

## Redline Appendix

Below is a redline presentation of changes to Rule 3.10(c) (additions are underlined while deletions are crossed out):

### **§ 3.10 Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants, and leverage transaction merchants.**

\*      \*      \*      \*      \*

(c) Exemption from registration for certain persons.

(1) Definitions. For purposes of this paragraph (c), the following terms shall have the meanings set forth below.

(i) Covered transaction means a commodity interest transaction, as defined in § 1.3 of this chapter, executed bilaterally or made on or subject to the rules of any designated contract market or registered swap execution facility.

(ii) Foreign located person means a person located outside the United States, its territories, or possessions.

(iii) International financial institution means the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, the European Stability Mechanism, the North American Development Bank, those institutions defined as “international financial institutions” in 22 U.S.C. 262r(c)(2), those institutions defined as “multilateral development banks” in Article 1(5(a)) of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC Derivative Transactions, Central Counterparties and Trade Repositories, their agencies and pension plans, and any other similar international

organizations, and their agencies and pension plans.

(2) Exempt futures commission merchants.

(i) ~~(4)~~ Proprietary accounts. A person trading solely for proprietary accounts, as defined in § 1.3 of this chapter, is not required to register as a futures commission merchant: ~~Provided:~~ provided, that

such person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder.

(ii) ~~(2)~~ Foreign located persons. (A) A foreign located person engaging in the activity of a ~~(i) A foreign broker~~ futures commission merchant, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register ~~as a futures commission merchant if it submits any commodity interest transactions executed bilaterally, on or subject to the rules of a designated contract market, or on or subject to the rules of a swap execution facility, for clearing on an omnibus basis through a futures commission merchant registered in accordance with section 4d of the Act.~~ in such capacity; provided, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(iiB) A ~~foreign broker~~ foreign located person acting in accordance with ~~paragraph (e)(2)(i)~~ paragraph (c)(2)(ii)(A) of this section is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered

futures commission merchant or any person required to be so registered.

(3) ~~(3)~~ Exempt introducing brokers.

(i) Foreign located persons.

(A) ~~(i)~~ A ~~person~~ foreign located ~~person~~ outside the United States, its territories or possessions engaged in the activity of: ~~An~~ an introducing broker, as defined in ~~§ 1.3 of this chapter; a commodity trading advisor, as defined in § 1.3 of this chapter; or a commodity pool operator, as defined in § 1.3~~ §1.3 of this chapter, in connection with any ~~commodity interest~~ covered transaction ~~executed bilaterally or made on or subject to the rules of any designated contract market or swap execution facility~~ only on behalf of ~~persons~~ foreign located ~~persons or international financial institutions~~ outside the United States, its territories or possessions, is not required to register in such capacity; provided, that if any such ~~commodity interest~~ covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(B) ~~(ii)~~ A ~~person~~ foreign located person acting in accordance with paragraph (c)(3)(i)(A) of this section ~~remains subject to section 4d of the Act, but otherwise~~ is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any ~~person~~ registered ~~in such capacity~~; introducing broker or any person required to be so registered.

(ii) ~~(4)~~ Exempt foreign brokers. (A) A foreign located person ~~located outside the United~~

~~States, its territories or possessions~~ that is exempt from registration as a futures commission merchant in accordance with § 30.10 of this chapter is not required to register as an introducing broker in accordance with section 4d of the Act if:

(1) ~~(i)~~ Such ~~a~~ person is affiliated with a futures commission merchant registered in accordance with section 4d of the Act;

(2) ~~(ii)~~ Such ~~a~~ person introduces, on a fully-disclosed basis in accordance with § 1.57 of this chapter, any institutional customer, as defined in § 1.3 of this chapter, to a registered futures commission merchant for the purpose of trading on a designated contract market;

(3) ~~(iii)~~ Such person's affiliated futures commission merchant has filed with the National Futures Association (Attn: Vice President, Compliance) an acknowledgement that the affiliated futures commission merchant will be jointly and severally liable for any violations of the Act or the Commission's regulations committed by such person in connection with those introducing activities, whether or not the affiliated futures commission merchant submits for clearing any trades resulting from those introducing activities; and

(4) ~~(iv)~~ Such person does not solicit any person located in the United States, its territories or possessions for trading on a designated contract market, nor does such person handle the customer funds of any person located in the United States, its territories or possessions for the purpose of trading on any designated contract market.

