Letter from the Investment Company Institute

October 5, 2026

Mr. Christopher 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 Mr. Kirkpatrick:

The Investment Company Institute[1] appreciates the opportunity to comment on the notice of proposed rulemaking by the Commodity Futures Trading Commission (CFTC or "Commission") to amend its registration requirements for certain commodity pool operators (CPOs) and commodity trading advisors (CTAs) to reduce duplicative and overlapping regulation and reflect inflation (the "Proposal").[2] ICI and its members are supportive of the Proposal and have a strong interest in the CFTC and its staff rationalizing CFTC rules to reduce unnecessary burdens on market participants. ICI further urges the Commission to

[1] The Investment Company Institute (ICI) is the leading voice of the asset management industry serving individual investors. ICI represents mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $48.6 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional $11.5 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and separately managed accounts (SMAs) for individual investors. ICI associate members include service providers to funds, including financial communications firms, custodians and transfer agents, and CIT Trust companies. ICI has offices in Washington, DC, Brussels, and London.

[2] *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. 54264 (Aug. 21, 2026) *available at* https://www.govinfo.gov/content/pkg/FR-2026-08-21/pdf/2026-17079.pdf.

move forward and extend similar registration exemptions to registered investment companies ("registered funds").[3]

Background

The Proposal seeks to amend certain of the CFTC's Part 4 regulations, which provide rules relating to CPOs and CTAs, such that registered investment advisers (RIAs) regulated and overseen by the Securities and Exchange Commission (SEC) would qualify for an exemption from CPO registration with respect to their pools that are offered only to certain sophisticated investors deemed to be "qualified eligible persons" (QEPs), subject to certain conditions (the "Proposed RIA-QEP Exemption"). The Proposed RIA-QEP Exemption is largely based on former Regulation 4.13(a)(4), which was adopted in 2003 and subsequently rescinded in 2012 (the "Original QEP Exemption").[4] The Proposed RIA-QEP Exemption also would generally codify the no-action positions issued by the CFTC's Market Participants Division (MPD) in Letters 25-50 and 26-06,[5] with certain modifications. Additionally, the Proposal would make an inflation-based adjustment to the CPO registration exemption for small commodity pools (the "Small Pool Exemption") in an effort to maintain and modernize the CFTC's long-standing regulations with financial thresholds.[6]

---

[3] A proposed rulemaking to "rescind certain registration requirements for mutual funds required to be registered with the Commission" recently appeared on the CFTC's 2026 regulatory agenda. *See* Commodity Pool Operator Exemptions for Mutual Funds (RIN: 3038-AF60) *available at* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202510&RIN=3038-AF60.

[4] The Original QEP Exemption had the following conditions with respect to the related commodity pool: (i) interests in the pool were exempt from registration under the Securities Act of 1933 (the "Securities Act"), and such interests were offered and sold without marketing to the public in the US; and (ii) the CPO reasonably believed, at the time of investment, that each natural person participant is a QEP of the type listed in CFTC Regulation 4.7(a)(6)(i), and each non-natural person participant is a QEP or "accredited investor" as defined in the Securities Act. The Original QEP Exemption also permitted persons relying on it with respect to qualifying pools to do so without affecting their ability to claim exemption for additional pools investing in a *de minimis* amount of pool assets in commodity interests.

[5] CFTC Staff Letter No. 25-50 (Dec. 19, 2025) ("Letter 25-50"), *available at* https://www.cftc.gov/csl/25-50/download and CFTC Staff Letter 26-06 (Feb. 26, 2026) ("Letter 26-06"), *available at* https://www.cftc.gov/csl/26-06/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).

