

XV. *CFTC Proposes Amendments to Registration Exemptions for Foreign Persons*

A. Introduction and Background

A swap, broadly defined, is the exchange of securities between parties in order to exchange certain terms of the securities, such as maturity or interest rate.¹ Generally, swaps may be executed through a variety of means; they may be privately negotiated through bilateral “over-the-counter” transactions, privately negotiated but executed through a clearing process, or listed on a derivatives exchange.² Cleared swaps are those transactions in which the details have been compared by brokers prior to execution of the swap.³ Central counterparties, such as derivatives clearing organizations (DCOs), provide such swap clearing services and are registered with the Commodity Futures Trading Commission (CFTC).⁴ Derivative commodities may be traded on commodities markets, particularly commodity exchanges such as designated contract markets (DCMs) or swap execution facilities (SEFs).⁵ Futures Commission Merchants (FCMs) can act as intermediaries between DCOs and clients to “solicit or accept orders for the purchase or sale of” commodity futures on or subject to the rules of exchanges with rules and regulations for buyers

¹ See *Swap*, BARRON’S DICTIONARY OF FINANCE AND INVESTMENT TERMS (8th ed. 2010).

² *Product Descriptions and Frequently Asked Questions*, INT’L SWAPS AND DERIVATIVES ASS’N, INC., <http://www.isda.org/educat/faqs.html> [<https://perma.cc/R58R-AGL3>].

³ *Clear*, BARRON’S DICTIONARY OF FINANCE AND INVESTMENT TERMS (8th ed. 2010).

⁴ See *Clearing Organizations: Derivatives Clearing Organizations*, U.S. COMMODITY FUTURES TRADING COMM’N (Sept. 23, 2016), <http://www.cftc.gov/industryoversight/clearingorganizations/index.htm> [<https://perma.cc/353C-URTF>].

⁵ See *Commodity Market*, INVESTOPEDIA, <http://www.investopedia.com/terms/c/commodity-market.asp> [<https://perma.cc/K3N3-Z58C>]; *Trading Organizations*, U.S. COMMODITY FUTURES TRADING COMM’N (Sept. 24, 2016), <http://www.cftc.gov/IndustryOversight/TradingOrganizations/index.htm> [<https://perma.cc/WP2N-WCKA>].

and sellers to “trade futures and options contracts or securities.”⁶ FCMs must register with the CFTC (registered FCMs), unless the firm handles “transactions only for proprietary persons” (defined as the “firm itself, affiliates, top officers, or directors”) or the firm is a non-U.S. resident with only non-U.S. customers and trades are cleared through an FCM.⁷ This latter exemption will be the focus of discussion in this article.

Registered FCMs must meet certain filing and compliance requirements, such as a minimum adjusted net capital, segregation of customer funds, and disclosure requirements.⁸ In addition to CFTC requirements, FCMs are subject to enforcement actions of the National Futures Association (NFA), a self-regulatory organization required to enforce CFTC requirements.⁹ Following the 2008 financial crisis, the global nature of the financial impact spurred international members to commit to derivatives regulation in order to increase oversight and transparency.¹⁰ Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, swaps fell under the purview of the Commodity Exchange Act (CEA).¹¹ As such, the CFTC amended the definition of “commodity interest” to encompass swaps, thus requiring certain foreign entities acting as “intermediaries for persons located within the U.S. in connection with swaps” to register with the CFTC.¹²

⁶ *CFTC Glossary*, U.S. COMMODITY FUTURES TRADING COMM’N (Sept. 23, 2016, 9:32 PM), <http://www.cftc.gov/ConsumerProtection/EducationCenter/CFTCGlossary/index.htm> [<https://perma.cc/ZJV3-2NWR>].

⁷ *Futures Commission Merchants (FCMS) & Introducing Brokers (IBS)*, U.S. COMMODITY FUTURES TRADING COMM’N (Sept. 24, 2016), <http://www.cftc.gov/IndustryOversight/Intermediaries/FCMs/index.htm> [<https://perma.cc/NSY5-YZ5C>]; 17 C.F.R. § 1.3(y), 3.10(c) (2016).

