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CFTC Provides CPO-Registration Relief for Certain Credit Risk Transfer SPVs

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On November 21, 2025 the CFTC's Market Participants Division ("MPD") issued Letter No. 25-37, a no-action letter providing CPO-registration relief to operators of certain credit risk transfer ("CRT") transactions structured through special purpose vehicles ("SPVs"). The letter responds to a request submitted by the Structured Finance Association ("SFA") on behalf of prudentially regulated financial institutions that use CRTs to manage balance-sheet risk by transferring the risk to sophisticated investors via SPVs. It states that, subject to specified conditions, MPD will not recommend enforcement against U.S.-regulated banks, their affiliates, or any other person involved in setting up or operating such SPVs for failure to register as commodity pool operators ("CPOs").

The question addressed by the letter has lingered since the Dodd–Frank Act expanded the Commodity Exchange Act's ("CEA) definition of "commodity pool" to include vehicles entering into swaps. A bank that manages risk with a CRT may do so by designating a reference pool of balance-sheet assets and establishing an SPV that issues credit-linked notes referencing exposure to those assets; sophisticated institutional investors purchase these notes and assume some of the assets' credit risk, but receive a stated rate of return and repayment of principal to the extent the reference pool performs as expected. In connection with this issuance, the SPV enters into a credit default swap ("CDS") or similar risk-sharing agreement with the bank that functions as the payment mechanism between the bank, the SPV, and the noteholders. Because the SPV is a vehicle entering into a swap, SFA's request letter notes that such SPVs could possibly be considered "commodity pools" under prior interpretations, and asks whether the operators may nonetheless rely on the exemption in CFTC Rule 4.13(a)(3).

CFTC Rule 4.13(a)(3) exempts the operator of a pool from CPO registration if four requirements are met: (i) interests are offered in exempt securities transactions; (ii) the pool satisfies specified *de minimis* limits on commodity-interest positions; (iii) participants are sophisticated investors; and (iv) the pool is not marketed as a vehicle for trading in commodity interests. SFA's request letter represents that, based on the planned structure of the CRT transactions, the SPVs would easily meet the first three requirements; the marketing prong requires more analysis. SFA explained that disclosures will describe the CDS in detail but will focus on the fact that the notes are debt securities with a stated rate of return that create exposure to the credit risk of a pool of reference assets, and will not describe the SPVs as vehicles for trading in swaps or other commodity interests. MPD concluded that, on those facts, it is appropriate to provide a no-action position permitting CRT operators to claim the Rule 4.13(a)(3) exemption.

The CPO-registration relief provided by Letter No. 25-37 is fact-specific. It is contingent on CRT SPVs meeting, among others, the following requirements:

- The operator of the CRT SPV must qualify for and rely on the CFTC Rule 4.13(a)(3) CPO-registration exemption.
- The operator must file a notice of exemption under Rule 4.13(a)(3) with the National Futures Association for each CRT SPV.
- If the operator becomes aware that the SPV no longer satisfies the requirements of Rule 4.13(a)(3), it must promptly notify MPD and the SPV's investors, and must not issue additional notes or enter additional CRTs until compliance is restored.
- For each CRT SPV, the only commodity-interest transaction may be the CDS necessary to effect the CRT.

- The SPV must not engage in active management of its assets or liabilities (but may increase existing assets or designate additional assets according to parameters set forth in the transaction documentation during defined "replenishment periods").
- The SPV's collateral must consist only of cash or highly liquid, cash-equivalent assets.
- The SPV must be established as a bankruptcy-remote entity with specified separateness, governance, and creditor-rights protections.
- The SPV must be used only to hedge credit risk associated with assets owned by the bank, and only to the extent needed to transfer that risk for prudential regulatory-capital purposes.

In light of the fact-specific nature of this relief and its status as a staff no-action position (not binding on the CFTC itself), banks considering CRT structures should treat Letter No. 25-37 as a carefully circumscribed safe harbor and ensure that contemplated CRT transactions align closely with its conditions. As long as these conditions are met, however, this letter should provide welcome clarity and relief to financial institutions and investors operating in this space. To the extent some of the facts or circumstances for a specific entity or transaction are not fully aligned with the four corners of the relief, however, the letter will not be eligible for reliance.