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February 22, 2008

Mr. David Stawick  
Secretary to the Commission  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington DC 20581

COMMENT



MACQUARIE

**Re: Exemption from Registration for Certain Firms with Regulation 30.10  
Relief, 73 FR 4499 (January 25, 2008)**

Dear Mr. Stawick:

Macquarie Futures USA Inc. ("Macquarie USA"), a registered futures commission merchant ("FCM") and a member of the National Futures Association ("NFA"), is pleased to submit these comments in support of the proposed amendments to Commodity Futures Trading Commission ("Commission" or "CFTC") Rule 3.10(c).<sup>1</sup> Macquarie USA is an indirect subsidiary of Macquarie Group Limited. Macquarie USA and its affiliates, including Macquarie Bank Limited and Macquarie Futures & Options (Hong Kong) Limited ("Macquarie Hong Kong"), execute and clear futures and options on futures transactions on derivatives exchanges globally on behalf of its institutional clients, both US and non-US.

Macquarie USA, Macquarie Bank Limited and Macquarie Hong Kong are among the firms that have benefited from the no-action positions that the Commission's Division of Clearing and Intermediary Oversight ("Division") has issued over the years, discussed in the above-referenced Federal Register release, i.e., 122504 CFTC Letter No. 07-08 (May 30, 2007) and CFTC Letter No. 07-16 (August 21, 2007). In light of the staff's experience to date and the number of firms that have found the requested relief necessary to serve their customers efficiently, we believe it is appropriate now to codify this relief as proposed in Rule 3.10(c)(4). The terms and conditions set forth in the no-action letters and carried over to the proposed rule, in particular the requirement that the exempt firm be an affiliate of an FCM that has agreed to be jointly and severally liable with the affiliate for any violations of the Act and the Commission's rules with respect to such transactions, are sufficient to assure both the protection of customers and the Commission's jurisdiction over the exempt firm.

With one critical exception, we agree with the Commission that, upon adoption of the proposed rule (and assuming the final rule is materially identical to the proposed rule), it will be appropriate to rescind the no-action letters identified in footnote 10 of the Federal Register release accompanying the proposed rule. The one exception is CFTC Letter No. 07-16 (August 21, 2007), which the Division issued to Macquarie USA and Macquarie Hong Kong.

<sup>1</sup> Macquarie USA also supports the Commission's proposal to revoke Commission Rule 30.8. We agree with the Commission that the reporting requirements set forth in this rule are no longer necessary.

Mr. David Stawick  
February 22, 2008  
Page 2

As the Commission is aware, neither the Hong Kong Securities and Futures Commission nor the Hong Kong Exchange has filed a petition for exemption with the Commission in accordance with the provisions of Commission Rule 30.10 on behalf of its registrants or members. Nonetheless, the Division issued a no-action based on the facts and circumstances set out in Macquarie USA's letter, including the facts that (1) Macquarie Hong Kong is registered with the Hong Kong Securities and Futures Commission, licensed to deal in futures contracts, and is a clearing member of the Hong Kong Exchange, and (2) Macquarie Hong Kong had applied for and received an exemption from registration with the Commission as an introducing broker in accordance with the provisions of Commission Rule 30.5.<sup>2</sup> Because Macquarie Hong Kong could not qualify for an exemption from registration under proposed rule 3.10(c)(4), we respectfully request that the Commission not rescind CFTC Letter No. 07-16.<sup>3</sup>



Macquarie USA appreciates the opportunity to comment on the proposed amendments to Commission Rule 3.10(c). If any member of the Commission or its staff has any questions concerning the matters discussed in this letter, please contact Michelle Broom at (212) 231-1558 or myself

Sincerely,

  
Joseph Mazurek  
President

cc: Ananda K. Radhakrishnan, Director, Division of Clearing and Intermediary Oversight

Andrew V. Chapin, Special Counsel, Division of Clearing and Intermediary Oversight

<sup>2</sup> In connection with this relief, Macquarie Hong Kong has entered into a written agency agreement with Macquarie USA, pursuant to which, Macquarie USA has been authorized to serve as Macquarie Hong Kong's agent "for purposes of accepting delivery and service of communications issued by or on behalf of the Commission, U.S. Department of Justice, any self-regulatory organization, or any foreign futures or foreign options customer." Commission Rule 30.5(a).

In its letter requesting relief, Macquarie USA also noted that, although the Commission staff may not have conducted an analysis of the regulatory structure in Hong Kong to the degree required under Commission Rule 30.10, the staff had reviewed this structure in Hong Kong in connection with its adoption of a no-action position authorizing the Hong Kong Exchange to make its electronic trading and order matching system available in the US. The staff did not refer to this fact in issuing the no-action letter. Therefore, it is not clear whether it was a factor in the Division's decision.

<sup>3</sup> In the alternative, the Commission could revise proposed rule 3.10(c)(4) to include affiliates of FCMs that have filed for an exemption from registration as an introducing broker under Commission Rule 30.5.