⁸ *Futures Commission Merchants (FCMS) & Introducing Brokers (IBS)*, *supra* note 7; *Futures Commission Merchant (FCM)*, NAT’L FUTURES ASS’N, <https://www.nfa.futures.org/nfa-registration/fcm/index.HTML> [<https://perma.cc/5M7Y-DP8Y>].

⁹ *Futures Commission Merchants (FCMS) & Introducing Brokers (IBS)*, *supra* note 7.

¹⁰ Julia H. Iodice, Note, *The U.S. Approach to Swaps Regulation: Striking a Balance Between Domestic and Foreign Interests*, 4 ST. JOHN’S J. INT. & COMP. L. 36, 40 (2013).

¹¹ Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. 51,824, 51,825 (proposed Aug. 5, 2016) (to be codified at 17 C.F.R. § 3.10(c)).

¹² *Id.*

On July 27, 2016, the CFTC announced proposed amendments to the CFTC regulations exempting, in certain situations, foreign persons located outside the United States (Foreign Intermediaries) from registering with the CFTC in certain circumstances.¹³ The amendments, to be codified in 17 C.F.R. § 3.10(c), would relax requirements for Foreign Intermediaries and were proposed largely to reflect the lack of relevant swap clearing requirements for certain foreign transactions and to reflect an emphasis on Foreign Intermediaries' activity, as opposed to foreign customers' activities.¹⁴

B. The Regulations

17 C.F.R. § 3 applies to “the registration of intermediaries engaged in . . . commodity interest transactions, including . . . swaps traded on U.S. trading facilities . . .”¹⁵ Section 3.10 generally applies to the “[r]egistration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants[,]” while Section 3.10(c) exempts categories of persons from registering with the CFTC in particular circumstances.¹⁶ These CFTC registration exceptions generally apply to firms (1) located outside the United States; (2) acting only on behalf of a person located outside the United States; and (3) engaged in a transaction that is cleared through a registered FCM.¹⁷

The first category of exempted persons falls under Section 3.10(c)(1).¹⁸ Under this exception, persons trading on behalf of only proprietary persons or accounts do not need to register with the CFTC

¹³ Press Release, U.S. Commodity Futures Trading Comm'n, CFTC Proposes to Amend the Conditions for Exemption from Registration for Certain Foreign Press (July 27, 2016), <http://www.cftc.gov/PressRoom/PressReleases/pr7412-16> [<https://perma.cc/3EXB-3Y3X>].

¹⁴ Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. at 51,825–26.

¹⁵ *Id.* at 51,825.

¹⁶ 17 C.F.R. § 3.10 (indicating 17 C.F.R. § 3.10 is titled “Registration of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, swap dealers, major swap participants and leverage transaction merchants” while § 3.10(c) is titled “Exemption from registration for certain persons”).

¹⁷ § 3.10(c)(1).

¹⁸ *Id.*

as a FCM.¹⁹ The second category of persons, identified as “foreign brokers” under Section 3.10(c)(2), are exempted from registering as FCMs if the broker submits bilateral commodity interest transactions, on or subject to the rules of DCMs or SEFs, for clearing through a FCM and an omnibus account.²⁰ “Foreign brokers” are persons located outside the United States that: (1) solicit or accept orders only from persons located outside the United States to purchase or sell commodity interests (including swaps) on or subject to the rules of DCMs or SEFs, and (2) in connection with solicitation or acceptance of such orders, accept money, securities, property, or extend credit in order to margin, guarantee, or secure trades or contracts that may result.²¹ The third category of persons are exempted under Section 3.10(c)(3).²² These are Foreign Intermediaries acting as an introducing broker (IB),²³ a commodity trading advisor (CTA),²⁴ or a commodity

¹⁹ *Id.*; *Futures Commission Merchants (FCMs) & Introducing Brokers (IBS)*, *supra* note 7.

²⁰ § 3.10(c)(2)(i). Individual accounts can be combined into omnibus accounts such that a futures manager may execute transaction between client accounts more quickly while protecting individual account holder identities. *See Omnibus Account*, INVESTOPEDIA, <http://www.investopedia.com/terms/o/omnibusaccount.asp> [<https://perma.cc/KV3U-RUAX>] (“An omnibus account is an account between two futures merchants (brokers). It involves the transaction of individual accounts that are combined in this type of account, allowing for easier management by the futures merchant. This protects the identities of the individual account holders, because the futures merchant transacts for them. . . . An omnibus account is normally overseen by a futures manager. The futures manager uses the funds in the account to complete trades on behalf of the participating individual investors . . . [a]llowing the broker to hold the majority of the responsibility while also allowing them to take fast actions when required.”).

