



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Matthew B. Kulkin  
Director

CFTC Letter No. 19-10 No-Action April 02, 2019

### **Re: Time-Limited No-Action Position on Introducing Broker Registration – Commodity Exchange Act Section 4d(g)**

Ladies and Gentlemen:

This letter is in response to a request, dated February 12, 2019, for a no-action position received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) of the Commodity Futures Trading Commission (“**Commission**”) from “A”, a global financial institution organized under the laws of “Country 1”. “A” is seeking temporary relief from registration as an introducing broker (“**IB**”)<sup>1</sup> for activities to be undertaken by its London Branch (“B”) as it realigns its operations consistent with forthcoming regulatory changes in the United Kingdom (“**UK**”). Specifically, the relief would permit “B” to accept futures and options orders from U.S. persons for execution on U.S. designated contract markets (“**DCMs**”) to be cleared through its affiliated FCM located in the U.S., notwithstanding that “A” has not registered with the Commission as an IB pursuant to section 4d(g) of the Commodity Exchange Act (“**CEA**”).<sup>2</sup>

#### **I. Regulatory Background**

Pursuant to section 4d(g) of the CEA, it is unlawful for any person to act in the capacity of an IB, unless such person is registered as an IB with the Commission. The CEA and Commission regulation 1.3 defines an IB as any person that, for compensation or profit, is engaged in soliciting or accepting orders for the purchase or sale of, among other financial products, any commodity for future delivery.<sup>3</sup>

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<sup>1</sup> For the definition of introducing broker, see Section 1a(31) of the Commodity Exchange Act (“**CEA**”) and Commission regulation 1.3. 7 U.S.C. 1a(31) and 17 CFR 1.3. The Commission’s regulations are found in Chapter 17 of the Code of Federal Regulations, 17 CFR Part 1 *et seq.*

<sup>2</sup> 7 U.S.C. § 1 *et. seq.*

<sup>3</sup> See Section 1a(31) of the CEA, 7 U.S.C. 1a(31), and 17 CFR 1.3.

However, Commission regulation 3.10(c)(4) provides an exception from registration as an IB. Such regulation provides that a person located outside of the U.S. that is exempt from registration as a futures commission merchant (“FCM”) in accordance with Commission regulation 30.10 is not required to register as an IB if such person:

- (1) Is affiliated with a registered FCM;
- (2) Introduces only institutional customers on a fully-disclosed basis to a registered FCM for the purpose of trading on a DCM;
- (3) Has an affiliated FCM that files with the National Futures Association an acknowledgment that the affiliated FCM will be jointly and severally liable for any violations of the CEA or the Commission’s regulations committed by such person in connection with those introducing activities; and
- (4) Does not solicit, or handle customer funds of, any person located in the U.S. for trading on a DCM.<sup>4</sup>

Commission regulation 30.10, upon petition, permits the Commission to exempt any person from any requirement of the Part 30 regulations. Commission regulation 30.10 allows persons located and doing business outside the U.S., who are subject to a comparable regulatory framework in the country in which they are located, to seek an exemption from the application of certain of the Part 30 regulations, provided such exemption would not be contrary to the public interest. If the Commission grants an exemption, persons outside the U.S. may solicit or accept orders directly from U.S. customers for foreign futures or options transactions and accept customer money or other property to secure such transactions without registering as an FCM.

## **II. Summary of Request for Relief**

Based upon the representations of “A”, DSIO understands the facts to be as follows. “C”, an existing wholly-owned subsidiary of “A” located in the UK and regulated by the UK Financial Conduct Authority (the “UK FCA”), previously accepted foreign futures and options orders from U.S. customers to be executed on foreign boards of trade. “C” is exempt from registration with the Commission as an FCM pursuant to an order issued by the Commission to the UK FCA pursuant to Commission regulation 30.10.<sup>5</sup> This

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<sup>4</sup> Commission regulation 3.10(c)(4), 17 CFR 3.10(c)(4).

<sup>5</sup> See 68 Fed. Reg. 58583 (Oct. 10, 2003). In the absence of the exemption, “C” would be required to register as an FCM pursuant to Commission regulation 30.4(a) by virtue of accepting any money,

relief was based, in part, on compliance by “C” with all UK FCA rules. “B” would also be subject to similar supervision by the UK FCA, particularly regarding its conduct of business. Pursuant to Commission regulation 3.10(c)(4), “C”, as an FCM exempt from registration pursuant to Commission regulation 30.10, may not solicit or handle customer funds of U.S. customers for orders to be executed on a DCM, but may introduce existing U.S. customers to its affiliated U.S. FCM for trading futures on a DCM without having to register separately as an IB, provided that certain conditions are met.

However, effective March 4, 2019, “A” merged “C” with “D”, a “Country 2” entity regulated by the “Regulator 2”. As a result, “C” dissolved and all futures and options business was transferred either to “D”, “B”, or “E”, a registered FCM affiliated with “B”. Following the merger of “C” into “D”, UK-based employees that supported the business previously conducted through “C” and who are also responsible for futures trading activities remained in London as employees of “B”.

Although “B” also will be subject to certain UK FCA rules, “B” does not qualify for an exemption from FCM registration pursuant to the Commission’s 30.10 order to the UK FCA because “B” also is subject to certain “Country 1” regulatory requirements. As a result, “B” separately may not qualify from the exception to IB registration set forth in Commission regulation 3.10(c)(4).

