

CFTC Proposes Relief for Non-US Managers

June 2020

On May 28, 2020, the Commodity Futures Trading Commission proposed amendments to CFTC Rule 3.10(c)(3),¹ which currently provides a registration exemption for non-U.S. commodity pool operators managing qualifying non-U.S. funds with non-U.S. investors. Rule 3.10(c)(3), however, is currently applied on an “all-or-nothing” basis, meaning that a non-U.S. fund manager can only rely on it if every commodity pool that it operates satisfies each element of the rule. Under the proposed amendments, Rule 3.10(c)(3) would apply on a “pool-by-pool” basis, allowing a manager to use it for one or more eligible non-U.S. pools while relying on different exemptions for other pools.

The proposed amendments would also institute a safe harbor for unintended U.S. investments in a non-U.S. pool; *provided*, that the manager undertakes certain reasonable efforts (such as prominent disclosures, subscription requirements, diligence measures and solicitation controls) to minimize the possibility of U.S. persons being solicited for, or sold, participation units in an offshore pool. A manager relying on the amended Rule 3.10(c)(3) would be expected to maintain documentation adequate to demonstrate compliance with the safe harbor. The amendments would also make clear that Rule 3.10(c)(3) relief would be available, even if inception-stage investments were accepted from qualifying U.S.-based affiliates of the non-U.S. commodity pool operator (e.g., no statutory disqualifications, ongoing registration suspensions or bars, or trading bans).

The comment period for the proposed amendments will commence with their publication in the Federal Register.

¹ The draft that was approved by the CFTC (“Exemption from Registration for Certain Foreign Persons Acting as Commodity Pool Operators of Offshore Commodity Pools (May 28, 2020)”) is [available here](#). The final amendments have not yet been published.

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