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CFTC Finalizes Position Limits Rule at October 15 Open Meeting

Commission Also Approves Final Rules on Margin Requirements for Uncleared Swaps and Registration Exemptions for Foreign Commodity Pools

October 15, 2020

Washington, D.C. — At its open meeting today, the Commodity Futures Trading Commission approved three final rules, including one regarding position limits for derivatives, completing the Commission’s major rulemakings related to implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

Final Rule: Position Limits for Derivatives

By a 3-2 vote, the Commission approved a final rule amending regulations of speculative position limits to conform with certain Dodd-Frank amendments to the Commodity Exchange Act. Among other things, the Commission adopted new and amended federal spot month position limits for derivatives contracts associated with 25 physical commodities, and amended single-month and all-months-combined federal limits for most of the agricultural contracts currently subject to federal position limits. Under the final rule, federal non-spot month position limits were not extended to the sixteen new physical commodities.

Additionally, the Commission adopted new and amended definitions for use throughout the position limits regulations, including a revised definition of “bona fide hedging transaction or position” that includes an expanded list of enumerated bona fide hedges and a new definition of “economically equivalent swaps.” The Commission also amended rules governing exchange-set position limit levels and related exchange exemptions; established a new streamlined process for non-enumerated bona fide hedging recognitions for purposes of federal position limits; and amended certain regulatory provisions that would eliminate Form 204 (and the corresponding parts of Form 304), while also enabling the CFTC to leverage and receive cash-market reporting submitted directly to the exchanges by market participants.

This final rule is effective 60 days after publication in the Federal Register.

Final Rule: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants (Phase VI Compliance Date Extension)

The Commission unanimously approved a final rule that amends the margin requirements for uncleared swaps for swap dealers and major swap participants for which there is no banking regulator. The final rule extends the initial margin implementation schedule for entities with smaller uncleared swap portfolios from September 1, 2021 to September 1, 2022, to avoid market disruption due to the large number of entities that would have been required to comply with the initial margin requirements by September 1, 2021.

This final rule is effective 30 days after publication in the Federal Register.

Final Rule: Exemption from Registration for Certain Foreign Intermediaries

The Commission unanimously approved a final rule that amends CFTC Regulation 3.10(c), which provides exemptions from intermediary registration under certain conditions to foreign-located persons, in connection with their U.S. commodity interest transactions conducted on behalf of persons located outside the United States (the 3.10 Exemption). Specifically, among other amendments, this final rule clarifies that the 3.10 Exemption for foreign-located persons acting as a CPO (non-U.S. CPOs) on behalf of offshore commodity pools may be claimed by such non-U.S. CPOs on a pool-by-pool basis. Additionally, the Commission adopted a provision clarifying that a non-U.S. CPO may rely upon the 3.10 Exemption for a qualifying offshore commodity pool, while being registered as a CPO or utilizing other available Commission relief from CPO regulation, for its operation of other commodity pools. The Commission also adopted a safe harbor, by which a non-U.S. CPO of an offshore pool may rely upon the 3.10 Exemption if it satisfies several enumerated factors related to its operation and offering of the offshore pool. The final rule also includes an amendment permitting U.S. affiliates of a non-U.S. CPO to contribute initial capital to the non-U.S. CPO's offshore pool without impacting the eligibility of the non-U.S. CPO to rely upon the 3.10 Exemption for that offshore pool.

Finally, the final rule adopts amendments to the 3.10 Exemption that were originally proposed in 2016. These amendments restructure CFTC Regulation 3.10(c) generally, and they clarify (1) whether clearing of commodity interest transactions through a registered futures commission merchant is required as a condition of this relief, and (2) whether the 3.10 Exemption is available for foreign intermediaries acting on behalf of international financial institutions.

This final rule is effective 60 days after publication in the Federal Register.

Additional information on these rulemakings, including statements of the Chairman and the Commissioners, can be found [here](#).

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