

CLIENT MEMORANDUM

CFTC Proposes Amendments to Foreign Intermediary Exemptions

August 5, 2016

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The Commodity Futures Trading Commission recently proposed amendments to rules that generally exempt certain non-U.S. parties from registration with the CFTC in connection with certain transactions entered into solely on behalf of non-U.S. persons. The proposed amendments would broaden the exemptions to cover uncleared transactions and expand the scope of persons for whom transactions may be effected.¹ The amendments would generally codify no-action relief previously provided by CFTC staff.

CFTC Rules 3.10(c)(2) and 3.10(c)(3) generally exempt persons located outside the United States from the requirement to register with the CFTC as an introducing broker, commodity trading advisor, commodity pool operator or futures commission merchant (collectively, “foreign intermediaries”) when acting only on behalf of persons also located outside the United States if the transactions in question are submitted for clearing through a registered futures commission merchant.

The CFTC proposes to amend Rules 3.10(c)(2) and 3.10(c)(3) to permit foreign intermediaries to rely on the exemptions with respect to (i) transactions involving uncleared swaps and (ii) transactions entered into on behalf of certain enumerated international financial institutions, including some that have a significant presence in the U.S. In the rule

¹ Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. 51824 (Aug. 5, 2016).

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proposal, the CFTC made clear that such amendments would not excuse any person from compliance with any other provision of the Commodity Exchange Act or any rule promulgated thereunder, including, without limitation, any requirement that transactions be cleared.

Comments on the proposed amendments are due by September 6, 2016.

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