

MEMO# 32849

October 20, 2020

CFTC Adopts Changes to Regulation 3.10(c): Exemption from Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools

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October 20, 2020 TO: ICI Global Members SUBJECTS: International/Global RE: CFTC Adopts Changes to Regulation 3.10(c): Exemption from Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools

On October 15, the Commodity Futures Trading Commission (CFTC) approved a final rule amending the registration exemptions available under CFTC Regulation 3.10(c) (collectively, 3.10 Exemption) for certain foreign persons, in connection with their US commodity transactions on behalf of persons located outside the United States.[\[1\]](#) Earlier in the year, ICI Global, the Alternative Investment Management Association Limited (AIMA), the Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA AMG), the Investment Adviser Association (IAA), and the Managed Funds Association (MFA) (collectively, the Associations) jointly submitted comments to the CFTC on its proposed rulemaking.[\[2\]](#) The Associations' letter expressed strong support for the proposed amendments to the 3.10 Exemption, noting that the proposed changes would bring welcome certainty and efficiencies to non-US asset managers that wish to participate in the US commodity markets on behalf of non-US investors in a manner that adds vibrancy to those markets, while fully protecting the interests of US investors and appropriately allocating the Commission's scarce resources. It also included some recommended adjustments to the proposed rule.

The key amendments to the final rule are briefly described below.

1. The amendments include a clarification that non-US commodity pool operators (CPOs), whether CFTC registered or not, acting for non-US pools may claim 3.10 Exemption status for those pools on a pool-specific basis, even if such CPOs operate pools pursuant to other available registration exemptions. The CFTC accepted the Associations' recommendation not to limit the "stacking provisions" to Regulations 4.13(a)(3) and 4.5 or explicitly enumerate those provisions.

2. The amendments provide a safe harbor under which non-US CPOs operating offshore pools can rely upon 3.10 Exemption status for such pools, provided they meet certain operating and offering-related conditions.
3. The amendments allow US affiliates of non-US CPOs to contribute initial capital to offshore pools without affecting the ability of those pools to claim 3.10 Exemption status. In response to feedback, including the Associations' letter, the CFTC removed the requirement that the affiliate be a "controlling affiliate," provided that "control" as articulated by the affiliate definition in CFTC regulation 4.7(a)(1)(i), is present. The CFTC did not accept the Associations' proposal to adjust the amendment to permit US affiliate contributions that serve the same commercial support purpose as initial capital but may be necessary later in the offshore pool's lifecycle.

The final rule will be effective 60 days after publication in the Federal Register.

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

endnotes

[1] The press release and link to the voting draft approved by the CFTC is available at: <https://www.cftc.gov/PressRoom/PressReleases/8287-20#:~:text=The%20Commission%20unanimously%20approved%20a%20final%20rule%20that%20amends%20CFTC,persons%20located%20outside%20the%20United>.

[2] See Exemption from Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools, available at: <https://www.cftc.gov/media/3911/votingdraft052820/download> and ICI Global Memorandum No. 32687 for a summary of the proposal and the joint trades letter, available at: <https://www.iciglobal.org/iciglobal/pubs/memos/ci.memo32687.global>.