

March 1, 2016

Mr. Vince A. McGonagle, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Request for Extended Relief from Certain Requirements under Parts 37 and 45 Related to Confirmations and Recordkeeping for Swaps Not Required or Intended to be Cleared

Dear Mr. McGonagle:

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

I. Relief Sought

The WMBAA respectfully requests that, for uncleared swap transactions executed on or pursuant to the rules of a SEF, DMO extend the relief granted under CFTC Letter No. 15-25 ("Letter 15-25"), until the earlier of (1) March 31, 2017, or (2) the effective date of revised Commission regulations that establish a permanent, practicable SEF confirmation solution, and not recommend that the Commission take enforcement action against a SEF:

- (1) if, in a confirmation provided pursuant to Commission Regulation 37.6(b), a SEF incorporates by reference terms from previously-negotiated agreements between the counterparties, without first having been supplied copies of such agreements;
- (2) for failure to maintain a copy of the agreements incorporated by reference in the SEF's confirmation, as required under Commission Regulations 37.1000, 37.1001, and 45.2(a); or
- (3) for failure to report data contained solely in the terms of the underlying agreements that are incorporated by reference in the SEF's confirmation as confirmation data pursuant to Commission Regulation 45.3(a).

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.

In addition, the WMBAA encourages the Commission to undertake a rulemaking to establish a permanent, practicable SEF confirmation solution for uncleared transactions executed on or pursuant to the rules of a SEF consistent with the terms of the no-action relief requested herein.² 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.

II. Background

Commission regulation 37.6 requires a SEF to, at the same time as execution, “provide each counterparty to a transaction that is entered into on or pursuant to the rules of the [SEF] with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction.” In the preamble to the Part 37 rules, footnote 195 concludes that there is “no reason, under certain specified circumstances, why a SEF’s written confirmation agreement cannot incorporate by reference the privately negotiated terms from a freestanding master agreement for these types of transactions, *provided that the master agreement is submitted to the SEF ahead of execution* and the counterparties ensure that nothing in the confirmation terms contradict the standardized terms intended to be incorporated from the master agreement.”³

In response to requests from multiple parties, on August 18, 2014, in Letter 14-108, DMO granted time-limited no-action relief related to confirmation and regulatory reporting requirements in the context of uncleared swap transactions until September 30, 2015.⁴ Specifically, DMO provided that a SEF may incorporate the “terms from underlying previously-negotiated freestanding agreements of the counterparties by reference into the confirmation generated and transmitted to the counterparties to a swap transaction as required under Commission regulation 37.6(b), without copies of the underlying previously-negotiated freestanding agreements being submitted to the SEF prior to execution of the swap transaction.”⁵ In addition, a SEF need not receive or maintain a copy of the documents incorporated by reference in the SEF’s confirmation to the counterparties.⁶

On April 22, 2015, the Commission further extended the no-action relief through Letter 15-25, reiterating that DMO will not recommend enforcement action against a SEF: (1) if “in a confirmation provided pursuant to Commission Regulation 37.6(b), a SEF incorporates by reference terms from previously-negotiated agreements between the counterparties, without first having been supplied copies of such agreements”; (2) “for failure to maintain a copy of the agreements incorporated by reference in the SEF’s confirmation”; and (3) “for failure to report [the terms of the underlying agreements that are incorporated by reference in the SEF’s 37.6(b) confirmation] as confirmation data.”⁷

² As noted by Chairman Timothy Massad, the Commission has sought to revise a regulation “to codify previously granted no-action relief.” *See* Remarks of Chairman Massad before the Futures Industry Association Expo 2014 (Nov. 5, 2014) (discussing revisions to Regulation 1.35(a)).

³ Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33,476 (June 4, 2013), n. 195 (emphasis added).

⁴ CFTC Letter No. 14-108 (Aug. 18, 2014).

⁵ *Id.* at 5.

⁶ *Id.*

⁷ CFTC Letter No. 15-25 (Apr. 22, 2015).

As discussed in our prior request for relief in March 2014, market participants negotiate individualized, freestanding agreements in connection with their uncleared swaps that do not relate to the primary economic terms and conditions of a particular transaction. As a result, counterparties do not require that these terms be included in a confirmation for a swap executed bilaterally or on a SEF.

SEFs have been unable to develop a method to request, accept, and maintain a library of every underlying previously-negotiated freestanding agreement between counterparties that is not cumbersome and cost prohibitive. Many of these agreements are maintained in paper form, or scanned PDF files, making them impossible to quickly digitize in a cost-effective manner. The resource drain is considerable when considering that each SEF counterparty likely would have entered into agreements with many other parties and would have multiple agreements for different asset classes.

Further, the Commission has less costly methods to obtain the underlying previously-negotiated freestanding agreements between counterparties for uncleared swaps. First, SEFs have jurisdictional oversight over their participants, providing them with the ability to request the information at the direction of the Commission. At the same time, market participants that are registered entities, such as swap dealers or major swap participants, are bound by books and records and other information-sharing requirements.

III. Framework for No-Action Relief

Due to the complexity of this issue, despite efforts to consider potential implementation solutions, the WMBAA does not believe that SEFs will be able to develop a cost-effective method to collect and maintain underlying, previously-negotiated free standing agreements between counterparties. The WMBAA, therefore, requests that Letter 15-25 be extended until the earlier of (1) March 31, 2017, or (2) the effective date of revised Commission regulations that establish a permanent, practicable SEF confirmation solution. The WMBAA also requests that the staff recommend permanent relief through a formal rule change, as these regulatory requirements are impracticable, overly burdensome, and do not appear to provide meaningful public policy benefits to regulators or the public.

Specifically, the WMBAA requests that:

1. DMO will not recommend that the Commission take enforcement action if, in a confirmation provided pursuant to Commission Regulation 37.6(b), a SEF incorporates by reference terms from previously-negotiated agreements between the counterparties, without first having been supplied copies of such agreements;
2. DMO will not recommend that the Commission take enforcement action against a SEF for failure to maintain a copy of the agreements incorporated by reference in the SEF's confirmation, as required under Commission Regulations 37.1000, 37.1001 and 45.2(a); and
3. DMO will not recommend that the Commission take enforcement action against a SEF for failure to report data contained solely in the terms of the underlying agreements that are incorporated by reference in the SEF's confirmation as confirmation data pursuant to Commission Regulation 45.3(a).

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The WMBAA recommends that the DMO-issued relief contain the same conditions set forth in Letter 15-25.⁸

* * *

The WMBAA appreciates DMO's 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 "W. Shields", is positioned above the typed name.

William Shields
Chairman, WMBAA

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

⁸ See Letter No. 15-25 at 4-5.