[6] The existing Small Pool Exemption provides an exemption from CPO registration for operators of "small pools," defined as pools with no more than 15 participants and total gross capital contributions across all pools the person

The Proposal represents a critical and timely step in the Commission's efforts to eliminate unnecessary and duplicative regulation while preserving robust investor protections; however, it does not address or eliminate similar unnecessary and duplicative regulation with respect to registered funds and their advisers. When the Commission originally adopted Regulation 4.13(a)(4) in 2003, it correctly recognized that exempting qualifying CPOs—including those already subject to comprehensive SEC regulation as RIAs—would eliminate needless regulatory overlap without compromising investor safeguards. These considerations are just as compelling today, if not more so. RIAs to both QEPs and registered funds remain subject to rigorous, comprehensive SEC oversight, and while the Proposed RIA-QEP Exemption is carefully tailored to privately offered pools whose participants satisfy clearly defined sophistication standards, the same rationale can be used to amend Regulation 4.5 to exclude certain registered funds and their advisers from CPO registration.

Additionally, codifying Letter 25-50 and Letter 26-06 is not merely helpful—it is essential to delivering the regulatory certainty that market participants need. Numerous advisers have already withdrawn their CPO registrations and overhauled their compliance programs in direct reliance on those letters; leaving that reliance resting on staff relief alone is an unnecessary and avoidable risk. ICI encourages the Commission to finalize the Proposed RIA-QEP Exemption and move forward with a similar notice of proposed rulemaking for registered funds and their advisers without delay. ICI also recommends certain technical modifications to the Proposed RIA-QEP Exemption described below.

The CFTC Should Amend Regulation 4.5 to Similarly Eliminate Unnecessary Regulatory Overlap for Registered Funds and Their Advisers

ICI urges the CFTC to move forward with a proposal to amend Regulation 4.5 to exclude RIAs to registered funds from treatment as CPOs, restoring the equal treatment they enjoyed immediately prior to the regulation's 2012 amendments. From the adoption of Regulation 4.5 in 1985 until the 2012 amendments, all entities subject to the regulation—registered funds, insurance company separate accounts, bank trust and custodial accounts, and retirement plans subject to ERISA fiduciary rules—were accorded equal treatment for nearly three decades. Yet following the amendments, registered funds alone were singled out and burdened with trading and marketing conditions in order to continue to rely on the Regulation 4.5 exclusion.

---

operates or intends to operate not exceeding $400,000, subject to certain exclusions for those contributions. The Proposal seeks to increase the total gross capital contribution to $800,000.

There is no evidence that the CFTC's overlapping regulation of registered funds and their advisers is necessary or has produced any discernible benefit to fund shareholders. Registered funds and their advisers already are extensively regulated under the federal securities laws, making this additional layer of CFTC oversight redundant. Amending Regulation 4.5 to exclude registered funds and their advisers from being treated as CPOs would meaningfully advance Chairman Selig's goal of implementing the minimal effective dose of regulation necessary. The SEC would continue to regulate all registered funds and their advisers comprehensively, while key CFTC rules would continue to govern registered funds whenever they trade in commodity interests.

For all of the above reasons, ICI strongly recommends that the CFTC advance a notice of proposed rulemaking similar to the Proposed RIA-QEP Exemption for registered funds and their advisers without delay.[7]

The CFTC Should Provide Existing QEP Pools the Opportunity to Convert to Reliance on Regulation 4.13(a)(4) Without Providing Participants with a Right to Redeem

Consistent with Letter 25-50, ICI recommends that the final rule afford existing QEP pools a clear opportunity to convert to reliance on Regulation 4.13(a)(4) without triggering a special right to redeem for participants. 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.[8] The Proposal rightly recognizes that applying this requirement to pools that have already relied on Letter 25-50 would create unnecessary and avoidable disruption, and it appropriately contemplates preserving their existing treatment.[9] The Commission should extend this same sensible treatment to other existing pools that transition to Regulation 4.13(a)(4).

The CFTC Should Treat a Pool Operated under Regulation 4.13(a)(4) as a QEP under Regulation 4.7(a)(6)(i)(P)

ICI also recommends that the Commission preserve the ability of registered CTAs to advise pools under the operational exemption in Regulation 4.7(c) by expanding the reference to “an

---

[7] *See supra*, note 3.

[8] *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.

