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By Commission Website

May 10, 2011

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

Re: RIN 3038-AD50: Registration of Intermediaries, 76 Fed.Reg. 12888 (March 9, 2011)

Dear Mr. Stawick:

The Futures Industry Association (“FIA”)¹ is pleased to submit this letter in response to the Commodity Futures Trading Commission’s (“Commission’s”) notice of proposed rulemaking with respect to Part 3 of the Commission’s rules governing the registration of intermediaries. The proposed rules would require the registration of swap dealers and major swap participants and grant appropriate exemptions therefrom consistent with current Commission policies. Except as described below, FIA generally supports the proposed rules.

Commission Rule 3.10(c)(2) and (3)

Commission Rule 3.10(c)(2) currently provides that a foreign broker² that solicits and accepts orders in commodity interest transactions for execution on a designated contract market (“DCM”) or derivatives transaction execution facility is exempt from registration as an FCM, *provided*, such orders are submitted for clearing on an omnibus basis through a registered FCM. The Commission proposes to amend this rule

¹ FIA is the leading trade organization for the futures, options and OTC cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world’s largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearing organizations, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

FIA’s core constituency consists of futures commission merchants (FCMs”), and the primary focus of the association is the global use of exchanges, trading systems and clearinghouses for derivatives transactions. FIA’s regular members, which act as the majority clearing members of the U.S. exchanges, handle more than 90 percent of the customer funds held for trading on U.S. futures exchanges.

² Commission Rule 1.3(xx) defines a foreign broker is defined to mean “any person located outside the United States, its territories or possessions who is engaged in soliciting or in accepting orders only from persons located outside the United States, its territories or possessions for the purchase or sale of any commodity interest transaction on or subject to the rules of any designated contract market . . . and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom.”

to remove the reference to derivatives transaction execution facility and add a reference to swap execution facility (“SEF”).³ Thus, a foreign broker that submits commodity interest transactions executed on a SEF for clearing through an omnibus account maintained with a registered FCM would be exempt from registration as an FCM.⁴

FIA supports the proposed amendment. Further, we believe this exemption should be available to foreign brokers and other foreign intermediaries that execute swap transactions on a bilateral basis and voluntarily submit such transactions for clearing on a derivatives clearing organization (“DCO”). We anticipate that bilateral swap transactions will be an important part of the swaps market for some time, as DCMs and SEFs gradually expand the swaps that they will list for trading. An exemption from registration as an FCM for foreign brokers that submit bilateral swaps for clearing through an omnibus account will facilitate and encourage the development of cleared swaps markets.⁵

Commission Rule 3.10(c)(5)

The Commission has proposed to add a new section 3.10(c)(5) to exempt from registration as a swap dealer or major swap participant any person that is an associated person of a swap dealer or major swap participant as defined in section 1a(4) of the Act, as amended by section 721 of the Dodd-Frank Act.⁶ The Commission asks whether this exemption is necessary to clarify the registration responsibilities of employees of swap dealers and major swap participants, since the Commission has not yet determined whether to require the registration of associated persons of these registrants.⁷ As the Commission notes in its discussion of the proposed amendments to Rule 3.12(h)(1)(i), it is improbable that an individual, rather than an entity, will be registered as a swap dealer or major swap participant. Therefore, an exemption from registration for a natural person may seem unnecessary. Nonetheless, we support the regulatory certainty that this exemption would provide.

Commission Rule 3.12(h)(1)(i)

Commission Rule 3.12(h)(1)(i) currently exempts from registration as an associated person any individual that is registered with the Commission as a futures commission merchant, retail foreign exchange dealer, floor broker, or as an introducing broker. The Commission is proposing to amend this rule to provide a similar exemption from registration as an associated person to any individual that registered as a swap dealer or major swap participant. As indicated above, we agree that it is unlikely that an individual, rather

³ Because the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) repealed the provisions of the Commodity Exchange Act (“Act”) authorizing derivatives transaction execution facilities, the Commission has proposed to remove references to these facilities wherever they appear in Part 3. FIA agrees and notes that the definition of a foreign broker also refers to derivatives transaction execution facilities.

⁴ The Commission has also proposed to amend Commission Rule 3.10(c)(3) to provide similar relief to foreign persons acting in the capacity of an introducing broker. FIA supports this amendment.

