

MEMO# 29538

December 10, 2015

CFTC Staff Extends No-Action Relief from Certain Recordkeeping Requirements Under Regulation 1.35(a)

[29538]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 87-15
REGISTERED FUND CPO ADVISORY COMMITTEE RE: CFTC STAFF EXTENDS NO-ACTION RELIEF FROM CERTAIN RECORDKEEPING REQUIREMENTS UNDER REGULATION 1.35(a)

On December 8, the staff of the Commodity Futures Trading Commission (“CFTC”) extended the no-action relief it issued previously regarding certain of the recordkeeping obligations under CFTC Regulation 1.35(a). [\[1\]](#) The no-action relief is described briefly below.

In recognition of the CFTC’s ongoing consideration of proposed amendments to Regulation 1.35(a) under the Commodity Exchange Act (“Proposed Amendments”), [\[2\]](#) the relief extends the no-action relief the CFTC staff provided last year (“2014 No-Action Letter”). [\[3\]](#) Consistent with the Proposed Amendments, the 2014 No-Action Letter provided relief to (i) CTAs that are registered with the CFTC and are members of DCMs or SEFs from the requirement to record oral communications under Regulation 1.35(a); and (ii) market participants under Regulation 1.35(a) from the requirement that records of oral and written communications that lead to the execution of a transaction must be “identifiable and searchable by transaction.” As to the latter requirement, the 2014 No-Action Letter stated that the staff would not recommend enforcement action against a market participant on the grounds that its records of oral and written communications that lead to the execution of a transaction are not linked or otherwise identified with a particular transaction.

If not extended, the relief the CFTC granted in the 2014 No-Action Letter will expire on December 31, 2015. Accordingly, the December 8th letter extends the relief until the effective date of any final CFTC action with respect to the Proposed Amendments.

Sarah A. Bessin

endnotes

[1] CFTC Letter No. 15-65 (Dec. 8, 2015), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/15-65.pdf>.

[2] The Proposed Amendments would, among other things, expand and make permanent the temporary no-action relief that the CFTC staff has granted in prior no-action letters to commodity trading advisors (“CTAs”) that are members of a designated contract market (“DCM”) or swap execution facility (“SEF”) to exclude them from the requirement to record all oral communications with customers that lead to the execution of a transaction in a commodity interest. See ICI Memorandum No. 28659 (Jan. 13, 2015), available at https://www.ici.org/my_ici/memorandum/memo28659; ICI Memorandum No. 28525 (Nov. 13, 2014), available at http://www.ici.org/my_ici/memorandum/memo28525.

[3] CFTC Letter No. 14-147 (Dec. 16, 2014), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/14-147.pdf>. For a more detailed description of the 2014 No-Action Letter, please see ICI Memorandum No. 28583 (Dec. 16, 2014), available at https://www.ici.org/my_ici/memorandum/memo28583.