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Joshua B. Sterling
Director, Division of Swap Dealer and Intermediary Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Via electronic submission

7 October 2019

Dear Mr. Sterling,

Request for Clarification of Cross-Border Statements in Part 4 Proposal Preamble

The Alternative Investment Management Association Limited (AIMA)¹ appreciates the opportunity to communicate with the U.S. Commodity Futures Trading Commission's (Commission) Division of Swap Dealer and Intermediary Oversight (DSIO) and comment on the Commission's proposed regulations governing the registration and compliance requirements for commodity pool operators and commodity trading advisors (the 'Part 4 Proposal').² AIMA's members include investment advisers registered with the U.S. Securities and Exchange Commission and other international regulatory bodies such as the Financial Conduct Authority in the United Kingdom. Particularly since the Commission adopted major amendments to its regulations governing commodity pool operators ('CPOs') and commodity trading advisors ('CTAs') in 2012, some AIMA members are also CPOs and CTAs for purposes of the U.S. Commodity Exchange Act ('CEA') and regulations thereunder. Accordingly, these AIMA members have either registered under the CEA

¹ AIMA, the Alternative Investment Management Association, is the global representative of the alternative investment industry, with more than 1,900 corporate members in over 60 countries. AIMA's fund manager members collectively manage more than \$2 trillion in assets. AIMA draws upon the expertise and diversity of its membership to provide leadership in industry initiatives such as advocacy, policy and regulatory engagement, educational programmes and sound practice guides. AIMA works to raise media and public awareness of the value of the industry. AIMA set up the Alternative Credit Council (ACC) to help firms focused in the private credit and direct lending space. The ACC currently represents over 170 members that manage \$400 billion of private credit assets globally. AIMA is committed to developing skills and education standards and is a co-founder of the Chartered Alternative Investment Analyst designation (CAIA) – the first and only specialised educational standard for alternative investment specialists. AIMA is governed by its Council (Board of Directors). For further information, please visit AIMA's website, www.aima.org.

² Notice of proposed rulemaking, Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors, 83 Fed. Reg. 52902 (October 18, 2018).



and/or operate in accordance with exemptions from such registration provided in the CEA or Commission regulations promulgated thereunder.

AIMA is providing this letter to express its support for, and agreement with, the letter recently provided by the Asset Management Group of the Securities Industry and Financial Markets Association to Mr. Sterling and the DSIO, dated September 13, 2019, captioned "Request for Clarification of Cross-Border Statements in Part 4 Proposal Preamble" (the 'SIFMA Letter'). The SIFMA Letter is also signed by the Investment Adviser Association, Fried, Frank, Harris, Shriver & Jacobson LLP and Willkie Farr & Gallagher LLP. The SIFMA Letter specifically requests that the Commission "make clear that the Preamble for the Proposal was not intended to promulgate an interpretation of Rule 3.10(c)(3)(i) that would impair the ability of offshore CPOs to rely on that rule on a pool-by-pool basis for activities that do not involve U.S. investors."

Although Commission Rule 3.10(c)(3)(i) was not the subject of any of the proposed rule amendments in the Part 4 Proposal, the Preamble addressed Rule 3.10(c)(3)(i) in connection with a discussion of Staff Advisory 18-96 and appeared to assume that the Rule could not be used on a pool-by-pool basis. The SIFMA Letter notes, and AIMA agrees, that such an interpretation would be "contrary to the Commission's longstanding activities-based application of its CPO and CTA exemptions, . . . incorrect as a matter of interpretation and contrary to a broad range of the Commission's long held policy goals." Previously, AIMA and five other commenters, including the four signatories to the SIFMA Letter, submitted letters to the Commission to express concern regarding the Preamble's discussion of Rule 3.10(c)(3)(i) and similarly reasoned that the Rule should be available on a pool-by-pool basis.³

Accordingly, the SIFMA Letter proposes that the Commission issue language to withdraw the discussion of Rule 3.10(c)(3)(i) from the Preamble and clarify that the Commission sees "no reason why Rule 3.10(c)(3)(i) should not be interpreted to apply on a pool-by-pool basis, in a manner consistent with the Commission's historical approach to the applicability of its other exemptions applicable to CPOs and CTAs." AIMA agrees that Rule 3.10(c)(3)(i) should not apply on a pool-by-pool basis and strongly supports the language proposed in the SIFMA Letter.

We truly appreciate your consideration of our comments on the Part 4 Proposal. We would be happy to elaborate further on any of the points raised in this letter. If you have questions or require further information, please contact either Jiří Król at +(202) 219-4940 or Jennifer Wood at +44 (0) 20 7822 8380.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "J. Król", is positioned above the typed name.

Jiří Król
Deputy CEO, Global Head of Government Affairs
AIMA

³ Appendices A and B to the SIFMA Letter describe the six commenters and include excerpts from each letter.



cc:

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