²¹ § 1.3(xx).

²² § 3.10(c)(3)(i).

²³ An introducing broker is a person who (i) solicits or accepts the purchase or sale commodities futures, securities futures, or swaps, certain agreements or transactions, certain commodity options, certain leverage transactions, or is registered with the CFTC as an introducing broker, and (ii) does not accept money, securities, property, or does not extend credit to margin, guarantee, or secure trades or contracts that may result. § 1.3(mm)(1). As a practical matter, introducing brokers delegate the floor operation of trade executions to another futures merchant though still maintaining a relationship with the client, allowing the broker to focus on the client instead of trading floor operations. *See Introducing Broker*, INVESTOPEDIA, <http://www.investopedia.com/terms/i/introducingbroker.asp> [<https://perma.cc/564U-YT3V>].

pool operator (CPO),²⁵ in connection with bilaterally executed commodity interest transactions, made on or subject to the rules of any DCM or SEF, only on behalf of persons located outside the United States.²⁶ These Foreign Intermediaries do not need to register as a FCM as long as any such commodity interest transaction is cleared through a registered FCM.²⁷ The fourth category of exemptions applies to Foreign Intermediaries that have petitioned, pursuant to Section 3.10, to be exempt from registering as FCMs with the CFTC.²⁸ These Foreign Intermediaries do not need to register as IBs with the CFTC if: (1) they are affiliated²⁹ with a registered FCM, (2) they introduce an institutional customer to a registered FCM in order to trade on a DCM, (3) their affiliated FCM filed an acknowledgment of joint and several liability or CEA or CFTC regulatory violations committed in connection with the introducing activities with the NFA, and (4) they neither solicit anyone located in the United States for trading on a DCM nor handle customer funds for persons in the United States for trading on a DCM.³⁰

C. The Amendments

The early forms of the proposed amendment can be traced back to the CFTC's Division of Swap Dealer and Intermediary Oversight (Division). Before the amendments were proposed, non-

²⁴ Commodity trading advisors refers to persons (i) advising others on trading in commodities futures, securities futures, or swaps, (ii) engaging in certain agreements or transactions, certain commodity options, certain leverage transactions, (iii) registered with the CFTC as a commodity trading advisor, or (iv) issues reports on any of the foregoing. § 1.3(b)(1).

²⁵ A commodity pool operator is a person registered with the CFTC as a commodity pool operator, or a person (i) engaged in a commodity pool, investment trust, syndicate, or similar type of business, and (ii) who solicits and accepts funds, or securities to trade in commodity interests, futures securities, or swaps, certain agreements or transactions, or certain commodity options. § 1.3(cc).

²⁶ § 3.10(c)(3)(i).

²⁷ *Id.*

²⁸ § 3.10.

²⁹ § 3.10 (c)(4)(v) (stating a firm is "affiliated" with an FCM if (1) the firm owns 50 percent or more of the FCM, (2) the FCM owns 50 percent or more of the firm, or (3) a third party holding 50 percent or more of the firm also owns 50 percent or more of the FCM).

³⁰ § 3.10(c)(4).

U.S. market participants requested relief from requirements to register as an IB or CTA for activities involving swaps for an international financial institution (IFI) located in the United States.³¹ The requestors provided underwriting services for non-U.S. IFI note offerings, and in turn, the IFIs would enter into swaps to offset risk from the issued notes.³² The requestors also assisted in the swap transactions in certain situations.³³ Focusing on the client's status as an IFI,³⁴ the requestors argued that the CFTC recognizes the uniqueness of IFIs in the context of swaps, perhaps due to IFIs' "multinational" character and the positive public policy implications of encouraging such institutions to transact in a global market.³⁵ In the no-action letter³⁶ addressing these arguments, the Division acknowledged that IFIs "should not be subject to mandatory clearing," thus concluding that Foreign Intermediaries, acting solely on behalf of IFIs in swaps transactions or providing advice solely regarding such activities, should not be required to register as an IB or CTA.³⁷

