

Electronic Mail and Overnight Mail

Christopher Kirkpatrick
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Re: CFTC Proposal to Amend Chief Compliance Officer Duties and Annual Report Requirements (Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments, 82 Fed. Reg. 21330 (May 8, 2017))

Dear Mr. Kirkpatrick:

This letter is submitted on behalf of a number of our large internationally-headquartered swap dealer clients with U.S. operations (the **Financial Institutions**) regarding the Commodity Futures Trading Commission's (CFTC) proposed amendments to its rules concerning the duties of Chief Compliance Officers (CCO) of futures commission merchants, swap dealers, and major swap participants (swap dealers and major swap participants, collectively, the **Regulated Entities**) and certain requirements for preparing and furnishing CCO annual reports (the **Amendments**).^{1,2}

A key driver for the CFTC in proposing the Amendments is the CFTC's desire to harmonize its CCO rules with similar rules³ of the Securities and Exchange Commission (the **SEC**) applicable to security-based swap dealers and security-based major swap participants, and to therefore "increase efficiencies, reduce regulatory burden, particularly for dual registrants, and further clarify the scope of CCO duties."⁴ These objectives are in line with the CFTC's recently-announced Project KISS, which is "an agency-wide review of [the CFTC's] rules, regulations, and practices to make them simpler, less burdensome, and less costly."⁵

¹ See Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments, 82 Fed. Reg. 21330 (May 8, 2017).

² 17 CFR 3.3.

³ 17 CFR 240.15Fk-1.

⁴ 82 Fed. Reg. 21331 (May 8, 2017).

⁵ 82 Fed. Reg. 21494 (May 9, 2017) (as amended by 82 Fed. Reg. 23765 (May 24, 2017)).

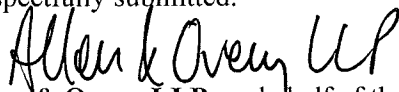
The Financial Institutions support Project KISS and efforts to simplify the regulatory landscape for industry participants; however, they are mindful that a limited number of the Amendments⁶ impact rules which are currently the subject of substituted compliance determinations for Regulated Entities, though not, we believe, in a manner that should be expected to materially impact the CFTC's previous analysis of relevant non-U.S. requirements and the CFTC's resulting comparability determinations.⁷ Given the CFTC's intent behind the Amendments (*i.e.* to reduce the regulatory burden on Regulated Entities subject to multiple rule-sets through rule harmonization)⁸ and the similar policy objectives behind Project KISS, the Financial Institutions would not expect the Amendments to inadvertently alter their ability to continue to rely on substituted compliance.

Having reviewed the Amendments, the Financial Institutions continue to believe that the rules of their home countries are comparable to 17 CFR 3.3, as revised by the Amendments, in purpose, effect, and comprehensiveness. If and when the final Amendments are issued, the Financial Institutions would therefore appreciate if the CFTC could clarify in the commentary thereto that Regulated Entities may continue to benefit from the substituted compliance determinations that pertain to 17 CFR 3.3 without having to reapply for new determinations.

The Financial Institutions believe that changes to the CFTC rules that simplify regulatory requirements for U.S. Regulated Entities who will be dually-regulated by the CFTC and SEC should not be undertaken at the expense of progress made to-date with respect to substituted compliance for non-U.S. Regulated Entities. Any other outcome would result in uncertainty and additional costs for non-U.S. Regulated Entities, which the Financial Institutions believe would outweigh the benefits conveyed on the market from requiring Regulated Entities to comply with 17 CFR 3.3, as revised by the Amendments.

We would be pleased to discuss further with the CFTC. Please do not hesitate to contact David Lucking, (212) 756-1157, at Allen and Overy LLP if you should have any questions with regard to the foregoing.

Respectfully submitted:



Allen & Overy LLP, on behalf of the Financial Institutions

⁶ These include the amendments to:

- 17 CFR 3.3(d)(3);
- 17 CFR 3.3(d)(4); and
- 17 CFR 3.3(f)(1).

⁷ *E.g.* 78 FR 78923 (December 27, 2013) (*European Union: Certain Entity-Level Requirements*); 78 FR 78864 (December 27, 2013) (*Australia: Certain Entity-Level Requirements*); 78 FR 78910 (December 27, 2013) (*Japan: Certain Entity-Level Requirements*).

⁸ *See* 82 Fed. Reg. 21331 (May 8, 2017) (Section 1).