

MEMO# 30123

August 9, 2016

CFTC Proposes Amendments to Rule for CPOs and CTAs Acting on Behalf of Non-U.S. Persons

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TO: REGISTERED FUND CPO ADVISORY COMMITTEE
ICI GLOBAL REGULATED FUNDS COMMITTEE No. 48-16 RE: CFTC PROPOSES AMENDMENTS TO RULE FOR CPOS AND CTAS ACTING ON BEHALF OF NON-U.S. PERSONS

The Commodity Futures Trading Commission (“CFTC” or “Commission”) recently proposed amendments to CFTC rule 3.10(c) to broaden the exemption from registration for a person located outside the United States acting as a commodity pool operator (“CPO”), commodity trading advisor (“CTA”), introducing broker (“IB”), or a futures commission merchant (“FCM”), in connection with commodity interest transactions solely on behalf of persons located outside the United States, or on behalf of certain international financial institutions (“IFIs”). [1] This proposal is relevant to, among others, CPOs and CTAs of non-U.S. funds. [2]

The CFTC has requested comments on the proposed amendments, described briefly below, by September 6, 2016. ICI is considering submitting a brief letter with other trade associations supporting the proposed amendments. Please contact me (sarah.bessin@ici.org) by Monday, August 15, if you disagree with this approach.

Rule 3.10(c)(3)(i) currently provides an exemption from registration as a CPO, CTA, or IB if a person and the transaction meet the following conditions: (i) the person is located outside the United States; (ii) the person acts only on behalf of persons located outside the United States; and (iii) the commodity interest transaction is submitted for clearing through a registered FCM. [3] The CFTC staff has granted no-action relief that permits CTOs, CTAs, and IBs, acting solely on behalf of persons located outside the United States, to rely on rule 3.10(c)(3)(i), even if they do not satisfy the clearing requirement because their activities involve swaps that are not subject to a Commission clearing requirement. [4] Similarly, the CFTC staff has granted no-action relief under rule 3.10(c)(3) from the requirement to register as an IB or CTA in connection with transactions for IFIs [5] with respect to swaps, even if the clearing requirement is not met. [6]

The proposed amendments would codify and expand this no-action relief by eliminating

from rule 3.10(c)(2)(i) and (3)(i) both the clearing requirement and references to DCMs and SEFs. The proposed amendments would also broaden the exemption to extend to activity that is either solely on behalf of foreign located persons or IFIs (both of which would be defined under the rule). [7]

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endnotes

[1] Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. 51824 (Aug. 5, 2016), available at <http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-18210a.pdf>.

[2] Including non-U.S. regulated funds publicly offered to investors, such as UCITS.

[3] Rule 3.10(c)(2)(i) provides a similar exemption from registration for a person acting as an FCM.

[4] See CFTC No-Action Letter 16-08 (Feb. 12, 2016).

[5] IFIs are those institutions defined in the Commission's previous rulemakings and staff no-action letters including, but not limited to, the International Monetary Fund, the International Bank for Reconstruction and Development, and the European Bank for Reconstruction and Development. See, e.g., Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant," 77 Fed. Reg. 30596, 30692 n.1180 (May 23, 2012).

[6] See CFTC No-Action Letter 15-37 (June 4, 2015).

[7] A "foreign located person" would be defined as a "person located outside the United States, its territories, or possessions . . ."