

**MEMO# 28583**

December 16, 2014

## **CFTC Staff Issues No-action Relief from Certain Recordkeeping Requirements under Regulation 1.35(a)**

[28583]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 87-14  
REGISTERED FUND CPO ADVISORY COMMITTEE RE: CFTC STAFF ISSUES NO-ACTION RELIEF FROM CERTAIN RECORDKEEPING REQUIREMENTS UNDER REGULATION 1.35(a)

The staff of the Commodity Futures Trading Commission (“CFTC”) has issued time-limited no-action relief regarding certain of the recordkeeping obligations under CFTC Regulation 1.35(a) that, among other things, extends and expands relief previously granted by the staff. [\[1\]](#) The no-action relief is described briefly below.

The CFTC recently proposed amendments to Regulation 1.35(a) under the Commodity Exchange Act which addresses recordkeeping requirements applicable to certain market participants, including a member of a designated contract market (“DCM”) or a swap execution facility (“SEF”), with respect to transactions relating to their business of dealing in commodity interests. [\[2\]](#) Among other things, the Proposed Amendments would expand and make permanent the temporary no-action relief that the CFTC staff has granted to commodity trading advisors (“CTAs”) that are members of a DCM or SEF to exclude them from the requirement to record all oral communications that lead to the execution of a transaction in a commodity interest. That no-action relief, however, will expire on December 31, 2014. [\[3\]](#)

The CFTC staff now has issued no-action relief that, consistent with the Proposed Amendments: (i) extends the current no-action relief granted under CFTC No-Action Letter 14-60 and expands it to cover all required oral communications under Regulation 1.35(a), not just those oral communications that lead to the execution of swap transactions; [\[4\]](#) and (ii) provides relief to 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.” Under the no-action relief, 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. The no-action relief expires on the earlier of: (i) December 31, 2015 or (ii) the effective date of any CFTC action

with respect to the Proposed Amendments.

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**endnotes**

[1] CFTC Letter No. 14-147 (December 16, 2014), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-147.pdf>.

[2] Records of Commodity Interest and Related Cash or Forward Transactions, available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/federalregister110314b.pdf> ("Proposed Amendments"). For a summary of the Proposed Amendments, please see ICI Memorandum No. 28525 (November 13, 2014), available at [http://www.ici.org/my\\_ici/memorandum/memo28525](http://www.ici.org/my_ici/memorandum/memo28525).

[3] See CFTC No-Action Letter No. 14-60 (Apr. 25, 2014), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-60.pdf> ("CFTC No-Action Letter No.14-60"). See also CFTC No-Action Letter No. 13-77 (Dec. 20, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-77.pdf> ("CFTC No-Action Letter 13-77").

[4] Thus, the no-action relief relieves CTAs from the requirement to record oral communications under Regulation 1.35(a) with respect to all commodity interest transactions covered by the rule, not just swaps, similar to the relief the CFTC staff granted under CFTC No-Action Letter 13-77, which expired on May 1, 2014.