



NATIONAL FUTURES ASSOCIATION

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5/3/07

May 2, 2007

By E-Mail (secretary@cftc.gov)

Ms. Eileen A. Donovan
Acting Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st St., N.W.,
Washington, D.C. 20581

COMMENT

Re: RIN 3038-AC26; Exemption From Registration for Certain Foreign Persons

Dear Ms. Donovan:

National Futures Association applauds the Commodity Futures Trading Commission's efforts to codify a long-standing registration exemption for foreign brokers. As discussed below, NFA supports the proposal and asks the Commission to consider extending it to other entities.

The Commission's proposal would codify its existing position that foreign entities are not required to register as FCMs if they do not solicit or carry accounts for U.S. customers and limit their activities in the U.S. to placing trades with a registered FCM that carries the foreign entity's omnibus account. Although the Commission may have broader jurisdiction over these firms, for prudential purposes it has chosen to exempt them from FCM registration and from any requirements that apply solely to registrants—e.g., net capital and segregation requirements.

As we understand it, the Commission's intent is to codify its existing position and maintain the *status quo*. We also understand, however, that some members of the industry are concerned that the specific language proposed by the Commission could be interpreted more broadly to apply requirements that may currently apply only to registered entities. We understand that FIA may propose language in its comment letter to address this concern. We are supportive of this effort and are willing to discuss this issue further with Commission staff.

NFA frequently receives questions regarding registration requirements for foreign entities and individuals, and many of these inquiries relate to off-shore firms and individuals who do not solicit or manage funds for U.S. customers. While some of these

inquiries ask whether a foreign firm is required to register as an FCM, many of them deal with registration as IBs, CPOs, CTAs, and APs. We answer those inquiries by mentioning the CFTC's longstanding position that these firms and individuals are not generally required to register with the Commission. If the person requesting the information asks for legal authority, we refer them to various *Federal Register* releases and CFTC no-action and interpretive letters. Unfortunately, however, the information is not found in a single location, and people often comment that it would be helpful if it was.

As the Commission notes in its release, as long ago as 1976 the Office of General Counsel adopted a no-action position for foreign pool operators and account managers without U.S. customers or participants.¹ In 1980, the Commission stated that it would focus its limited resources on domestic firms and customers and eliminated registration requirements for foreign APs of domestic FCMs if those individuals do not solicit U.S. customers.² The Commission's August 3, 1983 *Federal Register* release adopting rules for introducing brokers extended this reasoning to exempt foreign persons from registration as introducing brokers if they solicit only foreign customers.³

To make this information easier to find and reference, we ask the Commission to consider codifying its existing positions by amending CFTC Regulation 3.10(c) to include exemptions from IB, CPO, and CTA registration for foreign entities that do not solicit or manage funds for U.S. customers or participants. We also recommend amending CFTC Regulation 3.12(h) to codify the exemption from AP registration for foreign individuals that are located in a foreign office and solicit only foreign customers. Although we recognize that this may require a separate rule-making proceeding, we encourage the Commission to take that step.

If you have any questions concerning this letter, please contact me (312-781-1413 or tsexton@nfa.futures.org) or Kathryn Camp (312-781-1393 or kcamp@nfa.futures.org).

Respectfully submitted,

Thomas W. Sexton
Vice President and General Counsel

(kpc/CommentLetters/Foreign Persons)

¹ CFTC Staff Letter 76-21 [1975-1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) Para. 20,222 (August 15, 1976).

² 45 Fed. Reg. 18356, 18360 (March 20, 1980). See also 45 Fed. Reg. 80485, 80490 (December 5, 1980).

³ 48 Fed. Reg. 35247, 35261 (August 3, 1983).