



May 13, 2016

Mr. Vince A. McGonagle, Director
Division of Market Oversight

Mr. Jeffrey M. Bandman, Acting Director
Division of Clearing and Risk

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Extended No-Action Relief from Commission Regulations 37.9(a)(2) and 37.203(a)

Dear Mr. McGonagle and Mr. Bandman:

The Wholesale Markets Brokers' Association, Americas ("WMBAA")¹ respectfully submits a request to the Division of Market Oversight ("DMO") and the Division of Clearing and Risk ("DCR") (together, the "Divisions") for an extension of no-action relief as described herein. Each of the WMBAA member firms is registered with the Commodity Futures Trading Commission ("CFTC" or "Commission") as a swap execution facility ("SEF").

In particular, the WMBAA respectfully requests that the Divisions extend the no-action relief previously provided under letter 15-24 until the earlier of (1) June 15, 2017, or (2) the effective date of revised Commission regulations that establish a permanent, practicable solution for swaps with operational or clerical errors executed on a SEF. During this time, the WMBAA requests that the Divisions "not recommend that the Commission take any enforcement action against a SEF for failure to comply with Commission Regulation 37.9(a)(2) . . . regarding methods of execution or to comply with Commission Regulations' 37.203 . . . prohibition against pre-arranged trading if, after a trade has been rejected for clearing, the SEF . . . permits a new trade, with terms and conditions that match the terms and conditions of the original trade, other than any such error and time of execution, to be submitted for clearing without having been executed pursuant to methods set forth in Commission Regulation[] 37.9(a)(2) . . ." ² CFTC letter 15-24 expires on June 15, 2016.

¹ The WMBAA is an independent industry body representing the largest inter-dealer brokers. The founding members of the group—BGC Partners, GFI Group, Tradition, and Tullett Prebon—operate globally, including in the North American wholesale markets, in a broad range of financial products, and have received permanent registration as swap execution facilities. The WMBAA membership collectively employs approximately 4,000 people in the United States; not only in New York City, but in Stamford and Norwalk, Connecticut; Chicago, Illinois; Jersey City and Piscataway, New Jersey; Raleigh, North Carolina; Juno Beach, Florida; Burlington, Massachusetts; and Dallas, Houston, and Sugar Land, Texas. For more information, please see www.wmbaa.com.

² See CFTC Letter no. 15-24 (Apr. 22, 2015), at 4-5.

Consistent with the prior relief granted under letter 15-24, the WMBAA also requests that the Divisions continue to provide relief to a SEF if, “after a trade has been cleared and an error is discovered, the SEF . . . permits a prearranged trade between the original parties that offsets the swaps carried on the DCO’s books, without that trade having been executed pursuant to the methods required in Commission Regulations 37.9(a)(2).”³ Further, the WMBAA requests that a SEF may “permit the original or intended counterparties to enter into a pre-arranged transaction that reflects the terms to which the parties mutually assented without that trade having been executed pursuant to the methods set forth in Commission Regulations 37.9(a)(2)”⁴

In addition, the WMBAA encourages the Commission to undertake a rulemaking to establish a permanent, streamlined solution that addresses SEF-executed trades that suffer from operational or clerical errors and permits modifying previously-executed and cleared swaps, similar to processes allowed in the futures markets, rather than relying on the cancellation and rebooking process. The WMBAA would appreciate the opportunity to further explore these possibilities with Commission staff. Until such time as the Commission is able to promulgate revised rules, the WMBAA believes that extending no-action relief in this regard would provide much-needed relief.

I. Background

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), on April 9, 2012, the Commission published regulations addressing the timing of acceptance for clearing and clearing member risk management.⁵ Among other provisions, the Commission requires clearing members of a registered DCO to establish risk-based limits and screen orders for compliance with those limits. In addition, the Commission requires SEFs to coordinate with DCOs, to which they submit transactions for clearing, to develop rules and procedures to facilitate prompt and efficient transaction processing.

The Commission’s Part 37 regulations set forth requirements that govern trading on SEFs. In particular, Regulation 37.203(a) requires a SEF to prohibit certain abusive trading practices, including pre-arranged trading, except for block trades or other types of transactions whose rules have been certified to or approved by the Commission. Further, Regulation 37.9(a)(2) establishes requirements for the method of execution of transactions on a SEF in swaps that are subject to the trade execution requirement under the Commodity Exchange Act (“CEA”).⁶

³ *Id.* at 5.

