



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Matthew B. Kulkin
Director

Re: No-Action Relief for Certain Conditions of the Floor Trader Provision

Ladies and Gentlemen:

This letter is in response to a request from FIA Principal Traders Group (“**FIA PTG**”) to the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) of the Commodity Futures Trading Commission (“**Commission**”) requesting relief from certain conditions in paragraph (6)(iv) of the “swap dealer” definition in Commission regulation (“**Regulation**”) 1.3¹ (hereinafter, the “**Floor Trader Provision**”). DSIO is hereby granting the relief requested, subject to the conditions set forth below.

Regulatory Background

Regulation 1.3 defines the term “swap dealer,” and provides certain exceptions and exclusions from the defined term. The Floor Trader Provision provides that a registered floor trader (“**Floor Trader**”) need not consider cleared swaps executed on or subject to the rules of a designated contract market or swap execution facility (hereinafter, “**DCM and SEF Cleared Swaps**”) when determining whether the Floor Trader is a swap dealer if certain conditions are satisfied. Such swaps would not be considered when determining whether a Floor Trader’s swap dealing activity exceeds the de minimis threshold for swap dealer registration contained in the “swap dealer” definition (“**SD De Minimis Threshold**”).

The Floor Trader Provision applies where the Floor Trader:

- (A) Is registered with the Commission as a Floor Trader;
- (B) Only enters into swaps with proprietary funds for that trader’s own account that are DCM and SEF Cleared Swaps;
- (C) Is not an affiliated person of a swap dealer;

¹ 17 CFR § 1.3. Commission regulations referred to in this letter are found at 17 C.F.R. Ch. 1 and may be accessed through the Commission’s website, <https://www.cftc.gov>.

- (D) Does not directly, or through an affiliated person, negotiate the terms of swap agreements, other than price and quantity or to participate in a request for quote process subject to the rules of a DCM or SEF;
- (E) Does not directly or through an affiliated person offer or provide swap clearing services to third parties;
- (F) Does not directly or through an affiliated person enter into swaps that would qualify as hedging physical positions pursuant to paragraph (6)(iii) of the “swap dealer” definition or hedging or mitigating commercial risk as defined in Regulation 1.3 (except for any such swap executed opposite a counterparty for which the transaction would qualify as a bona fide hedging transaction);
- (G) Does not participate in any market making program offered by a DCM or SEF; and
- (H) Notwithstanding the fact such person is not registered as a swap dealer, such person complies with Regulations 23.201, 23.202, 23.203, and 23.600 with respect to each such swap as if it were a swap dealer.²

Summary of Request for Relief

FIA PTG asserts that some of the foregoing conditions in the Floor Trader Provision are unclear or unnecessarily restrictive and have frustrated the objective of the provision, which was to reduce duplicative regulation of proprietary floor traders providing liquidity with respect to DCM and SEF Cleared Swaps. FIA PTG also states that the relief from certain conditions of the Floor Trader Provision facilitates greater liquidity with respect to DCM and SEF Cleared Swaps by allowing proprietary floor traders that are registered floor traders to trade those swaps in volume for their own accounts without being required to also register as swap dealers. Members of FIA PTG want to trade swaps on SEFs and DCMs, and would provide liquidity for such swaps, but have been reluctant to do so because of a perceived lack of clarity in some of the Floor Trader Provision conditions. Specifically, members of FIA PTG assert that the Floor Trader Provision is unclear as to whether a Floor Trader may enter into any swaps *other than* DCM and SEF Cleared Swaps and nonetheless continue to benefit from the Floor Trader Provision.

In addition, FIA PTG notes that to comply with the Floor Trader Provision, a Floor Trader must comply with Regulation 23.600 “with respect to each such swap as if it were a swap dealer.”³ Among other things, Regulation 23.600(c)(2) requires the preparation and filing of periodic risk reports with the Commission.⁴ FIA PTG asserts that complying with Regulation 23.600(c)(2) would likely provide limited regulatory benefit given that Floor Traders taking advantage of the provision would be: (1) engaging primarily in proprietary trading of DCM and SEF Cleared Swaps, and therefore subject to the regulatory protections of central clearing and

² 17 CFR § 1.3, Swap dealer, paragraph (6)(iv).

