itself, cause a pool operated in reliance on § 4.13(a)(4) to be treated as a pool for which pool-level reporting is required. Consistent with the exempt status of each pool, § 4.27(b)(2) and the Form CPO-PQR instructions are applied on a pool-by-pool basis, and a registered CPO is not required to report pool-level information on Form CPO-PQR for a pool operated in reliance on § 4.13(a)(4).¹³ The same pool-by-pool approach applies to recordkeeping, notices, and other Part 4 obligations unless the final rule provides otherwise. This clarification implements the Proposal's reliance on Form PF, where Form PF is required, and avoids duplicative reporting; it does not reduce information the Commission has determined to be necessary.

B-5. Form PF condition

The Commission confirms that the Form PF condition in § 4.13(a)(4) requires only that an adviser file Form PF with respect to a pool where the adviser is otherwise required to do so under the Form PF instructions and the SEC's rules. If an adviser is not required to file Form PF, or a pool is not required to be reported on an adviser's Form PF, that circumstance does not make the adviser ineligible for the exemption with respect to that pool, and no voluntary filing is required or expected. The condition is satisfied by compliance with Form PF's own definitions, instructions, timing, and consolidation rules, including where master-feeder or parallel structures are reported on a consolidated basis.

¹² See 17 C.F.R. § 4.14(a)(8) (2026); 2003 Adopting Release, *supra* note 2, at 47,226–27 (adopting the related CPO and CTA exemptions together).

¹³ See 17 C.F.R. § 4.27(b)(2) (2026).

B-6. Rule 506(c) offerings

The Commission confirms that an offering conducted in compliance with Securities Act Rule 506(c) does not constitute marketing to the public for purposes of § 4.13(a)(4).¹⁴ Rule 506(c) permits general solicitation only where all purchasers are accredited investors and the issuer takes reasonable steps to verify that status, and § 4.13(a)(4) independently limits the participants that an Eligible Pool may admit. Accordingly, the accommodation does not broaden pool participation.

B-7. Transition

The Commission confirms that Staff Letters 25-50 and 26-06 remain available until the final rule is operative and claimants have had a reasonable period to complete any required filings.¹⁵ Existing and pending claims under Letter 25-50, pools that have deregistered or are in the process of doing so, associated CTA relief, and delegation arrangements remain protected during that period, and no person is required to register or re-register solely as a result of the timing of the final rule's effectiveness or of NFA system implementation. As described in Section ____ above, Letter 26-06 also remains available thereafter with respect to any delegation arrangement not fully addressed by the final rule. The Commission does not intend, by adopting this rule, to limit the ability of the Staff to issue interpretations, responses to frequently asked questions, or other guidance addressing implementation questions as they arise.

¹⁴ See 17 C.F.R. § 230.506(c) (2026), *available at* <https://www.ecfr.gov/current/title-17/chapter-II/part-230/section-230.506>.

¹⁵ See Letter 25-50, *supra* note 1; CFTC Staff Letter No. 26-06 (Feb. 26, 2026), *available at* <https://www.cftc.gov/csl/26-06/download>.