⁴ *Id.*

⁵ Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 Fed. Reg. 21,278 (Apr. 9, 2012).

⁶ Under CEA § 2(h)(8), swap transactions that are subject to the clearing requirement of CEA § 2(h)(1) must be traded on either a DCM or a SEF, unless no DCM or SEF makes the swap “available to trade” or the transaction is not subject to the clearing requirement under section 2(h)(7).

On September 26, 2013, the Divisions issued joint guidance regarding obligations related to “the clearing of swaps that are traded on or through the facilities of SEFs or DCMs and cleared at DCOs by FCMs that are clearing members of the DCO” (“STP Guidance”).⁷ Among other aspects of the clearing process, the Divisions discussed the “effect of rejection from clearing,” stating that “any trade that is executed on a SEF or DCM and that is not accepted for clearing should be void *ab initio*.”⁸ The Divisions further stated that DCMs and SEFs must have rules “stating that trades that are rejected from clearing are void *ab initio*.”⁹

In response to industry concerns that trades would be rejected by DCOs for flaws that are readily correctable, the Divisions granted no-action relief for SEFs from Regulations 37.9(a)(2) and 37.203(a) in letter 13-66 by allowing a SEF to permit a new trade, with terms and conditions that match the terms and conditions of the original trade, other than any error of the original trade and the time of execution, to be submitted for clearing.¹⁰ As the Divisions observed, the no-action relief effectively permitted SEFs “to implement rules that establish a ‘new trade, old terms’ procedure.”¹¹ The no-action relief expired on June 30, 2014.

The Divisions granted similar no-action relief for SEFs from compliance with such regulations with respect to package transactions under letter 14-62 and subsequently extended the relief under letter 14-121. Pursuant to this no-action relief, “SEFs and DCMs would be permitted to establish a ‘new trade, old terms’ procedure for legs of a package transaction that had been rejected from clearing because of the sequencing of submission of the legs of a package transaction.”¹² The extension of the no-action relief expired on February 16, 2015.

Subsequently, in response to a prior request for no-action relief submitted by the WMBAA, under letter 15-24, the Divisions granted similar relief to that provided under letter 13-66 and permitted a similar procedure to be followed in situations where an error is not discovered until after a swap has been cleared.¹³

II. Request for Relief

The WMBAA respectfully requests that the Divisions extend the no-action relief previously provided under letter 15-24. Despite SEF efforts to continue to work on solutions to reduce operational and clerical errors and address the complexities discussed in the WMBAA’s prior request for relief,¹⁴ market participants continue to encounter circumstances in which a trade is rejected

⁷ Staff Guidance on Swaps Straight-Through Processing, Sept. 26, 2013, *available at* <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/stpguidance.pdf>.

⁸ *Id.* at 5.

⁹ *Id.* at 6.

¹⁰ *See* CFTC Letter no. 13-66 (Oct. 25, 2013).

¹¹ *See id.* at 3.

¹² CFTC Letter no. 14-121 (Sept. 30, 2014).

¹³ *See* CFTC Letter no. 14-121 (Apr. 22, 2015).

¹⁴ *See* WMBAA Letter to Director Vince McGonagle (Jan. 8, 2015).

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from clearing due to a readily correctible clerical or operational error, resulting in void *ab initio* treatment, or an error is discovered after a trade has been cleared. The WMBAA does not believe that it is likely that market participants will be able to entirely eliminate operational and clerical errors.

While the WMBAA appreciates the relief granted under prior no-action letters, the WMBAA respectfully submits that fixing errors through the “new trade, old terms” procedure after a swap has been cleared has been costly. Rather than relying on the cancellation and rebooking process, the WMBAA encourages the Commission to adopt via a rulemaking a permanent, practicable process for modifying previously-executed and cleared swaps, similar to that allowed in the futures markets. Until such time as the Commission is able to promulgate revised rules, however, the WMBAA believes that extending no-action relief would provide a much-needed remedial process for counterparties to execute their original, intended transactions. The WMBAA recommends that such relief contain the same conditions set forth in letter 15-24.

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The WMBAA appreciates the Divisions’ consideration of this request and would be pleased to discuss this request in further detail.

Sincerely,

A handwritten signature in blue ink, appearing to read "William Shields", is positioned above the typed name.

William Shields
Chairman, WMBAA

cc: The Honorable Timothy Massad, Chairman
The Honorable Sharon Bowen, Commissioner