³ *Id.*

⁴ 17 CFR § 23.600(c)(2).

exchange trading, and (2) complying with all the other risk management requirements of Regulation 23.600.

For these reasons, FIA PTG requests that DSIO provide no-action relief to any Floor Trader that excludes DCM and SEF Cleared Swaps from the determination of whether the Floor Trader is a swap dealer, notwithstanding the failure of the Floor Trader to comply with:

- (1) Condition (B) of the Floor Trader Provision by entering into swaps other than DCM and SEF Cleared Swaps;
- (2) Condition (D) of the Floor Trader Provision by negotiating the terms of swaps that are not DCM and SEF Cleared Swaps; or
- (3) Condition (H) of the Floor Trader Provision by failing to submit periodic risk reports as required by Regulation 23.600(c)(2).

DSIO No-Action Position

Based on the representations of FIA PTG discussed above, DSIO has determined that a no-action position is appropriate. Accordingly, DSIO will not recommend that the Commission take an enforcement action against a Floor Trader that excludes its DCM and SEF Cleared Swaps when determining whether the Floor Trader is a swap dealer pursuant to paragraph (6)(iv) of the “swap dealer” definition in Regulation 1.3 (and therefore excludes its DCM and SEF Cleared Swaps from counting toward its SD De Minimis Threshold), notwithstanding the following:

- (A) The Floor Trader enters into swaps other than DCM and SEF Cleared Swaps;
- (B) The Floor Trader directly or through an affiliated person, negotiates the terms of swaps other than DCM and SEF Cleared Swaps; or
- (C) The Floor Trader does not submit periodic risk reports as required by Regulation 23.600(c)(2).

The foregoing no-action position is subject to the following condition:

- (1) Notwithstanding the fact that the Floor Trader is not registered as a swap dealer, the Floor Trader complies with Regulations 23.201, 23.202, 23.203, and 23.600 (other than 23.600(c)(2)) with respect to each of its swaps (including swaps that are not DCM and SEF Cleared Swaps) as if it were a swap dealer.

In addition, DSIO notes that notwithstanding the foregoing no-action position, the Floor Trader and its affiliates remain subject to the following requirements:

- (1) The Floor Trader must comply with the affiliate aggregation requirements in paragraph (4)(i) of the “swap dealer” definition in Regulation 1.3 with respect to all of its swaps

other than DCM and SEF Cleared Swaps and all swaps of its affiliates (other than the DCM and SEF Cleared Swaps of an affiliate that is a Floor Trader in compliance with the Floor Trader Provision or the conditions of this letter); and

- (2) Each affiliate of the Floor Trader must comply with the affiliate aggregation requirements in paragraph (4)(i) of the “swap dealer” definition in Regulation 1.3 with respect to all swaps of the Floor Trader other than DCM and SEF Cleared Swaps.

DSIO intends for this letter to permit Floor Traders that are in compliance with the no-action position stated herein to conduct the following activity as presented by FIA PTG in its request:

1. Swap dealing pursuant to the Floor Trader Provision. DCM and SEF Cleared Swaps would be excluded when determining whether the Floor Trader is a swap dealer and therefore not count towards a Floor Trader’s SD De Minimis Threshold calculation.
2. Swap dealing outside the Floor Trader Provision. Swaps that are not DCM and SEF Cleared Swaps and that otherwise meet the definition of dealing swaps in the “swap dealer” definition in Regulation 1.3 would continue to be considered when determining whether the Floor Trader is a swap dealer and therefore count towards determining whether a Floor Trader exceeds the SD De Minimis Threshold.
3. Non-dealing swap activity. Swaps that do not otherwise meet the definition of dealing swaps in the “swap dealer” definition in Regulation 1.3 would be excluded when determining whether the Floor Trader is a swap dealer and therefore not count towards determining whether a Floor Trader exceeds the SD De Minimis Threshold.

This letter, and the positions taken herein, represent the views of DSIO 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 persons relying on it from compliance with any other applicable requirements contained in the Act or in the Regulations issued thereunder. This letter does not create or confer any rights for or obligations on any person or persons subject to compliance with the CEA that bind the Commission or any of its other offices or divisions. Further, this letter, and the relief contained herein, is based upon the representations made to DSIO. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please contact Fern Simmons, Special Counsel, at (202) 418-5901 or fsimmons@cftc.gov.

Very truly yours,

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