On December 18, 2018, “A” submitted a petition to the Commission under Commission regulation 30.10 (the “**30.10 Petition**”) requesting an exemption from registration as an FCM for the foreign futures and options activities to be undertaken by its home office in “Country 1” as regulated by the “Regulator 1”. Should the Commission issue an order granting “A” an exemption from FCM registration for these activities, “A” may seek to confirm an exemption from FCM registration for the foreign futures and options activities of “B” consistent with an order issued by the Commission regarding foreign brokers subject to bifurcated relief.<sup>6</sup> “B” would then be permitted under Commission

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securities or property from US customers to margin, guarantee or secure any foreign futures or options trades or contracts.

<sup>6</sup> See Performance of Certain Functions by NFA With Respect to Those Foreign Firms Acting in the Capacity of a FCM, 70 Fed. Reg. 2621 (Jan. 14, 2005) (the “**2005 NFA Order**”). Pursuant to the 2005 NFA Order, the Commission authorized the National Futures Association (“**NFA**”) to confirm exemptive relief to certain firms acting in the capacity of an FCM that are subject to regulation by a foreign futures authority in a particular jurisdiction to which an order under Commission Rule 30.10 has been issued, notwithstanding that such firms may be subject, in part, to joint regulation by a second regulator in another jurisdiction. The Commission previously authorized NFA to confirm exemptive relief solely to firms subject to regulation by a single foreign futures authority. Here, as a “Country 1” entity, if “A’s” 30.10 Petition were granted, “Regulator 1” would be “A’s” home country regulator and the UK FCA would be the host country regulator of “B”.

regulation 3.10(c)(4) to engage in limited U.S. futures and options transactions without having to register separately as an IB.

Based on representations from “A”, DSIO understands that “B” will not accept U.S. customer money, security, or property in connection with any futures or options transactions to be executed on a DCM, and will comply with all the regulatory conditions set forth in Commission regulation 3.10(c)(4). In particular, “B” will accept orders only from institutional customers and clear all DCM transactions through “E”. Further, “B” will not otherwise engage in any activity relating to the offer and sale of foreign futures and options that would require IB registration pursuant to Commission regulation 30.4(b). In connection with the merger, “A” has represented to DSIO that if the requested relief is not granted there could be detrimental impacts to “B” and its institutional customers trading on both US markets and foreign markets.<sup>7</sup>

Given the foregoing, “A” has requested temporary no-action relief from registration as an IB for activities to be undertaken by “B” to provide “B” with sufficient time for the Commission’s review of “A’s” 30.10 Petition.

## II. DSIO No-Action Position

Based on the foregoing facts as represented by “A”, DSIO believes that a time limited no-action position is warranted while the Commission reviews the outstanding 30.10 Petition from “A”. Accordingly, DSIO will not recommend that the Commission commence an enforcement action against “A” for the failure of “B” to be registered with the Commission as an IB until **May 4, 2020** or such earlier time that “B” confirms an exemption from FCM registration pursuant to Commission regulation 30.10 and thus qualifies for the IB registration exception pursuant to Commission regulation 3.10(c)(4), subject to the following conditions:

1. “B” remains authorized and subject to supervision by the UK FCA, and complies with the applicable provisions of the UK FCA’s Conduct of Business Sourcebook;
2. “A” continues to be authorized by and subject to supervision by “Regulator 1”;
3. “B” remains affiliated with “E”, as that term is defined in Commission regulation 3.10(c)(4)(v);

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<sup>7</sup> “A” has represented that, from the time that the merger was completed through the time pending the Commission’s review of its 30.10 Petition, U.S. customers of “C” will be serviced by “E” or “D” in compliance with Part 30 .

4. “B” introduces on a fully-disclosed basis to “E” only institutional customers, as defined by Commission regulation 1.3, for the purpose of trading on a DCM;
5. “B” does not solicit, and does not handle the customer funds of, any person located in the U.S. for trading on a DCM; and
6. “E” files with the NFA an acknowledgement it will be jointly and severally liable for any violations of the CEA or the Commission’s regulations by “B” in connection with its introducing activities in accordance with Commission regulation 3.10(c)(4)(iii).

The DSIO no-action position set forth in this letter will terminate immediately should “A” withdraw its pending 30.10 Petition or otherwise fail to make a good faith effort to provide in response to a request from DSIO any additional materials or information in support of its petition. This letter, and the position taken herein, represents the views of DSIO only, and do not necessarily represent the position or view 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 Commission regulations. Further, this letter, and the positions taken herein, is based upon the representations made to DSIO. Any different, changed, or omitted material facts or circumstances might render this no-action position void.

Questions concerning the relief in this letter may be directed to Mathew B. Kulkin, Director, DSIO at (202) 418-5213 or [mkulkin@cftc.gov](mailto:mkulkin@cftc.gov); Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949 or [ffisanich@cftc.gov](mailto:ffisanich@cftc.gov), Andrew Chapin, Associate Chief Counsel, DSIO at (202) 418-5465 or [achapin@cftc.gov](mailto:achapin@cftc.gov), or Scott Lee, Special Counsel, DSIO at (202) 418-5090 or [slee@cftc.gov](mailto:slee@cftc.gov).

Very truly yours,

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