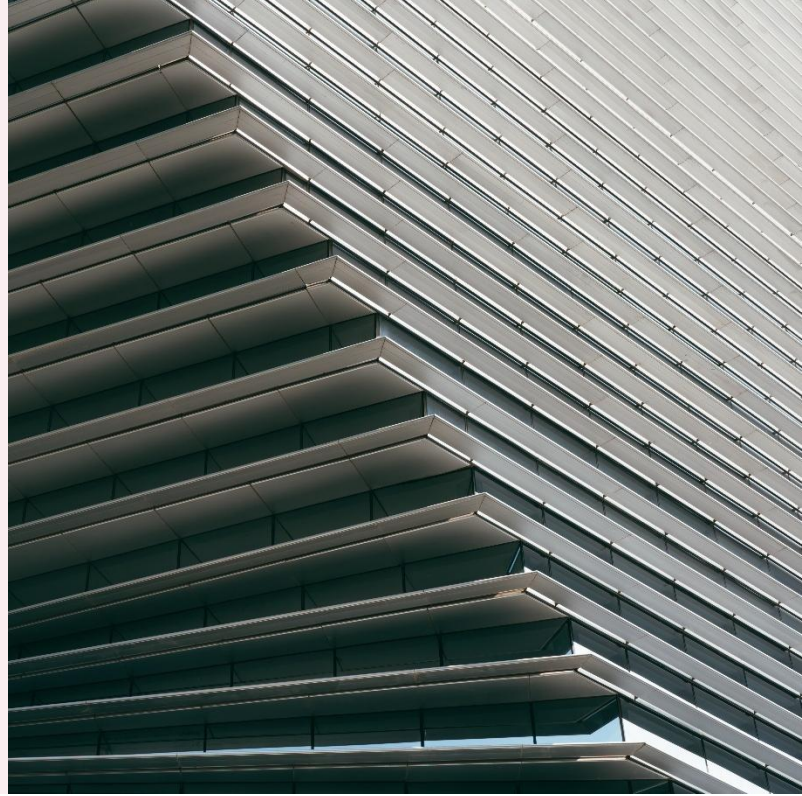


CFTC Provides No-Action Relief for Commodity Pool Operators in Connection with Certain Credit Risk Transfer Transactions

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On November 21, 2025, the CFTC issued a no-action letter that exempts certain market participants in credit risk transfer ("**CRT**") transactions from the Commodity Pool Operator ("**CPO**") registration requirements.¹

Background

The letter confirms the CFTC's position on a transaction structure that is increasingly relied upon in the U.S. CRT market, whereby a bank purchases credit protection on a portfolio of assets from a special purpose vehicle ("**SPV**") through a credit default swap ("**CDS**"), and the SPV finances its obligations under the CDS through an issuance of credit-linked notes ("**SPV-issued CLNs**"). SPV-issued CLNs are one way in which U.S. banks and bank holding companies can execute CRT transactions.

The two other prominent structures are bilateral transactions, where the bank executes a CDS directly with a protection seller ("**Direct CDS**"), and credit-linked notes directly issued by the bank ("**Bank-issued CLNs**"), both of which have some drawbacks. Direct CDS is less versatile than a security. It can be cumbersome for asset managers to allocate to multiple accounts, and many types of investment companies and other potential protection sellers are restricted in their ability to execute derivative transactions. Meanwhile, in September 2023, the Federal Reserve Board ("**Fed**") issued a series of FAQs stating that Bank-issued CLNs do not satisfy certain technical requirements for the bank to claim regulatory capital relief,² requiring banks to request

¹ CFTC No-Action Letter 25-37, Commodity Pool Operator Registration for Operators of Certain Credit Risk Transfer Transactions (Nov. 21, 2025) ("**NAL 25-37**").

² Specifically, Bank-issued CLNs do not satisfy (i) a definitional requirement for "synthetic securitizations" as they rely on a hypothetical, rather than an actual, guarantee or credit derivative to determine loss pay-outs, and (ii) an operational requirement that the credit risk mitigant must consist of collateral over which the bank has a security interest, rather than the outright cash proceeds of the Bank-

approval under the Fed's "reservation of authority" ("**ROA**"). ROA approval typically comes with conditions, including a cap on the aggregate notional amount of the exposures which can be subject to Bank-issued CLNs.

