



September 12, 2016

Mr. Christopher Kirkpatrick  
Secretary to the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, DC 20581

Re: Chief Compliance Officer Annual Report Requirements for Futures Commission Merchants, Swap Dealers and Major Swap Participants; Amendments to Filing Date (RIN 3038 – AE49)

Dear Mr. Kirkpatrick

The Futures Industry Association (the “FIA”)<sup>1</sup>, International Swaps and Derivatives Association (“ISDA”)<sup>2</sup> and Securities Industry and Financial Markets Association (“SIFMA”)<sup>3</sup> (the “Associations”), are pleased to submit this letter on behalf of their futures commission merchant (“FCM”) and provisionally registered swap dealer (“SD”) and major swap participants (“MSP”) member firms (collectively “Registrants”), in connection with the proposal of the Commodity Futures Trading Commission (the “Commission” or the “CFTC”) to codify current no-action relief<sup>4</sup> by amending the requirements of Rule 3.3 (f)(2) of the regulations promulgated under the Commodity Exchange Act (the “CEA”).

The Associations greatly appreciate the efforts of the Commission to improve the process for filing the Chief Compliance Officer Annual Report (“CCO Annual Report”). As discussed in greater detail below, we do, however, have certain recommendations to improve the proposal. Specifically, our comments reflect concerns regarding: (i) linking the filing date of the CCO Annual Report to the submission of the Registrants’ annual financial reports (including, but not limited to, Form 1-FR-FCM or FOCUS Report) for US Registrants or Registrants for which there is no comparability determination; and (ii) establishing a 15 day deadline to file the comparable Annual Report (“Comparable Annual Report”) with the Commission following the completion date of this report for Registrants that are subject to a substituted compliance determination (“Substituted Compliance Registrants”).

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<sup>1</sup> FIA is the leading trade organization for the futures, options and over-the-counter cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world’s largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearinghouses, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions. FIA’s core constituency consists of futures commission merchants, who are the majority of clearing members of the U.S. exchanges, handling more than 90% of the customer funds held for trading on U.S. futures exchanges.

<sup>2</sup> Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 67 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association’s web site: [www.isda.org](http://www.isda.org).

<sup>3</sup> SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over \$2.5 trillion for businesses and municipalities in the U.S., serving clients with over \$20 trillion in assets and managing more than \$67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

<sup>4</sup> The Division of Swap Dealer and Intermediary Oversight (DSIO) issued the current No-Action Relief to FCMs, SDs and MSPs for the filing of the annual report on March 27, 2015. See CFTC Letter No. 15-15.

## I. Linking of the CCO Annual Report to the Submission of Financial Reports

The current no action relief is based on the joint FIA and ISDA No-Action Request letter (dated March 3, 2015), which requested that the deadline for filing the Annual Report be 90 days following the FCM's/SD's fiscal year-end. In that letter, the Associations also requested that there be no obligation to file the CCO Annual Report simultaneously with a Registrant's annual financial reports. This request was based on the inherent differences, in terms of both substance and process, between CCO Annual Reports and annual financial reports. These reports are typically prepared by different groups within the Registrants, contain different information, and are used for different purposes. In many ways, the CCO Annual Report requires a more extensive year-end information-gathering process than an audited financial statement. Codifying the rule to replicate the current relief is the most efficient approach for all Registrants.

We understand that section 4s(k)(3) of the Commodity Exchange Act requires the SD and MSP CCO Annual Report to "accompany" the filing of financial reports<sup>5</sup>. There is no requirement, however, that such submissions be made simultaneously, as the Commission has recognized in proposing that the CCO Annual Report be submitted within 30 days after submission of the financial reports. However, we request that the time period for filing the CCO Annual Report be 30 days following the **deadline** for filing financial reports, as opposed to the actual **submission** date. The Associations believe that such a requirement would be sufficient to meet the intent of the statute. The Securities and Exchange Commission ("SEC") has adopted a similar approach in their Annual Report Rule, 15Fk-1(c)(2)(ii)(A).<sup>6</sup> Requiring the CCO Annual Report to be filed 30 days after the **submission** of the financial report raises concerns because the **submission** date is not necessarily a static date as compared to a **deadline** date. As noted above, different personnel typically prepare the respective CCO Annual Report and financial reports. The financial reports are usually prepared and filed by a firm's finance group and may be filed before the deadline date, which would effectively reduce the time period for filing the CCO Annual Report and give rise to the need for a new process in the CCO Annual Report group to monitor and communicate with the finance group on the financial report submission date. This concern can be resolved by setting the CCO Annual Report filing date at 30 days after the deadline for submitting financial reports.