The Division released another no-action letter in February 2016 responding to market participants on behalf of non-U.S. CPOs and CTAs requesting relief from requirements to clear swaps through registered FCMs if the swaps are not subject to a CFTC clearing

³¹ Thomas Smith, U.S. Commodity Futures Trading Comm'n No-Action Letter, Div. of Swap Dealer and Intermediary Oversight CFTCLTR No. 15-37, 2015 WL 3544119 (June 4, 2015). IFIs include entities such as the International Monetary Fund, the European Bank for Reconstruction and Development, and the International Development Association. *See* Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. at 51,825 n.7.

³² Smith, *supra* note 31.

³³ *Id.*

³⁴ Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. at 51,825 (indicating that IFIs are specifically enumerated entities previously defined in the CFTC's rulemaking and no-action letters.).

³⁵ *See* Smith, *supra* note 31.

³⁶ CFTC no-action letters are written statements that the staff will not recommend enforcement action for failure to comply with a certain regulation. These statements are only binding on the staff that issued the letter in respect to the "specific fact situation and persons addressed by the letter." *CFTC Staff Letters*, U.S. COMMODITY FUTURES TRADING COMM'N (Sept. 24, 2016), <http://www.cftc.gov/lawregulation/cftcstaffletters/index.htm> [<https://perma.cc/ED3Y-7TAB>].

³⁷ Smith, *supra* note 31, at n.9.

requirement.³⁸ These requestors argued these requirements are unreasonable because the CEA and CFTC regulations “do not require all swaps to be cleared” and “some swaps are not yet accepted for clearing by any [DCOs].”³⁹ In response, the Division clarified that Section 3.10(c)(3)(i) was “not intended to impose an independent clearing requirement on commodity interest transactions involving Foreign Intermediaries that the CEA and Commission regulations do not otherwise require to be cleared.”⁴⁰ Therefore, a non-U.S. firm engaging in IB, CTA, or CPO activity, on behalf of persons located outside the United States, involved in swaps transactions not subject to CFTC clearing requirements, will not have to register with the CFTC.⁴¹

In light of the pushback, the CFTC’s proposed amendments to Section 3.10(c) seek to “simplify the registration exemption that is available to Foreign Intermediaries.”⁴² The proposed amendments would codify the relief agreed upon and sentiments expressed by the Division in the June 2015 and February 2016 no-action letters. If enacted, Foreign Intermediaries will be generally exempt from registering with the CFTC if the Foreign Intermediary is involved in a commodity interest transaction only on behalf of either persons located outside the United States, or IFIs.⁴³ It will not matter whether or not such person or IFI clears the transaction.⁴⁴ However, all persons and IFIs must still comply with other CEA and CFTC regulations, such as clearing commodity interest transactions through a DCO (regardless of the DCO’s registration status with the CFTC).⁴⁵ In light of the argument that some commodity transactions are not “subject to a clearing requirement under the CEA or [CFTC] regulations, and some

³⁸ Eileen Flaherty, U.S. Commodity Futures Trading Comm’n, No-Action Letter, CFTCLTR No. 16-08, 2015 WL 627415 (Feb. 12, 2016).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. at 51,826.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* (“[T]he exemptions from registration in § 3.10(c)(2) and (3) do not in themselves excuse any person (including any IFI) from compliance with any provision of the CEA or Commission regulations otherwise applicable to such persons, including, without limitation, any requirement that a resulting commodity interest transaction be cleared by a DCO registered or exempt from registration with the Commission.”).

are not available for clearing by any DCO registered with the [CFTC],” the clearing requirement language will be removed from Section 3.10(c).⁴⁶ Since non-U.S. persons subject to futures or swaps clearing requirements by the CEA or the CFTC will still be required to comply with the respective regulations, the removal of this clearing requirement language will “simplify” compliance for Foreign Intermediaries.⁴⁷ The CFTC further clarified that these amendments are in line with the policy that the exemptions should focus on Foreign Intermediary activities and consumer protection of domestic firms and firms involved with domestic participants.⁴⁸ Responsibility to regulate and protect Foreign Intermediary customers will lie within the customer’s jurisdiction.⁴⁹

