

Derivatives Alert

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CFTC Staff Provides Foreign Intermediary Registration Relief for Foreign Customers' Uncleared Swaps

The Division of Swap Dealer and Intermediary Oversight of the Commodity Futures Trading Commission (CFTC) has issued no-action relief from the requirement to register as an introducing broker (IB), commodity trading advisor (CTA) and commodity pool operator (CPO) for foreign persons that intermediate trades only on behalf of foreign customers.¹ Current CFTC Regulation 3.10(c)(3)(i) provides relief from the registration requirement for persons meeting the definition of an IB, CTA and/or CPO with respect to intermediating "commodity interest"² transactions if (1) the person is located outside the United States; (2) the person acts only on behalf of customers located outside the United States; and (3) the commodity interest transaction is submitted for clearing through a registered futures commission merchant.³ The no-action relief eliminates the third requirement with respect to swaps that are not subject to the CFTC's clearing mandate.⁴ No filing is required to rely on this no-action relief.

¹ See CFTC Letter No. 16-08 (February 12, 2016), available at <http://www.cftc.gov/idc/groups/public/@llettergeneral/documents/letter/16-08.pdf>.

² Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFTC amended the definition of "commodity interest" to include swaps. See 17 C.F.R. § 1.3(yy).

³ Persons exempt from registration as an IB, CTA and/or CPO pursuant to this exemption remain subject to the anti-fraud provisions of Commodity Exchange Act Section 4o. See 17 C.F.R. § 3.10(c)(3)(ii).

⁴ See 17 C.F.R. Part 50.