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Commodity Futures Trading Commission  
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- **17 CFR Part 3**
- **RIN Number 3038-AE46**
- **Exemption From Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools**

Dear Mr. Kirkpatrick.

Thank you very much for giving us the opportunity to comment on your notice of proposed rulemaking on Exemption From Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools.

The Commodity Futures Trading Commission (CFTC) is proposing to amend the conditions in CFTC regulation 3.10(c) under which a person located outside of the United States engaged in the activity of a commodity pool operator (CPO; each person located outside of the United States a non-US CPO) in connection with commodity interest transactions on behalf of persons located outside the United States (collectively, an offshore commodity pool or offshore pool) would qualify for an exemption from CPO registration and regulation with respect to that offshore pool. Specifically, through amendments to CFTC regulation 3.10(c), the CFTC is proposing that non-US CPOs may claim an exemption from registration with respect to its qualifying offshore commodity pools, while maintaining another exemption from registration, relying on an exclusion, or registering as a CPO with respect to the operation of other commodity pools. The CFTC is also proposing to add a safe harbor by which a non-US CPO of an offshore commodity pool may rely upon the proposed exemption in CFTC regulation 3.10(c) if they satisfy enumerated factors related to the operation of the offshore commodity pool. Additionally, the CFTC is proposing to permit certain US control affiliates of a non-US CPO to contribute capital to such CPO's offshore pools as part of the initial capitalization without rendering the non-US CPO ineligible for the exemption from registration under CFTC regulation 3.10.

Please note that the comments expressed herein are solely my personal views

I generally agree with these proposals, which would simplify compliance by eliminating the potential need for the CFTC to require the registration and oversight of non-US CPOs whose pools have no US investors. I particularly support proposed § 3.10(c)(3)(iv) that adds a safe harbor permitting a non-US CPO to rely on the 3.10 exemption with respect to a non-US pool provided the following conditions are satisfied:

- (A) The pool is organized and operated outside of the United States, its territories or possessions;
- (B) The pool's offering materials and any underwriting or distribution agreements include clear, written prohibitions on the pool's offering to participants located in the United States and on US ownership of the pool's participation units;
- (C) The pool's constitutional documents and offering materials are reasonably designed to preclude US persons from participating therein and include mechanisms reasonably designed to enable its operator to exclude US persons who attempt to participate in the pool;
- (D) The CPO exclusively uses non-US intermediaries for the distribution of participations in the pool;
- (E) The CPO uses reasonable due diligence methods to preclude US persons from participating in the pool; and
- (F) The pool's participation units are directed and distributed to participants outside the United States.

The proposed safe harbor provides adequate provisions that will simplify compliance with no loss of regulatory amenity.

Yours sincerely

C.R.B.

Chris Barnard