



COMMODITY FUTURES TRADING COMMISSION

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Division of Swaps Dealer
and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Letter No. 16-23
No-Action
February 29, 2016
Division of Swap Dealer and Intermediary Oversight

Re: Request for Relief from Regulation 1.57(a)(1)

Dear :

This is in response to your letter dated February 12, 2016, to the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), as supplemented by e-mail messages to, and telephone conversations with, Division staff (collectively, the "Correspondence"). By the Correspondence, you seek on behalf of "A", a registered futures commission merchant ("FCM"), and "A's" current and potential future introducing brokers ("IBs"), relief from Regulation 1.57(a)(1), which addresses the operations and activities of a guaranteed IB and its guarantor FCM.¹ Specifically you request relief from the provision in Regulation 1.57(a)(1) requiring that a guaranteed IB open and carry each customer account solely with its guarantor FCM and on a fully-disclosed basis.²

Based upon the representations made in the Correspondence, we understand the relevant facts to be as follows. The IBs are registered with the Commission in order to introduce counterparties to swap transactions. To satisfy their financial requirements as IBs pursuant to Regulation 1.17(a)(1)(iii), each IB has entered or intends to enter into a guarantee agreement ("Guarantee

¹ Commission regulations referred to in this letter are found at 17 C.F.R. Ch. 1 (2015). They are accessible through the Commission's website, www.cftc.gov, as are the Commodity Exchange Act ("CEA") and the CFTC Staff Letters referred to below.

"A" and the guaranteed IBs identified in the Correspondence are under common control, in that each is owned, either directly or indirectly, by the same person.

² Regulation 1.57(a)(1) provides, in relevant part, that each IB must open and carry each customer's account with a carrying FCM on a fully-disclosed basis. The Regulation further provides that an IB which has entered into a guarantee agreement with an FCM must open and carry its customers' accounts with the guarantor FCM.

Agreement”) with “A” (the guaranteed IBs hereinafter are referred to as “GIBs”).³ The GIBs will engage in the business of assisting in arranging swaps between two counterparties. Each of the counterparties will be an eligible contract participant (“ECP”).⁴

When the GIBs arrange swap transactions, “A” will not carry the accounts of the GIBs’ customers that are counterparties to those swaps. For cleared swaps, the transactions will be carried and cleared by FCMs independently selected by the ECP counterparties (and not by “A”). For uncleared swaps, no FCMs will be involved in carrying and clearing the transactions.

In support of your request, you represent that:

1. “A” is and will remain well-capitalized for the risks undertaken, and will maintain an amount of net capital that surpasses, in the aggregate, the amount of net capital that each IB would have had to maintain if it operated without the Guarantee Agreement.
2. “A” and the GIBs will revise their Guarantee Agreements to provide that “A” will be jointly and severally liable with each respective GIB for all obligations of the GIB under the CEA, as it may be amended from time to time, and the rules, regulations and orders which have been or may be promulgated thereunder with respect to solicitation by the GIB of swaps orders.
3. For cleared swaps transactions arranged by a GIB, the clearing FCMs will be independently selected by the ECP counterparties (“A” will not carry accounts for, or clear such transactions). The GIBs will not introduce the ECPs to the clearing FCMs.
4. For uncleared swaps transactions arranged by a GIB, there will be no FCMs carrying or clearing such transactions.
5. The GIBs will receive no compensation from the clearing FCMs independently selected by the ECPs.

In light of these representations, including the representation that “A” will maintain sufficient net capital to meet its obligations under the revised Guarantee Agreements, and consistent with prior staff positions in this area, the Division will not recommend that the Commission commence an enforcement action against “A” or its current or potential future GIBs for the GIBs’ failure to

³ Regulation 1.17(a)(1)(iii) requires each IB to maintain minimum net capital equal to the greatest of \$; the amount required by a registered futures association of which the IB is a member; or the amount required under Rule 15c3-1(a) of the Securities and Exchange Commission if the IB is also a securities broker-dealer. An IB, however, may elect to enter into a Guarantee Agreement that satisfies certain requirements set forth in Regulation 1.10(j) with a guarantor FCM in lieu of meeting the minimum capital requirement. *See* Regulation 1.17(a)(2)(ii).

⁴ CEA Section 1a(18) defines an ECP as being, among other persons and when acting for its own account, a financial institution, a State-regulated insurance company, an investment company regulated as such under the Investment Company Act of 1940, or an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$.

carry each customer's account with the guarantor FCM (*i.e.*, "A") as required by Regulation 1.57(a)(1).⁵

This letter, and the position taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or any other office or division of the Commission. Moreover, the relief issued by this letter does not excuse any person relying on it from compliance with any other applicable requirements contained in the CEA or the Commission's regulations. Further, this letter is based upon the representations that have been made to the Division, as stated above. Any different, changed, or omitted material facts or circumstances might render this no-action position void. In this regard, you must notify the Division immediately in the event the operations or activities of "A" or its GIBs change in any material respect from those represented to us. Finally, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the relief provided herein, in its discretion.

If you have any questions concerning this letter, please contact Christopher W. Cummings, Special Counsel, or Barbara S. Gold, Associate Director, at (202) 418-6700.

Very truly yours,

Eileen T. Flaherty
Director
Division of Swaps Dealer and
Intermediary Oversight

⁵ See CFTC Staff Letters 14-133 (October 31, 2014) and 04-04 (January 15, 2004) for prior staff positions with which this letter is consistent.