



September 6, 2016

Via Website: <http://comments.cftc.gov>

Mr. Christopher J. Kirkpatrick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: Amendment to Commission Regulation 3.10(c): Exemption from  
Registration for Certain Foreign Persons - RIN No. 3028-AC26**

Dear Mr. Kirkpatrick:

The IAA, SIFMA AMG, and ICI Global (collectively, the “Associations”)<sup>1</sup> appreciate the opportunity to comment on the recently proposed amendments to Regulation 3.10(c)(3)(i) issued by the Commodity Futures Trading Commission (“CFTC” or “Commission”) under the Commodity Exchange Act.<sup>2</sup> We strongly support the proposed amendments, which would simplify the CFTC registration exemption for foreign CPOs and foreign CTAs.

The Proposal codifies no-action relief issued by the CFTC staff earlier this year that granted relief from the registration requirements for foreign CPOs or foreign CTAs that would be exempt under Regulation 3.10(c)(3)(i), except for the condition in the rule that the commodity interest involved be submitted for clearing through a registered FCM.<sup>3</sup> The Proposal would

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<sup>1</sup> The Investment Adviser Association (“IAA”), the Asset Management Group of the Securities Industry and Financial Markets Association (“SIFMA AMG”), and ICI Global are three leading associations of financial services firms that represent, among their members, entities that are registered as commodity pool operators (“CPOs”) or commodity trading advisors (“CTAs”). More information about each of the Associations can be found at the end of this letter.

<sup>2</sup> *Amendment to Commission Regulation 3.10(c): Exemption from Registration for Certain Foreign Persons*, RIN 3038-AC26, 81 Fed. Reg. 51824 (Aug. 5, 2016) (“Proposal”), available at <http://www.cftc.gov/idx/groups/public/@lrfederalregister/documents/file/2016-18210a.pdf>. The amendments to 3.10(c)(2)(i) affect foreign futures commission merchants (“FCMs”), and the amendments to 3.10(c)(3)(i) also affect foreign introducing brokers (“IBs”).

<sup>3</sup> Proposal at 51825. CFTC Letter No. 16-08 to SIFMA AMG and IAA regarding Regulation 3.10(c)(3)(i) (Feb. 12, 2016), available at <http://www.cftc.gov/idx/groups/public/@lrfederalregister/documents/letter/16-08.pdf>; Letter from Timothy Cameron, Head of Asset Management and Laura Martin, Associate General Counsel, SIFMA AMG and Robert Grohowski, General Counsel and Monique Botkin, Associate General Counsel, IAA, to CFTC re: Request for Relief – Commodity Exchange Act Section 4k and Commission Regulation 3.10(c)(3)(i) (Feb. 2, 2016) (“SIFMA AMG and IAA Letter”), available at [https://www.investmentadviser.org/eweb/docs/Publications\\_News/Comments\\_and\\_Statements/Current\\_Comments\\_Statements/160202cmnt.pdf](https://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/160202cmnt.pdf). The Proposal also would result in the rule’s registration relief being available with respect to transactions in all commodity interests, not just swaps, as under the 2016 no-action letter, and would

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eliminate the condition that the commodity interest transaction involved be submitted for clearing through a registered FCM, as long as the foreign CPO or foreign CTA, in connection with a commodity interest transaction, only acts on behalf of (1) foreign located persons (i.e., persons located outside the U.S.), or (2) IFIs, without regard to whether such persons or institutions clear such commodity interest transaction.<sup>4</sup>

We very much support and appreciate the Commission's codification of the existing no-action relief to eliminate the clearing condition in the exemption. We believe the proposal is consistent with the underlying purposes, goals, and intent of Regulation 3.10(c)(3)(i) as evident from the history of amendments to that provision, the clearing requirements under Section 2(h) of the CEA, and Commission policy.<sup>5</sup> As the Commission states, the proposed amendments would enhance protection of market participants "by providing greater legal certainty . . ." as well as "greater efficiency, competitiveness and financial integrity of financial markets; price discovery; and sound risk management practices by ensuring greater depth in swaps markets accessed by U.S. persons."<sup>6</sup> The Commission appropriately recognizes that where a foreign CPO's or foreign CTA's "customers are located outside the U.S., the jurisdiction where the customer is located has the preeminent interest in protecting such customers."<sup>7</sup>

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codify no-action relief issued by the Commission staff in 2015 regarding "international financial institutions" ("IFIs"). See CFTC Letter No. 15-37 (June 4, 2015), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/15-37.pdf>. Letter No. 15-37 provides no-action relief under Regulation 3.10(c)(3) from registration for foreign IBs and CTAs where they were acting for customers that are IFIs that may have U.S. headquarters or a significant presence in the U.S. but do not have the attributes of domestic persons (i.e., institutions such as the IMF and others). The Proposal would codify the term "IFIs" used in Letter 15-37 and other CFTC rulemakings.

<sup>4</sup> Proposed Regulation 3.10(c)(3)(i). In addition to eliminating the clearing requirement, the Proposal would eliminate references to any designated contract market ("DCM") and swap execution facility ("SEF") from Regulation 3.10(c)(2)(i) and 3.10(c)(3)(i). Proposal at 51826.

<sup>5</sup> See SIFMA AMG and IAA Letter, *supra* note 3.

<sup>6</sup> Proposal at 51827.

<sup>7</sup> Proposal at 51826.

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For all of these reasons, we support adoption of the amendments as proposed. If you have any questions regarding our comments or wish to discuss further, please do not hesitate to contact any of the undersigned.

Respectfully submitted,

/s/

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cc: Honorable Timothy G. Massad, Chairman  
Honorable Sharon Y. Bowen, Commissioner  
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#### About the Associations

The IAA is a not-for-profit association that exclusively represents the interests of SEC-registered investment adviser firms, with a membership that consists of approximately 600 firms that collectively manage nearly \$20 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. Many IAA members are also registered as CPOs or CTAs. For more information, visit [www.investmentadviser.org](http://www.investmentadviser.org).

SIFMA AMG's members represent U.S. asset management firms whose combined global assets under management exceed \$34 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.

The international arm of the Investment Company Institute, ICI Global serves a fund membership that includes regulated funds publicly offered to investors in jurisdictions worldwide, with combined assets of US\$19.9 trillion. ICI Global seeks to advance the common interests and promote public understanding of regulated investment funds, their managers, and investors. Its policy agenda focuses on issues of significance to funds in the areas of financial stability, cross-border regulation, market structure, and pension provision. ICI Global has offices in London, Hong Kong, and Washington, DC.