In order to effect these amendments, the CFTC has specifically proposed the removal and addition of particular language from or to Section 3.10(c). First, the clearing requirement and references to DCMs and SEFs will be removed from Section 3.10(c)(2)(i), which currently applies to foreign brokers.⁵⁰ The resulting subsection will stipulate that a Foreign Intermediary engaging in FCM activity (defined in 17 C.F.R. § 1.3(p)) need not register as an FCM if the activity is either solely foreign broker activity, or solely on behalf of an IFI.⁵¹ Second, the clearing requirement and references to DCMs and SEFs will also be removed from Section 3.10(c)(3)(i), which currently applies to Foreign Intermediaries engaging in IB, CTA, or CPO activities.⁵² The resulting subsection will stipulate that a Foreign Intermediary engaged in IB, CTA, or CPO activity need not register as an FCM if the activity is either solely on behalf of a person not located in the United States, or solely on behalf of an IFI.⁵³ Third, the CFTC proposed adding Section 3.10(c)(6) to define IFIs for clarity.⁵⁴

⁴⁶ *Id.*

⁴⁷ *See id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 51,826.

⁵¹ *Id.* at 51,827.

⁵² *Id.* at 51,826.

⁵³ *Id.* at 51,827.

⁵⁴ *Id.* at 51,826.

D. Public Comments to the Proposed Amendments

The comment period for the proposed regulations ended September 6, 2016.⁵⁵ Only six parties responded, including two large organizations voicing strong support for the amendments.⁵⁶ The Managed Funds Association, representing “the global alternative investment industry,” provided a succinct comment letter establishing support for the proposed amendments.⁵⁷ Specifically, the Managed Fund Association supported the CFTC’s emphasis on focusing on consumer protection by turning focus to domestic firms or firms dealing with domestic clients.⁵⁸ The comment points out that limited CFTC and NFA resources provide a compelling reason for the proposed regulations, as it would allow the CFTC and the NFA effectively use resources and apply efforts domestically.⁵⁹ CME Group Inc. (CME), a parent company of several DCMs, a SEF, and a DCO, provided a lengthier comment, applauding the proposed amendments as “improv[ing] market efficiency and increas[ing] liquidity by eliminating unnecessary regulatory burdens associated with accessing the U.S. markets”⁶⁰ CME continued to argue that the amendments are in line with the “concept of outcomes based mutual recognition” and “standards for cross-border cooperation between authorities” by reducing duplicate efforts by regulatory authorities.⁶¹ CME further asserted that the expansive language of the proposed amendments would “increase efficiency for non-U.S. market participants seeking to

⁵⁵ *Id.* at 51,824.

⁵⁶ Comments for Proposed Rule 81 FR 51824, U.S. COMMODITY FUTURES TRADING COMM’N, <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1724> [<https://perma.cc/C6MV-NEGQ>].

⁵⁷ Letter from Stuart Kaswell, Exec. Vice President & Managing Dir., Gen. Counsel, Managed Funds Ass’n, to Christopher Kirkpatrick, Sec’y of the Comm’n, U.S. Commodity Futures Trading Comm’n (Sept. 2, 2016) (on file with the with the U.S. Commodity Futures Trading Comm’n).

⁵⁸ *Id.*

⁵⁹ *Id.* (“Given limited resources, we believe it would be a better and more effective use of the resources and efforts of the Commission and the National Futures Association to focus on overseeing domestic firms or firms targeting U.S. persons as customers.”).

⁶⁰ Letter from Sunil Cutinho, President, CME Clearing, to Christopher Kirkpatrick, Sec’y of the Comm’n, U.S. Commodity Futures Trading Comm’n (Aug. 23, 2016) (on file with the with the U.S. Commodity Futures Trading Comm’n).

