



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 12-26  
No-Action  
June 1, 2012  
Division of Swap Dealer and Intermediary Oversight

Futures Industry Association  
c/o Katten Muchin Rosenman LLP  
525 West Monroe Street  
Chicago, IL 60661-3693

National Introducing Brokers Association  
55 West Monroe Street  
Suite 3600  
Chicago, IL 60603

Re: Request for No-Action Relief from Provisions of Regulation 1.71

Ladies and Gentlemen:

This is in response to your correspondence, dated May 25, 2012, and May 31, 2012, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”), in which you requested no-action relief pursuant to Commission Regulation 140.99, 17 CFR § 140.99. Collectively, your correspondence requested that the Division provide a limited time period of no-action relief – in essence, an extension of the compliance date – for certain provisions of Commission Regulation 1.71, 17 CFR § 1.71, that have a compliance date of June 4, 2012.<sup>1</sup> You filed your requests on behalf of registered futures commission merchants (“FCMs”) and introducing brokers (“IBs”).

The Commission promulgated Regulation 1.71 pursuant to section 4d(c) of the Commodity Exchange Act (“the Act”), 7 U.S.C. § 6d(c), as amended by section 732 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). Regulation 1.71 generally seeks to accomplish several goals, including the following:

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<sup>1</sup> For the relevant text of Regulation 1.71, see Swap Dealer and Major Swap Participant Recordkeeping, Reporting and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20128, 20198-99 (Apr. 3, 2012).

- Subsection (c) prohibits research analysts who work for an FCM or IB, or for an affiliate, from having their judgment compromised or from being improperly influenced by employees in other parts or affiliates of the FCM or IB;<sup>2</sup>
- Subsection (d) prohibits FCMs from allowing affiliated swap dealers or major swap participants from directly or indirectly interfering with, or attempting to influence, the decision of the clearing unit personnel of the FCM to provide clearing services to a particular customer;<sup>3</sup>
- Subsection (e) requires FCMs and IBs to adopt and implement written policies and procedures that mandate the disclosure to customers of any material incentives and any material conflicts of interest regarding the decision of customers as to trade execution and clearing of the derivatives transaction.<sup>4</sup>

You have identified operational constraints that will prevent certain affected persons from becoming fully compliant with certain provisions of Regulation 1.71 as of June 4, 2012.<sup>5</sup> Based upon the representations made in your correspondence, the Division believes that granting FCMs and IBs no-action relief is neither contrary to the purpose of the Act nor to the public interest. Accordingly, the Division will not recommend that the Commission take an enforcement action against FCMs or IBs for failure to be fully compliant with Regulations 1.71(a)-(c), (e) and (f) until **60 days** beyond the current June 4, 2012 compliance date of the Regulation (**August 3, 2012**).<sup>6</sup>

In granting FCMs and IBs an additional 60 days to comply with Regulations 1.71(a)-(c), (e) and (f), the Division seeks to strike the appropriate balance between the statutory directives of section 732 of the Dodd-Frank Act and the need to provide market participants with sufficient time to adjust to regulatory changes. The Division believes that setting a specific compliance date that applies to all FCMs and IBs identically is appropriate. Absent new information relating to the practicability of implementing Commission Regulation 1.71(a)-(c), (e) and (f), the Division will not extend this no-action relief beyond the 60 days provided in this letter.<sup>7</sup>

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<sup>2</sup> Regulation 1.71(c), 17 C.F.R. § 1.71(c); *see* 77 Fed. Reg. at 20198-99.

<sup>3</sup> Regulation 1.71(d)(1), 17 C.F.R. § 1.71(d)(1); 77 Fed. Reg. at 20200.

<sup>4</sup> Regulation 1.71(e), 17 C.F.R. § 1.71(e); 77 Fed. Reg. at 20200.

<sup>5</sup> *See* Letter from Kenneth M. Rosenzweig at 2 (May 25, 2012) (contending that Regulation 1.71 “require[es] FCMs to comprehensively restructure the ways in which their clearing units and affiliated swap dealers’ trading desks interact with each other and with their common clients”).

<sup>6</sup> This letter does not change the compliance date for Regulation 1.71(d) that was adopted by the Commission. Notably, Regulation 1.71(d) is the only subsection in the Regulation that concerns relationships between employees of FCMs and employees of affiliated swap dealers and major swap participants. Accordingly, the Commission determined it appropriate to adopt a compliance date for Regulation 1.71(d) that is the later of June 4, 2012, or the date on which swap dealers and major swap participants will be required to register. The remaining subsections in Regulation 1.71 apply to employees of FCMs and affiliates of FCMs but do not implicate swap dealers, major swap participants or the employees of such entities. Since the registration of swap dealers and major swap participants is immaterial to complying with Regulations 1.71(a)-(c), (e) and (f), the Commission determined in the Adopting Release that affected persons should be compliant with those provisions by June 4, 2012, the effective date of the Regulation.

<sup>7</sup> The Division notes that Regulation 1.71(b)(1) requires policies and procedures reasonably designed to ensure compliance with the provisions of the Regulation. Until the compliance date for Regulation 1.71(d), FCMs will not be required to have adopted policies and procedures relating to Regulation 1.71(d).

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse the affected persons from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. For example, affected persons remain subject to all antifraud provisions of the Act. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void.

Should you have any questions, please do not hesitate to contact me at (202) 418-5977; Frank Fisanich, Chief Counsel, at (202) 418-5949; or Ward Griffin, Associate Chief Counsel, at (202) 418-5425.

Very truly yours,

Gary Barnett

cc: Regina Thoele, Compliance  
National Futures Association, Chicago