

Insights

BACK BY POPULAR DEMAND: CFTC STAFF ISSUES NO-ACTION LETTER REVIVING QEP EXEMPTION FOR CERTAIN PRIVATE FUND ADVISERS

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In December 2025, the Staff of the U.S. Commodities Futures Trading Commission (“CFTC”) issued a no-action letter (the “Letter”) that effectively reinstates the former Rule 4.13(a)(4) exemption from registration as commodity pool operators (CPOs) or commodity trading advisers (CTAs) for certain SEC-registered investment advisers with respect to commodity pools offered solely to qualified eligible persons (the “QEP Exemption”). The CFTC had rescinded the QEP Exemption in 2012.

Under the Letter, SEC-registered investment advisers who offer private funds solely to QEPs are exempt from registration as CPOs or CTAs, provided that they meet the following conditions:

- The investment adviser must be SEC-registered;
- Interests in the relevant funds are exempt from registration under the Securities Act of 1933, as amended, and are not marketed to the public (provided that the prohibition on marketing to the public does not apply to a pool that is also offered pursuant to Rule 506(c) under the Securities Act);
- The investment adviser reasonably believes each investor in the relevant funds meets the definition of a QEP;
- The investment adviser files Form PF for the relevant funds with the SEC, which Form is received by the CFTC; and
- The investment adviser emails a prescribed notice of reliance on the Letter to mpdnoaction@cftc.gov.

Eligible investment advisers will not have to register with the CFTC for new funds and may withdraw from CFTC registration for existing funds, provided they satisfy the aforementioned conditions. Although generally advisers registered with the CFTC as CPOs are required to offer fund investors a right of redemption in connection with CFTC deregistration, the Letter makes clear that deregistration in reliance on the Letter does not trigger redemption rights. The Letter also

provides that a CPO relying on the no-action position is not required to register, or may withdraw from registration, as a CTA, but only with respect to the specific pools for which the CPO is relying on the no-action position.

Because one of the conditions requires that the investment adviser files Form PF, we would note that the relief will not be available to smaller investment advisers that do not file Form PF.

The Letter notes that it is providing interim relief, applicable until the CFTC promulgates rules addressing reinstatement of the QEP Exemption or publicly determines not to promulgate such rules.

As a result of the Letter, it would be advisable for any SEC-registered investment adviser to private funds that is also registered with the CFTC to consider:

- whether it is eligible to withdraw its CFTC registration; and
- if so, whether it is in the interests of the adviser, the funds and investors to do so at this time.

BCLP attorneys are ready to assist investment advisers as they assess potential withdrawal from CFTC registration. Please contact any of the authors or your regular BCLP contact for guidance.

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MEET THE TEAM



Katherine Cooper

Partner, New York

katherine.cooper@bclplaw.com

+1 212 541 1141



Robert M. Crea

U.S. Head of Fund Formation,
San Francisco

robert.crea@bclplaw.com

+1 415 675 3413



Lauren A. Ford

Counsel, Charlotte

lauren.ford@bclplaw.com

+1 704 749 8930



Carol R. Schepp

Counsel, New York

carol.schepp@bclplaw.com

[+1 212 541 2004](tel:+12125412004)

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