

Public Statements & Remarks

Supporting Statement of Commissioner Brian Quintenz Regarding Final Rule Exempting from Registration Certain Foreign Persons Acting as CPOs of Offshore Commodity Pools

October 15, 2020

I am pleased to support today's final rule that expands an existing exemption from registration for foreign commodity pool operators (CPOs) trading on U.S. markets on behalf of foreign investors. Building on previously granted staff no-action relief, the final rule creates new possibilities for fund managers, appropriately focuses the Commission's resources and customer protection activities upon domestic firms and U.S. customers, and provides for simplified compliance. For example, the final rule permits non-U.S. CPOs to claim the exemption on a pool-by-pool basis, which I believe is appropriate given that many large, foreign CPOs operate both U.S. and non-U.S. pools. The final rule also permits a foreign fund manager to satisfy the exemption's requirement that its pool does not contain funds of U.S. customers by complying with certain safe harbors, such as fund documentation requirements. In doing so, the final rule recognizes that the manner in which fund interests are sold in the real world often makes it impossible for a fund manager to make a blanket attestation that there is no U.S. investment in a given commodity pool.

Finally, for the first time, the final rule would permit U.S. affiliates of foreign pools to contribute initial capital to those pools. Allowing U.S. affiliates to contribute seed money to offshore pools operated by their affiliated non-U.S. CPOs should facilitate innovation and fund development by enabling those offshore pools to establish a performance history for solicitation purposes.

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