



July 7, 2017

Mr. Christopher J. Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: **RIN 3038—SE56: Chief Compliance Officer Duties and Annual Report Requirements for Futures Commission Merchants, Swap Dealers, and Major Swap Participants; Amendments**

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) proposed amendments to the Commission's regulations regarding certain chief compliance officer (CCO) duties and annual report requirements for futures commission merchants (FCMs), swap dealers (SDs), and major swap participants. NFA fully supports the Commission's proposed changes and offers the following comments on these proposals.

NFA appreciates the Commission's efforts to clarify the scope of a CCO's duties and the CCO Annual Report's content and submission requirements. As noted in the proposing release, the Commission's initiatives will increase efficiencies and reduce regulatory burdens for FCMs and SDs while ensuring their compliance with the Commodity Exchange Act (CEA) and CFTC regulations.

The Commission's efforts to further harmonize its regulations with the corresponding requirements that the Securities and Exchange Commission (SEC) has adopted for security-based SDs and major security-based swap participants (SBS Entities) are especially important since the SEC has estimated that a large number of SBS Entities who register with the SEC when its requirements become effective will also be CFTC Registrants.¹ The Commission's approach to conform its CCO rule and Annual Report requirements to SEC requirements should produce regulatory benefits

¹ See *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants; Final Rule*, 80 FR 48964 (Aug. 14, 2015) at 48990.



Christopher J. Kirkpatrick

July 7, 2017

for dually-registered entities without diminishing the intended protections of the CEA and CFTC regulations.

We urge the Commission, however, to carefully consider industry comments on possible further harmonization with the SEC's rule, especially with respect to the CCO's responsibilities. As NFA noted by letter dated January 18, 2011 to the Commission when the CCO rule was first proposed, the CCO's role should be clearly defined as that of an independent advisor and not a supervisor over the business lines. Therefore, NFA supports any changes to the CCO's duties to clarify the CCO's role in this manner, which appears consistent with prior SEC and Financial Industry Regulatory Authority guidance.

NFA specifically supports the Commission's proposal to amend CFTC Regulation 3.3(e)(2) to eliminate the requirement that the Annual Report review each applicable requirement under the CEA and Commission regulations and map it to a corresponding written policy or procedure (WPP) adopted by the FCM or SD that is reasonably designed to ensure compliance. NFA's experience with CCO Annual Reports under the current requirements has found that some FCMs and SDs spend more time identifying the WPPs that are designed to ensure compliance than focusing on performing a meaningful self-assessment as to the effectiveness of the WPPs. The Commission's proposal to remove this "mapping" obligation would not reduce the value of the information provided in the CCO Annual Report. Rather, NFA believes it will improve the quality of the report by allowing firms to focus on providing meaningful summaries of their WPPs, together with a detailed discussion of the annual assessment and recommended improvements.

NFA also endorses the Commission's proposed amendment to CFTC Regulation 3.3(d)(1) to clarify that the CCO's duties are specific to those related to the firm's business as an FCM or SD. The breadth of the CCO's responsibilities are significant, and NFA believes that it is important that the CCO focus his or her resources on the firm's business for which it is required to be registered. This clarification will not only provide the CCO with a better ability to focus on this area, but should also make it easier for firms to retain qualified individuals to carry out these important responsibilities. NFA also encourages the Commission to clarify that a CCO's duty to take reasonable steps to resolve any conflicts of interest only applies to conflicts that relate to the firm's business as an FCM or SD.

Similarly, NFA supports the proposed change to CFTC Regulation 3.3(e)(4) to clarify that the CCO Annual Report should discuss the Registrant's compliance resources set aside for the FCM or SD, as applicable, rather than all of the



Christopher J. Kirkpatrick

July 7, 2017

firm's business activities. The purpose of the Annual Report is to determine the FCM's or SD's compliance with the CEA and CFTC regulations, and focusing only on relevant business activities will streamline the reports and likely increase their effectiveness. Additionally, NFA recommends that the Commission adopt a materiality threshold to the certification required by CFTC Regulation 3.3(f)(3), which would be consistent with the SEC's final CCO rule.²

In closing, NFA supports the Commission's proposed changes to the CCO rule and annual reporting requirements and believes they will increase efficiencies and reduce regulatory burdens. We also understand that industry participants have identified other possible areas of harmonization with the SEC's rule, and we encourage the Commission to carefully consider these comments when finalizing the proposed amendments

If you have any questions concerning this letter, please do not hesitate to contact the undersigned at (312) 781-1409 or cwooding@nfa.futures.org or Cynthia Cain Ioannacci at (312) 781-1490 or ccain@nfa.futures.org.

Very truly yours,

A handwritten signature in black ink that reads "Carol A. Wooding". The signature is written in a cursive, flowing style.

Carol A. Wooding
Vice President and General Counsel

Comment Letters/CCO Comment Letter (Final July 2017)

² NFA further notes the legislation to reauthorize the CFTC, which the House of Representatives passed on January 12, 2017, includes a materiality threshold for CCO certifications. See *Commodity End-User Relief Act*, H.R. 238, 115th Cong. § 413 (2017).