



NEW YORK  
CITY BAR

**THE COMMITTEE ON FUTURES  
AND DERIVATIVES**

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Via E-mail: [projectKISS@CFTC.gov](mailto:projectKISS@CFTC.gov)  
Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

**Re: Project KISS – RIN #3038-AE55**

Dear Secretary Kirkpatrick:

We write on behalf of The Committee on Futures and Derivatives (the “Committee”) of the New York City Bar Association (the “City Bar”) to provide our comments with respect to the Commission’s Project KISS initiative. 82 *Federal Register* 23765 (May 24, 2017).

The City Bar is an organization of over 24,000 members. Most of its members practice in the New York City area. However, the City Bar also has members in nearly every state and over 50 countries. The Committee consists of attorneys knowledgeable about the trading and regulation of futures contracts, cleared swaps, and over-the-counter derivative products, and it has a practice of submitting comments to regulators on legal and regulatory developments that may have a significant impact on futures and derivatives markets.

We welcome the opportunity to submit suggestions that we think are in the public interest about how certain of the Commission’s existing rules, regulations and practices could be applied in a simpler manner.

## **SUGGESTED INITIATIVES**

### **Posting of Frequently Asked Questions and Responses**

Background. Lawyers, compliance officers and others call Commission staff on a daily basis with interpretive and other questions but only the caller benefits from the answer.

Proposal. On a monthly or other periodic basis, the Commission staff should post on the Commission's website an FAQ that describes the most common frequently asked telephone inquiries and the responses for that period. In this way, all interested members of the public would benefit from the Commission staff's thinking on issues that arise frequently. We also understand that many telephone inquiries set forth unique facts that would not be amenable to an FAQ. We envision that the Commission staff would use its reasonable judgment in determining which issues to include in the FAQs. On an annual basis, it would be beneficial if the staff were also to furnish an index of subjects covered in the FAQs.

### **Commodity Pool Operator Delegation**

Background. Commission No-action Letter 14-126 (DSIO, October 15, 2014) sets forth a number of conditions with which commodity pool operators (CPOs) that delegate their CPO responsibilities to registered CPOs must comply to take advantage of no-action relief from the requirement to register as a CPO. Condition 6 requires that if the delegating CPO and the designated CPO are each a non-natural person, then one such CPO must control, be controlled by, or be under common control with the other CPO. As the Commission staff is aware, Condition 6 is a condition that generally does not fit a fairly common fact-pattern, *e.g.*, a Cayman trustee. Therefore, the Commission staff has recently begun to issue no-action letters advising that the staff will not recommend enforcement action for non-compliance with Condition 6, *e.g.*, Commission No-action Letter 17-09 (DSIO, February 1, 2017). In other words, Condition 6 requires the issuance of new no-action letters regarding non-compliance with a condition in No-action Letter 14-126.

Proposal. The Commission should address this issue by either (a) adopting a new rule on CPO delegation that amends or eliminates Condition 6 or (b) reissuing a revised CPO delegation letter that either (x) eliminates Condition 6, so that CPOs can rely on the letter without having to seek a new one for each delegation, (y) amends Condition 6 to eliminate the common control requirement or (z) permits CPOs to claim relief through notice filings rather than requests for individual no-action letters.

### **Use of Commission's Website for Research**

Background. Market participants often turn to the Commission's website as a trusted source of regulatory and compliance research; however, the Commission's website is vast and given the variety of documents and commentary that accompanies rulemaking (*e.g.*, fact sheets, amendments, no-action letters, comment letters), market participants may be uncertain whether they have accounted for all relevant documents, regulatory developments, interpretations and staff guidance surrounding the rule.

Proposal. The Commission should consider (a) creating a new area on its website where users could view all Commission rules organized by Title 17 Code of Federal Regulation (CFR) citation and (b) building the functionality for users to select individual rules and view the entire dossier of legal, regulatory and industry documentation related to that rule, similar to the “Rulemaking Records” area currently hosted on the Commission’s website. *See, e.g.,* <http://www.cftc.gov/LawRegulation/RulemakingRecords/index.htm>.

For example, on its website the Commission should add a new link under Law & Regulation, directing users to a new page with a two-column table displaying across each row both the CFR section citation of a given Title 17 rule and the corresponding title of the rule, similar to the table on the Commission’s “Rulemaking Records” page. A truncated example of such a table follows:

<b>CFR §</b>	<b>Rule Title</b>
§ 1.31	Books and records; keeping and inspection.
§ 1.32	Reporting of segregated account computation and details regarding the holding of futures customer funds.
§ 1.33	Monthly and confirmation statements.
§ 1.34	Monthly record, “point balance”.
§ 1.35	Records of commodity interest and related cash or forward transactions.
§ 1.36	Record of securities and property received from customers.
§ 1.37	Customer's name, address, and occupation recorded; record of guarantor or controller of account.
§ 1.38	Execution of transactions.
§ 1.39	Simultaneous buying and selling orders of different principals; execution of, for and between principals.

The CFTC should also include a hyperlink in each CFR rule title in the table to a separate page dedicated to that rule. The hyperlinked page would contain a comprehensive collection of materials related to the rule, further organized by, for example, the following categories:

- (1) Federal Register releases (including all amendments to the rule);
- (2) Facts sheets, FAQs and Commissioner’s statements regarding the rule;
- (3) Public comments to rulemaking;
- (4) Minutes of Commission open meetings and staff roundtables;
- (5) Industry publications (similar to the industry publications the Commission currently lists for each Federal Register release on its Rulemaking Records page);
- (6) Staff Interpretive Letters and No-action Letters;
- (7) Enforcement actions and Federal court opinions or decisions (to which the CFTC is a party);
- (8) Relevant NFA rule citations (if any); and
- (9) Other Federal Sources (such as related House Reports or Commissioners’ statements regarding rulemakings).

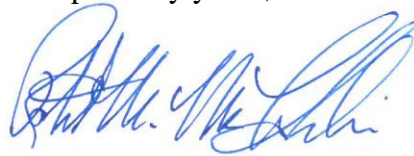
Providing such an area for rule-specific web content organized according to CFR citation and corresponding rule title would provide market participants with an efficient and cost-

effective regulatory and compliance research tool that provides a holistic and contextual overview of each rule and its evolution.

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We appreciate the opportunity to present the Committee's views to you on the Commission's Project KISS initiative. Our members who constitute the working group for this letter are available to discuss any of the above suggestions at your convenience.

Respectfully yours,



Robert M. McLaughlin, Chair  
The Committee on Futures and Derivatives  
New York City Bar Association

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The Committee on Futures and Derivatives  
Robert M. McLaughlin, Chair

Committee Members that constitute the working group for this letter:

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**The opinions expressed by members of the Committee in this letter are the individual opinions of the members and not necessarily the opinions of any organization with which they may be employed or affiliated.**