The combination of those factors has led to many banks and investors to prefer SPV-issued CLNs, which do not require ROA approval, give investors tradeable securities and have the added benefit of being flexible structures that can readily accommodate credit ratings and similar features. However, there have been questions about the regulatory treatment of SPVs used for CRT transactions. The CFTC's recent action, through NAL 25-37, has taken one of those questions off the table.

Need for CPO Relief

The question concerned the treatment of the SPV under the CFTC's commodity pool rules. In the context of CRT transactions, the commodity pool rules apply where the risk transfer instrument to which the bank and the SPV are parties is a transaction regulated by the CFTC, which is particularly the case where the underlying portfolio of reference obligations is static, or comprises consumer assets such as auto loans or residential mortgage loans. The commodity pool rules are analogous to the SEC's investment company rules, and, in particular, require the promoter or operator of an SPV that is party to a transaction regulated by the CFTC to register as a "commodity pool operator" ("**CPO**") unless an exemption is available.

Exemptions to CPO registration are limited, and the only viable option under the current rules would be CFTC Rule 4.13(a)(3). That rule provides that an operator of a commodity pool is exempt from registration if: (i) interests in the pool are exempt from registration under the Securities Act (e.g., a private placement under Section 4(a)(2) of the Securities Act or a Rule 144A offering), (ii) the commodity pool meets certain *de minimis* tests with respect to its commodity interest positions, (iii) the operator reasonably believes that each investor is a sophisticated investor and (iv) interests in the pool are not marketed as or in a vehicle for trading in commodity interests. The first three prongs are easily satisfied in most, if not all, U.S. CRT trades.

Prong (iv) (the "**Marketing Prong**"), however, has been the subject of some debate, because the CDS is the SPV's primary asset. The CFTC has historically treated ownership of regulated commodity instruments as an indicator that the pool is engaging in trading activity (even if there is only one regulated transaction). In 2014, the CFTC issued no-action relief (the "**2014 NALs**")³ to address this concern in CRT trades entered into by government sponsored entities such as Fannie Mae and Freddie Mac, and also by the insurance linked-securities market, both of which use a very similar transaction structure to SPV-issued CLNs. The 2014 NALs took the position that the risk transfer

issued CLNs. See Federal Reserve Board, [Frequently Asked Questions about Regulation Q, Questions #2-3](#) (Sep. 28, 2023) ("**Fed FAQs**").

³ See CFTC No-Action Letter 14-111, [Re: Request for No-Action Relief from Commodity Pool Operator Registration for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation](#) (Aug. 25, 2014) and CFTC No-Action Letter 14-152, [Re: Request for Interpretative or No-Action Relief from Commodity Pool Operator Registration for Operators of Insurance-Linked Securities Issuers](#) (Dec. 18, 2014).

transaction acts as a mere conduit by which the credit risk on the reference assets is transferred to investors, rather than being an investment exposure in its own right. While the fact pattern, and consequently the analysis, appeared to be the same for SPV-issued CLNs, the CFTC's view of the ability of U.S. operators of SPV-issued CLNs to rely on that analysis was unresolved.

Scope of NAL 25-37 relief

With the issuance of NAL 25-37, the CFTC has confirmed that banks, investors and intermediaries to certain SPV-issued CLNs in the U.S. will not be required to treat the SPV as a commodity pool requiring a registered CPO, provided the following conditions are satisfied:

1. The CRT trades are limited to those used to hedge the risk of assets owned by the bank, and that transfer credit risk to the extent necessary to create a sufficient hedge and qualify the bank for prudential regulators' capital relief;
2. The bank, the applicable SPV, and/or any affiliate or other person involved in the operations of the CRT transaction on the bank's behalf (the "**CRT CPO**") continually meets the requirements of the exemption found in CFTC Regulations 4.13(a)(3)(i)-(iii).

