

MEMO# 30975

December 12, 2017

CFTC Interpretive Guidance Regarding CTA Registration Requirements Resulting from MiFID II Research Provisions

[30975]

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TO: ICI Members

ICI Global Members

Derivatives Markets Advisory Committee

ICI Global Regulated Funds Committee

SEC Rules Committee SUBJECTS: International/Global

MiFID, EMIR, AIFMD, UCITS V RE: CFTC Interpretive Guidance Regarding CTA Registration Requirements Resulting from MiFID II Research Provisions

On December 11, 2017, the Commodity Futures Trading Commission's (CFTC) Division of Swap Dealer and Intermediary Oversight issued interpretative guidance^{[\[1\]](#)} providing that a futures commission merchant (FCM), swap dealer (SD), or introducing broker (IB) that receives separate compensation for commodity trading advice is not required to register as a commodity trading advisor (CTA), so long as the offered advice is "solely incidental" to the conduct of the FCM's or SD's business, or "solely in connection with" the operation of the IB's business. The guidance further provides that the analysis of whether the commodity trading advice is "solely incidental" to the FCM's or SD's conduct of its business, or "solely in connection with" the IB's business must be performed by the FCM, SD, or IB based upon the particular facts and circumstances of the relationship between the parties. Direct payment for commodity trading advice is one factor to consider; the receipt of separate compensation, however, is not dispositive on its own.

The interpretation was requested as a result of the European Union's Markets in Financial Instruments Directive II (MiFID II Directive), which will require certain investment managers to make separate payments for investment research services and execution services beginning January 3, 2018. The interpretation, however, is not limited to entities that are bound by the MiFID Directive, but rather extends to any separate payments for commodity trading advice received by FCMs, SDs, and IBs.

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endnotes

[1] The interpretive guidance is available at:
<http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-65.pdf>

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