⁶¹ *Id.*

access U.S. markets” while also increasing liquidity in the United States and increasing the possibility of international cooperation between jurisdictions in light of the globalization of the derivatives market.⁶²

E. Conclusion

Looking forward, the proposed amendments would mostly simplify and clarify the currently complex language of Section 3.10(c), and provide a more efficient domestic and global regulatory process, and relax the compliance process for Foreign Intermediaries or any other foreign person trying to enter the U.S. derivatives market.⁶³ However, the proposed language for Sections 3.10(c)(2)(i) and (3)(i) may leave “open the possibility that a Foreign Intermediary that is itself a clearing firm, but is not registered as an FCM could clear transactions in the U.S. for customers located outside the U.S., subject . . . to the rules of the applicable DCO.”⁶⁴ The proposed amendments may further leave open certain questions about what parties may qualify as “persons located outside of the U.S.,” including whether a U.S. citizen “temporarily residing outside of the U.S.” would fall under this category.⁶⁵

⁶² *Id.*

⁶³ See Letter from Sunil Cutinho, *supra* note 60 (arguing that the proposed amendments will encourage participation in the U.S. commodities markets and hold international jurisdictions responsible for regulatory costs); Ajay Shamdasani, *Proposed US CFTC Change to Intermediary Registration Exemptions May Benefit Asian Institutions*, HONG KONG LAWYER (Aug. 31, 2016), <http://www.hk-lawyer.org/content/proposed-us-cftc-change-intermediary-registration-exemptions-may-benefit-asian-institutions> [https://perma.cc/GCH3-CSQ5].

⁶⁴ DAVID MITCHELL & KRISTIN CORAPI, FRIED FRANK, CFTC UPDATE: CFTC PROPOSES AMENDMENTS TO RULES ON EXEMPTION FROM REGISTRATION FOR CERTAIN FOREIGN INTERMEDIARIES 3 (2016), <http://www.friedfrank.com/siteFiles/Publications/FINALv3%20-8-4-2016-%20TOC%20Memo%20-CFTC%20Update%20-%20CFTC%20Proposes%20Amendments%20to%20Rules%20on%20Exemption%20fro.pdf> [https://perma.cc/LN8T-JJCC].

⁶⁵ MATT KLUCHENEK & MICHAEL SEFTON, BAKER MCKENZIE, THE CFTC PROPOSES SIGNIFICANT RELIEF FOR NON-U.S. MARKET PARTICIPANTS 1 (2016), http://www.bakermckenzie.com/-/media/files/insight/publications/2016/08/the-cftc-proposes-significant-relief-for-non-us/al_na_cftcrelief_aug16.pdf?la=en [https://perma.cc/D75Z-7ZH6].

International institutions can benefit not only from the added clarity, but also from lowered costs.⁶⁶ The CFTC may also save enforcement and monitoring costs by pushing foreign customer protection costs to the respective international jurisdictions.⁶⁷ By shifting the monitoring costs to foreign jurisdictions, “the CFTC would alleviate some of the economic and non-economic costs of regulating a voluminous and international base”⁶⁸ Finally, in the CFTC’s 2016 fiscal year financial report, the CFTC stressed the importance of “international cooperation among regulators” to regulate the global swaps market.⁶⁹ The final regulations have not been released as of this writing.⁷⁰

Jessica Park⁷¹

⁶⁶ Shamdasani, *supra* note 63 (quoting attorneys and industry members who believe the proposed amendments “would result in less required compliance” and “would remove a condition to the exemption that has limited its usefulness and does not make much sense.”).

⁶⁷ See Iodice, *supra* note 10, at 63–64 (“[T]he CFTC must also consider the cost of actually enforcing these regulations [T]he theoretical cost of enforcing the swaps regulations broadly to non-U.S. entities . . . should strongly motivate the CFTC to rely more heavily on substituted compliance and its foreign counterparts where appropriate.”).

⁶⁸ *Id.* at 64.

⁶⁹ U.S. COMMODITY FUTURES TRADING COMM’N, FISCAL YEAR (FY) 2016 AGENCY FINANCIAL REPORT 37 (2016), <http://www.cftc.gov/idc/groups/public/@aboutcftc/documents/file/2016afr.pdf> [<https://perma.cc/Q25V-2L9V>].

⁷⁰ See Exemption From Registration for Certain Foreign Persons, 81 Fed. Reg. at 51,824.

⁷¹ Student, Boston University School of Law (J.D. 2018).