Should the CRT CPO become aware that the SPV is unable to meet any of the requirements found in CFTC Regulations 4.13(a)(3)(i)-(iii), it must promptly notify the CFTC's Market Participants Division in writing, providing copies of such notice to the bank and the noteholders pursuant to notice procedures in the CRT transaction documentation, and neither issue more notes nor engage in additional risk transfer arrangements until it is once again able to comply with the exemption in its entirety

3. The CRT CPO files a notice of eligibility for the exemption in CFTC Regulation 4.13(a)(3) from CPO registration with the National Futures Association (NFA), pursuant to CFTC Regulation 4.13(b) and meets the other terms of CFTC Regulation 4.13, with respect to each SPV, or each separate series or cell of such SPV, utilized in CRT transactions.
4. The only commodity interest transaction held by the SPV, or in the case of a multiuse SPV, by a single series or cell of the series limited liability company or protected cell company forming the SPV, will be the CDS necessary to accomplish the risk-sharing initiative between the bank and the SPV noteholders with respect to the referenced pool of bank assets; there will be no active management of assets and liabilities over the lifetime of the SPV; any marketing materials or disclosure documents circulated by or on behalf of the bank with respect to the CRT SPV must indicate that the CRT CPO is not registered with the CFTC as a CPO and is in compliance with the conditions of the no-action position provided in this letter.
5. The assets purchased with the proceeds of the sale of SPV notes at all times shall be in the form of cash, or cash-equivalent, "highly liquid" (as defined in CFTC Regulation 1.25(b)(1)) assets that have a maturity date on or before the termination of the CDS or are convertible to cash by the issuer/obligor of the collateral upon demand by the SPV. The payment

obligations of the SPV to the bank and to the noteholders must be secured by the collateral, and the security agreements must provide that obligations to the bank will be satisfied from the collateral, prior to any proceeds of the collateral being used to repay principal or interest to the noteholders. The collateral shall be maintained by the SPV such that it is available to be distributed in the form of cash or in kind to the bank at the time a payment becomes due under the CDS.

6. The collateral held by the SPV shall be subject to arrangements that protect the bank in the event the SPV becomes subject to an insolvency proceeding, to the extent possible under applicable law. This condition will be satisfied if the SPV satisfies the following criteria:
 - (a) The powers of the SPV shall be limited so that the SPV may not engage in business or activity other than as necessary or appropriate for serving as the SPV for the bank's CRT transaction;
 - (b) The SPV shall be restricted from incurring additional debt, except as appropriate for entering into additional CRT offerings in the case of a multiuse SPV, in which case the obligation to repay such additional debt shall be secured solely by additional collateral obtained in connection with such additional CRT note offering;
 - (c) The SPV shall be restricted from entering into any additional commodity interest transactions beyond the CDS necessary for the CRT transaction, except that in the case of a multi-use SPV, the SPV may enter into additional CDS transactions to the extent it is necessary or appropriate to effectuate additional CRT offerings on behalf of the bank;
 - (d) The SPV shall be governed by a board of directors (or other similar body) comprised of individuals independent of the bank;
 - (e) Corporate formalities shall be observed between the SPV, on the one hand, and the bank or the CRT CPO, on the other hand, such that each entity maintains its separate corporate status and identity, in compliance with CFTC Regulation 4.20;18
 - (f) As a condition to any agreement imposing obligations on the SPV, noteholders, the bank, and any other potential creditors of the SPV shall be required to waive any right to file an involuntary bankruptcy petition for the SPV or otherwise initiate an insolvency, liquidation, dissolution, or other action having substantially similar effect with respect to the SPV; and
 - (g) The SPV shall be required to maintain, at all times, an independent director whose vote is required for the filing of a voluntary petition for bankruptcy and shall be subject to separateness covenants, with respect to its transactions with affiliates, that are consistent with a bankruptcy-remote structure.

In practice, these conditions are generally consistent with the way in which SPVs are used in CRT transactions. The collateral requirements do not conflict with the requirements that apply to banks seeking to rely on financial collateral as a credit risk mitigant under the US capital framework. The governance requirements are consistent with the long-standing rating agency

criteria for securitization special-purpose issuers, which are generally seen as best-practice for SPVs used in CRT transactions. It is also helpful that the relief provided in NAL 25-37 extends to series SPV issuers (such as a Delaware series LLC) and allows for reliance on a cell-by-cell basis.

However, it is worth noting that the relief provided in NAL 25-37 is only available to entities that are subject to regulation by the U.S. prudential regulators, including U.S. branches of foreign banks, but not to foreign banks more generally.



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