In addition, the rule should account for prudentially regulated SDs, which are exempt from the Commission's proposed financial reporting rule<sup>7</sup> and are subject to other types of financial reporting requirements not listed in Rule 3.3(f)(2). Linking the CCO Annual Report filing date to the financial reporting requirements for such entities under applicable prudential regulations would create different timing than for SDs that are subject to the Commission's proposed financial reporting rule. In the interest of achieving a consistent deadline for all SDs, the Commission should set a 90-day deadline for SDs that are not subject to the Commission's proposed financial reporting rule.

In light of the considerations set forth above, we suggest the following language for 3.3(f)(2)(i):

(2)(i) Except as provided in paragraph (f)(2)(ii) of this section, the annual report shall be furnished electronically to the Commission within 30 days after the deadline for submission of (i) Form 1–FR–FCM, as required under § 1.10(b)(1)(ii) of this chapter, (ii) the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h) of this chapter, or (iii) the financial condition report, as required under section 4s(f) of the Act, as applicable, but in any event not more than 90 days after the end of the registrant's fiscal year. A registrant that is not required to file the above-listed financial reports shall furnish the annual report

<sup>5</sup> Please note that section 4s(k)(3) does not apply to FCMs.

<sup>6</sup> As adopted, Rule 15Fk-1(c)(2)(ii)(A) will require an SBS Entity's compliance report to "be submitted to the Commission within 30 days following the deadline for filing the [SBS Entity's] annual financial report with the Commission pursuant to Section 15F of the Act and rules and regulations thereunder." Section 15F(k)(3)(B)(i) of the Exchange Act provides that a compliance report shall "accompany each appropriate financial report of the [SBS Entity] that is required to be furnished to the Commission pursuant to this section." 15 U.S.C. 78o-10(k)(3)(B)(i). The Commission is interpreting "accompany" in Section 15F(k)(3)(B)(i) to mean follow within 30 days.)

<sup>7</sup> See Capital Requirements of Swap Dealers and Major Swap Participants, 76 FR 27802, 27838 (proposed May 12, 2011).

electronically to the Commission not more than 90 days after the end of its fiscal year. Until such time as the Commission adopts and implements a regulation establishing the time for filing the financial report, a swap dealer or major swap participant shall furnish the annual report electronically to the Commission not more than 90 days after the end of its fiscal year.

## II. Comparable Annual Report Deadline

We believe the 15-day period for Substituted Compliance Registrants to furnish the Comparable Annual Report with the Commission following the completion date of this report is sufficient. However, the requirement that the non-US law has a “specifically identifiable completion date”, which the Commission describes as “a date that can be clearly identified such as a **specific calendar date** or a **set number of days** after the Substituted Compliance Registrant’s fiscal year-end” may be an issue in certain jurisdictions, including, for example, France, the United Kingdom and Germany.

For instance, in France, Autorité des Marchés Financiers (AMF) regulations set the end of April as the due date for the comparable report, but that is predicated on the AMF making the format of the report available to registrants. In the past, the AMF has been delayed in providing the format and granted until early May to submit the report.

We therefore recommend that the Commission considers supplemental guidance as to what constitutes a “specifically identifiable completion date”, *e.g.*, “*as provided under relevant law or regulation in the home jurisdiction of the Substituted Compliance Registrant, or as otherwise set by the home regulator of the Substituted Compliance Registrant.*”

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The Associations appreciate for the opportunity to comment on this Proposal and look forward to working with you.

We would be pleased to provide further information or assistance at the request of the Commission or its staff. If you have any questions, or require any further information, please feel free to contact the undersigned.

Sincerely,



Allison Lurton  
FIA, SVP and General Counsel



Steve Kennedy  
ISDA, Global Head of Public Policy



Kyle Brandon  
SIFMA, Managing Director

cc: Honorable Timothy G. Massad, Chairman  
Honorable Sharon Y. Bowen, Commissioner  
Honorable J. Christopher Giancarlo, Commissioner  
Eileen Flaherty, Director, Division of Swap Dealer and Intermediary Oversight  
Erik Remmler, Deputy Director Registration and Compliance, Division of Swap Dealer and Intermediary Oversight  
Laura Gardy, Associate Director, Division of Swap Dealer and Intermediary Oversight