⁵ We note that the Commission has recently proposed to amend the definition of “commodity interest” as defined in Commission Rule 1.3(yy) to include swaps. “Amendments to Adapt CFTC Regulations to the Dodd-Frank Act,” approved for publication in the Federal Register on April 27, 2011. We support this proposed amendment.

⁶ Section 721 defines an associated person of a swap dealer or major swap participant as any person who is associated with a swap dealer or major swap participant as a partner, officer, employee, or agent (or any person occupying a similar status or performing similar functions), in any capacity that involves (i) the solicitation or acceptance of swaps; or (ii) the supervision of any person or persons so engaged.

⁷ 76 Fed.Reg. 12888, 12889 (March 9, 2011).

than an entity, will be registered as a swap dealer or major swap participant. As above, we support the regulatory certainty that the proposed exemption would provide.

As noted immediately above, the Commission has not yet determined whether to require the registration of associated persons of swap dealers and major swap participants. We understand this is in substantial part because the Dodd-Frank Act did not amend section 4k of the Act to require the registration of such persons.⁸ We agree that the Commission lacks the statutory authority to require the registration of associated persons of swap dealers and major swap participants and applaud the Commission for not seeking to extend its jurisdiction beyond that granted in the Dodd-Frank Act.

In this regard, however, it appears incongruous to provide that associated persons of swap dealers who negotiate swap transactions with customers are not required to be registered with the Commission, while the associated persons of FCMs who may subsequently participate in submitting such transactions for clearing are required to be registered. The negotiation of a swap transaction and the submission of that transaction for clearing are two parts of the same transaction. The associated person of the FCM may be acting in more than a clerical capacity, but the individual will not be involved in soliciting the transaction, the terms of which will already have been agreed. We, therefore, ask the Commission to confirm that associated persons of FCMs, whose activities are limited to participating in the submission for clearing of swaps transactions entered into between a swap dealer and its customer will not be required to be registered with the Commission as an FCM.⁹

Commission Rule 3.31(a)(5)

Commission Rule 3.31 requires a registrant to keep current the information contained in the Form 7-R which is filed in connection with an application for registration. In the event of certain changes, *e.g.*, a change in the registrant's legal name, or a change in its form of organization, the rule provides that a registrant may be required to withdraw its current registration and file a new application for registration. The rule then exempts a registrant from the requirement that it withdraw its registration and file a new application for registration in these circumstances subject to certain conditions set out in the rule.

Notwithstanding these safe harbors, the Commission proposes to require the re-registration of a registrant if the registrant changes its legal name or its form of the organization *and* adds a new principal. The Commission asks whether the additional transparency provided by the proposed amendments may be beneficial and necessary to fulfill the Commission's mandate to protect customers and whether the existing safe harbors from re-registration should be maintained.

FIA firmly supports the current safe harbors and opposes the proposed amendment as unnecessary. If a registrant is not required to withdraw its registration and file a new application if it separately changes its name, changes its form of organization *or* adds a new principal, we see no reason why a registrant would be required to withdraw its registration if it make these changes concurrently. We are not aware that the current safe harbors have been a cause of regulatory concern and, therefore, see no reason to alter them.

⁸ Nonetheless, consistent with the registration of associated persons, swap dealers and major swap participants are required to take reasonable steps to assure that associated persons are not subject to a statutory disqualification. Dodd-Frank Act, § 731; Act, § 4s(b)(6).

⁹ As the markets for cleared swaps mature, FIA recommends that the Commission, in coordination with the National Futures Association, consider whether the registration and other requirements currently applicable to associated persons of FCMs should be revised, or continue to apply, to associated persons who limit their activities to eligible contract participants.

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As the Commission noted, implementation of the Dodd-Frank Act will result in a number of new applicants. Such applicants would not appear to be able to take advantage of the safe harbors currently set out in Rule 3.31. However, it is equally likely that affiliated companies within a holding company, one or more of which may already be registered with the Commission, may merge or otherwise reorganize in order to conduct their futures and regulated swaps businesses more efficiently. Since such mergers or reorganizations would be expected to result in the addition of new principals and, perhaps, a change in the name of the registrant, the provisions of proposed Rule 3.31(a)(5) would be implicated. These transactions would appear to be exactly the types of transactions for which a safe harbor is most appropriate.

Conclusion

FIA appreciates having the opportunity to comment on these proposed rules. If the Commission has any questions concerning the matters discussed in this letter, please contact Barbara Wierzynski, FIA's Executive Vice President and General Counsel, at 202.466.5460.

Sincerely,



John M. Damgard
President

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner

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