[9] *See* Letter 25-50, *supra* note 5, at 6-7.

exempt pool" in Regulation 4.7(a)(6)(i)(P) to also include a pool operated under Regulation 4.13(a)(4). Regulation 4.7(a)(3) defines an "exempt pool" as "a pool that is operated pursuant to an effective claim for exemption under this section"—that is, under Regulation 4.7. Trading subsidiaries of commodity pools, and especially controlled foreign corporations (CFCs) of registered funds,[10] are often operated by their CPO, in its registered CPO capacity, under Regulation 4.7(b). As a result, the trading subsidiary or CFC is an "exempt pool," and its CTA—frequently a third party—can provide it with commodity interest trading advice under the CTA operational exemption in Regulation 4.7(c).

If the CPO of such a trading subsidiary or CFC instead elects to operate it under new Regulation 4.13(a)(4), the pool will no longer be an "exempt pool" as defined in Regulation 4.7(a)(3)—and it may not qualify as a QEP on any other basis. Because relatively few assets are needed to margin commodity interest trades (particularly exchange-traded commodity interests, for which the subsidiary or CFC need not qualify as an eligible contract participant), these pools may not otherwise qualify as QEPs or may not qualify for some period after the parent pool (registered fund) launches. The CTA exemption in Regulation 4.14(a)(8)(i)(D) does not solve this problem. Not every CTA advising a pool operated under Regulation 4.13(a)(4) will be able to satisfy that exemption's other conditions. More fundamentally, a CTA that has made a business decision to operate as a registered CTA under Regulation 4.7(c), regardless of the availability of CTA exemptions, should not be forced to fit within an exemption it has chosen not to rely upon.

Where such a subsidiary or CFC is neither an exempt pool nor otherwise a QEP, the CTA would be required to treat the pool as a "retail" client. The CTA would then have to deliver a disclosure document that fully complies with Part 4 of the CFTC's regulations ("Disclosure Document"), is reviewed and approved by the National Futures Association (NFA), and is updated on the schedule set forth in Regulation 4.36. This result serves no meaningful purpose: a Disclosure Document is designed for retail investors, and the subsidiary or CFC has no need for one because the only investor in the subsidiary or CFC is the parent pool.[11] By contrast, a CTA operating under Regulation 4.7(c) need only provide its QEP clients with the brief disclaimer prescribed by Regulation 4.7(c)(1)(i)—which typically appears in the client's

[10] Many registered funds use wholly owned subsidiaries to invest in commodity interests in order to satisfy one of the requirements of Subchapter M of the Internal Revenue Code, which provides for quasi-pass-through tax treatment of registered funds' income.

[11] Registered funds are generally considered QEPs pursuant to Regulation 4.7(a)(6)(ii)(A) provided it satisfies the "portfolio requirement" in Regulation 4.7(a)(5).

investment management agreement—and obtain the client's consent to treat its account as an "exempt account." Requiring a CTA to draft, periodically update, file with the NFA, respond to NFA comments on, and deliver a Disclosure Document would impose a significant burden in time and resources on affected CTAs. Alternatively, it would force an otherwise eligible CPO to forgo the Regulation 4.13(a)(4) exemption for the pool solely so that the pool can remain an "exempt pool." We believe this is an unintended consequence of the Proposal—and one the CFTC can easily avoid.

To address this issue, ICI recommends that the CFTC clarify that pools operated under Regulation 4.13(a)(4) may be considered "exempt pools" or otherwise initiate a rulemaking to amend Regulation 4.7(a)(6)(i)(P) to read as follows:

(P) "An exempt pool or pool operated under § 4.13(a)(4)."

* * * *

ICI appreciates the Commission's consideration of our comments and recommendations on the Proposal. If you have any questions or need additional information, please contact Tara R. Buckley, tara.buckley@ici.org, or Kimberly R. Thomasson, kthomasson@ici.org.

Sincerely,
/s/ Tara R. Buckley
Tara R. Buckley
Deputy General Counsel

/s/ Kimberly R. Thomasson
Kimberly R. Thomasson
Assistant General Counsel

cc: The Hon. Michael S. Selig, Chairman
DJ Hennes, Director, Market Participants Division