



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street NW, Washington, DC 20581  
Telephone: (202) 418-5000

Division of Swap Dealer and  
Intermediary Oversight

Eileen T. Flaherty  
Director

CFTC Letter No. 16-08  
No-Action  
February 12, 2016  
Division of Swap Dealer and Intermediary Oversight

**Re: Regulation 3.10(c)(3)(i): No-Action Position for Failure to Register as an Introducing Broker, Commodity Trading Advisor, or Commodity Pool Operator Solely with Respect to Activities Involving Swaps Not Subject to a Clearing Requirement**

Ladies and Gentlemen:

This letter is in response to a request for a no-action position received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) of the Commodity Futures Trading Commission (“**Commission**”) from the Asset Management Group of the Securities Industry and Financial Markets Association (“**SIFMA AMG**”) and the Investment Adviser Association (“**IAA**”) on behalf of their members that are commodity pool operators (“**CPOs**”) and commodity trading advisors (“**CTAs**”) located outside of the United States (collectively, the “**Requestors**”). Specifically, the Requestors asked for relief from the registration requirements in the Commodity Exchange Act (“**CEA**”) <sup>1</sup> for certain intermediaries located outside of the United States (“**Foreign Intermediaries**”) who would be exempt from registration under Commission Regulation 3.10(c)(3)(i) <sup>2</sup> but for the condition in such regulation that commodity interest <sup>3</sup> transactions be submitted for clearing through a futures commission merchant (“**FCM**”) registered with the Commission.

### **I. Regulatory Background**

As a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, swaps became subject to regulation under the CEA. Accordingly, the Commission promulgated conforming amendments to its regulations to include swaps in the definition of “commodity

---

<sup>1</sup> 7 U.S.C. § 1 et al.

<sup>2</sup> Codified at 17 C.F.R. § 3.10(c)(3)(i).

<sup>3</sup> The term, “commodity interest,” means any futures contract, swap, or other transaction subject to Commission regulation under the CEA. 17 C.F.R. § 1.3(yy).

interest” in Regulation 1.3(yy). Thus, swaps, whether executed bilaterally or on or subject to the rules of a designated contract market (“**DCM**”) or swap execution facility (“**SEF**”) are included in the types of transactions that Foreign Intermediaries must analyze in order to determine whether they may be exempt from registration with the Commission under Regulation 3.10(c)(3)(i).<sup>4</sup>

With respect to activities involving commodity interest transactions executed bilaterally or made on or subject to the rules of any DCM or SEF, Regulation 3.10(c)(3)(i) provides an exemption from registration as a CPO, CTA, or introducing broker (“**IB**”) if a person<sup>5</sup> and the transaction meet the following conditions:

1. The person is located outside the United States;
2. The person acts only on behalf of persons located outside the United States; and
3. The commodity interest transaction is submitted for clearing through a registered FCM.

## **II. Summary of Request for No-Action Position**

The Requestors represent that the Foreign Intermediaries seek to engage in activities involving swaps that are not subject to a Commission clearing requirement. The swaps would be executed bilaterally or on or subject to the rules of a SEF. In connection with such activities, the Requestors represent that the Foreign Intermediaries would meet all conditions of the registration exemption in Regulation 3.10(c)(3)(i) except for the condition that the swaps be submitted for clearing through a registered FCM.

The Requestors believe that this condition is not reasonable given that: (i) the CEA and Commission regulations do not require that all swaps be cleared; and (ii) some swaps are not yet accepted for clearing by any derivatives clearing organization. Thus, the Requestors ask that the Division take a no-action position that would permit Foreign Intermediaries to rely on the exemption from registration in 3.10(c)(3)(i) if their activities involve swaps that are not subject to a Commission clearing requirement and such swaps are not submitted for clearing through a registered FCM.

## **III. Division No-Action Position**

The Division believes that Regulation 3.10(c)(3)(i) was not intended to impose an independent clearing requirement on commodity interest transactions involving Foreign Intermediaries that the CEA and Commission regulations do not otherwise require to be cleared. Thus, the Division believes that a no-action position is warranted. Accordingly, the Division

---

<sup>4</sup> See Adaptation of Regulations To Incorporate Swaps, 77 Fed. Reg. 66,288, 66,295 (Nov. 2, 2012) (discussing the modification of the term, “commodity interest,” to include swaps); Registration of Intermediaries, 77 Fed. Reg. 51,898, 51,899 (Aug. 28, 2012) (discussing the conforming amendments to Regulation 3.10(c)).

<sup>5</sup> Under §1a(38) of the CEA and Regulation 1.3(u), the term “person” imports the plural and singular, and includes individuals, associations, partnerships, corporations and trusts. 7 U.S.C. § 1a(38); 17 C.F.R. § 1.3(u).

will not recommend an enforcement action against a person located outside the United States, its territories or possessions engaged in the activity of an IB, as defined in Commission Regulation 1.3(mm); a CTA, as defined in Commission Regulation 1.3(bb); or a CPO, as defined in Commission Regulation 1.3(nn), in connection with swaps not subject to a Commission clearing requirement<sup>6</sup> only on behalf of persons located outside the United States, its territories or possessions, for failure to register in such capacity.

This no-action relief shall expire on the later of the effective date or compliance date of any final rule amending Regulation 3.10(c)(3)(i).

This letter, and the positions taken herein, represent the views of the Division and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in the Regulations issued thereunder. This letter does not create or confer any rights or obligations on any person or persons subject to compliance with the CEA that bind the Commission or any of its other offices or division. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, at its discretion.

Should you have any questions, please contact me at (202) 418-5326, Katherine Driscoll, Associate Chief Counsel, at (202) 418-5544, or Gregory Scopino, Special Counsel, at (202) 418-5175.

Very truly yours,

Eileen T. Flaherty  
Director  
Division of Swap Dealer and Intermediary Oversight

Cc: Regina Thoele, Compliance  
National Futures Association, Chicago

Jamila A. Piracci, OTC Derivatives  
National Futures Association, New York

---

<sup>6</sup> As set forth in Part 50 of the Commission's Regulations.