~~(v)~~B) For the purposes of this paragraph, a person shall be affiliated with a futures commission merchant if such a person: ~~(A)~~ owns 50 percent or more of the futures commission merchant, ~~(B)~~ is owned 50 percent or more by the futures commission merchant.

~~;~~ or is owned 50 percent or more by a third person person that also owns 50 percent or more of the futures commission merchant.

(4) Exempt commodity trading advisors.

(i) A foreign located person engaging in the activity of a commodity trading advisor, as defined in § 1.3 of this chapter, in connection with any covered transaction only on behalf of foreign located persons or international financial institutions is not required to register in such capacity; provided, that if any such covered transaction is required or intended to be cleared on a registered derivatives clearing organization and the foreign located person or international financial institution that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) A foreign located person acting in accordance with paragraph (c)(4)(i) of this section remains subject to section 4o of the Act, but otherwise is not required to comply with those provisions of the Act and of the rules, regulations and orders thereunder applicable solely to any registered commodity trading advisor or any person required to be so registered.

(5) Exempt commodity pool operators.

(i) A foreign located person engaged in the activity of a commodity pool operator, as defined in § 1.3 of this chapter, in connection with any covered transaction is not required to register in such capacity, when such covered transactions are executed on behalf of a commodity pool, the participants of which are all foreign located persons or international financial institutions; provided, that if any such covered transaction is required or intended to

be cleared

on a registered derivatives clearing organization and the commodity pool that is party to the covered transaction is not a clearing member of such registered derivatives clearing organization, the covered transaction is submitted for clearing through a futures commission merchant registered in accordance with section 4d of the Act.

(ii) With respect to paragraph (c)(5)(i), initial capital contributed to a commodity pool by an affiliate, as defined by § 4.7(a)(1)(i) of this chapter, of the pool's commodity pool operator shall not be considered for purposes of determining whether such commodity pool operator is executing commodity interest transactions on behalf of a commodity pool, the participants of which are all foreign located persons; provided, that:

(A) The affiliate is not a natural person;

(B) The affiliate and its principals are not barred or suspended from participating in commodity interest markets in the United States, its territories or possessions;  
and

(C) Interests in the affiliate are not marketed as providing access to trading in commodity interest markets in the United States, its territories or possessions.

(iii) A commodity pool operated by a foreign located person shall be considered to be operated in accordance with the terms of paragraph (c)(5)(i), if:

(A) The commodity pool is organized and operated outside of the United States, its territories or possessions;

(B) The commodity pool's offering materials and any underwriting or distribution agreements include clear, written prohibitions on the commodity pool's offering to participants located in the United States and on U.S. ownership of the commodity pool's

participation units;

(C) The commodity pool's constitutional documents and offering materials:

(1) are reasonably designed to preclude persons located in the United States from participating therein; and

(2) include mechanisms reasonably designed to enable its operator to exclude any persons located in the United States that attempt to participate in the offshore pool, notwithstanding those prohibitions;

(D) The commodity pool operator exclusively uses non-U.S. intermediaries for the distribution of participations in the commodity pool;

(E) The commodity pool operator uses reasonable investor due diligence methods at the time of sale to preclude persons located in the United States from participating in the commodity pool; and

(F) The commodity pool's participation units are directed and distributed to participants outside the United States, including by means of listing and trading such units on secondary markets organized and operated outside of the United States, and in which the commodity pool operator has reasonably determined participation by persons located in the United States is unlikely.

(iv) Utilizing the relief under paragraph (c)(5)(i) of this section for a qualifying commodity pool will not affect the ability of a person to register with the Commission as a commodity pool operator, or to qualify for, rely upon, or claim other relief from regulation as such by the Commission, with respect to the operation of commodity pools or trading vehicles not otherwise eligible for the relief offered in this section.

(v) A person acting in accordance with paragraph (c)(5)(i) of this section remains

subject to section 4o of the Act, but otherwise is not required to comply with those provisions of the Act

and of the rules, regulations and orders thereunder applicable solely to any person registered in such capacity, or any person required to be so registered.

(6) Associated persons of swap dealers. ~~(5)~~ In determining whether a person is a swap dealer, the activities of a registered swap dealer with respect to which such person is an associated person shall not be considered.