



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

Vincent McGonagle  
Director

### **Supplemental Staff Letter with respect to Swaps Trading on Certain Financial Markets that are Licensed in Australia and Overseen by the Australian Securities & Investments Commission**

This letter responds to a request received by the Division of Market Oversight (“DMO” or the “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) from Yieldbroker Pty Limited (“Yieldbroker”) requesting a modification to CFTC No-Action Letter No. 15-29 (“Staff Letter 15-29”)<sup>1</sup> and CFTC Letter No. 16-72 (“Staff Letter 16-72”)<sup>2</sup> to treat U.S. persons trading on Yieldbroker’s platform as the reporting counterparty for purposes of Parts 43 and 45 of the Commission’s regulations.<sup>3</sup> These modifications would eliminate the conditions that require a Qualified Australian Market (“QALM”) to report Part 45 creation data and Part 43 data to a swap data repository (“SDR”) as if it were a swap execution facility (“SEF”).<sup>4</sup>

#### **Background**

Staff Letter 15-29 includes several no-action positions related to SEF registration requirements, the trade execution requirement, swap data reporting requirements, and swap dealer and major swap participant business conduct requirements, confirmation requirements, and swap trading relationship documentation obligations. Under the no-action positions set out in Staff Letter 15-29 related to reporting, a QALM would assume the reporting obligation as if it were a SEF.

Staff Letter 15-29 includes a requirement that a QALM, as a condition to qualifying for relief under the letter, must certify that it will report Part 43 and 45 data to a SDR, as if it were a SEF, for all transactions that are subject to the clearing requirement and/or involve a counterparty that is a U.S. Person.<sup>5</sup> Staff Letter 15-29 also includes a condition that a QALM must have rules that affirmatively prohibit the reporting of such transactions by reporting counterparties, in order

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<sup>1</sup> CFTC Letter No. 15-29 (May 15, 2015), available at <https://www.cftc.gov/csl/15-29/download>.

<sup>2</sup> CFTC Letter No. 16-72 (May 15, 2015) (“Staff Letter 16-72”), available at <https://www.cftc.gov/csl/16-72/download>.

<sup>3</sup> Letter from Fiona Breen, Head of Corporate & Company Secretary, Yieldbroker Pty Limited, to Vincent McGonagle, Director, CFTC Division of Market Oversight, dated November 15, 2022 (“Request Letter”).

<sup>4</sup> Staff Letter 15-29 at 17, 18.

<sup>5</sup> Staff Letter 15-29 at 17.

to avoid duplicative reporting.<sup>6</sup> Finally, Staff Letter 15-29 includes conditions related to the generation of the unique swap identifier for reporting obligations set out in Part 45.<sup>7</sup>

Subsequent to the issuance of Staff Letter 15-29, Yieldbroker submitted a request for relief in accordance with the terms and conditions of Staff Letter 15-29. In this request, Yieldbroker certified that it would begin reporting part 45 creation data and the initial part 43 data to an SDR of its choice, as if it were a SEF, in connection with all swap transactions executed on or pursuant to Yieldbroker's rules that are subject to the clearing requirement or involve a counterparty that is a U.S. Person.<sup>8</sup> Yieldbroker's obligation to report part 45 creation data and the initial Part 43 data associated with swap transactions to a Commission-registered or provisionally-registered SDR, as if it were a SEF, is a condition of Letter 15-29. In its request Yieldbroker also made other reporting-related certifications to satisfy the requirements set out in Staff Letter 15-29.<sup>9</sup>

In response to Yieldbroker's request, staff issued a letter providing no-action positions with respect to certain statutory and regulatory requirements. With respect to reporting requirements, Staff Letter 16-72 takes a no-action position with respect to parties executing swap transactions on, or pursuant to the rules of, Yieldbroker and their obligations to report Part 45 creation data and the initial Part 43 data associated with such swap transactions.<sup>10</sup> This no-action position is conditioned on Yieldbroker reporting Part 45 creation data and the initial Part 43 data associated with swap transactions to an SDR, as if Yieldbroker were a SEF.

### **Requested Staff Letter Modifications**

Yieldbroker has requested modifications to the staff letter conditions that relate to Part 45 creation data and initial Part 43 data. In support of this request, Yieldbroker has represented that all U.S. Persons that currently trade on Yieldbroker are provisionally registered swap dealers that have systems in place to report to SDRs and are amenable to being treated as the reporting counterparty.<sup>11</sup> Yieldbroker has also represented that it will modify its rulebook to affirmatively state that participants have all applicable reporting responsibilities for reportable transactions pursuant to Parts 43 and 45 of the Commission's regulations.<sup>12</sup> Finally, Yieldbroker has represented that the change in reporting from Yieldbroker to the reporting counterparties will occur without a gap in reporting.<sup>13</sup>

### **Modifications to Staff Letters 15-29 and 16-72**

DMO is issuing this supplemental letter to modify Staff Letter 15-29 and Staff Letter 16-72 to remove the reporting conditions related to Parts 43 and 45. Specifically, DMO is:

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<sup>6</sup> *Id.* at 18.

<sup>7</sup> *Id.* at 18.

<sup>8</sup> Staff Letter 16-72 at 9.

<sup>9</sup> *Id.* at 9-10.

<sup>10</sup> *Id.* at 11.

<sup>11</sup> Request Letter at 1 and 3.

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *Id.* at 1.

- Removing the reporting conditions set out in in section E.2.(i)(a)-(c) of Staff Letter 15-29.<sup>14</sup>
- Removing no-action position number 3 set out in section I.C. of Staff Letter 16-72.<sup>15</sup>

All other conditions and no-action positions in Staff Letter 15-29 and Staff Letter 16-72 are not modified by this letter and remain in full effect.

DMO notes that the modifications in this letter are based on representations made by Yieldbroker to the Division. Specifically, Yieldbroker has represented to the Division that all U.S. Persons currently trading on Yieldbroker are registered swap dealers and have systems in place to report to SDRs.<sup>16</sup> Yieldbroker has also represented that the change from reporting by Yieldbroker to reporting by the reporting counterparties will take place without a gap in reporting. In addition, Yieldbroker has also represented that it will modify its rulebook to make clear that reporting counterparties trading on its platform have applicable reporting responsibilities under Parts 43 and 45.

This supplemental letter modifies the conditions set out in Staff Letter 15-29 and Staff Letter 16-72, and shall expire immediately upon the expiration of those staff letters.

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This letter and the positions taken herein represent the views of DMO only, and do not necessarily represent the views of the Commission or of any other division or office of the Commission. Further, this letter, and the relief contained herein, is based upon the representations made to DMO by Yieldbroker. It should be noted that any different, changed, or omitted material facts or circumstances may render this letter void. Finally, as with all no-action letters, DMO 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 correspondence, please contact Isabella Bergstein, Assistant Chief Counsel, Division of Market Oversight, at 202-418-5182 or [ibergstein@cftc.gov](mailto:ibergstein@cftc.gov), Owen Kopon, Associate Chief Counsel, Division of Market Oversight, at 202-418-5360 or [okopon@cftc.gov](mailto:okopon@cftc.gov), or Roger Smith, Associate Chief Counsel, Division of Market Oversight, at 202-418-5344 or [rsmith@cftc.gov](mailto:rsmith@cftc.gov).

Sincerely,

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Vincent McGonagle  
 Director  
 Division of Market Oversight

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<sup>14</sup> Staff Letter 15-29 at 17-18.

<sup>15</sup> Staff Letter 16-72 at 11.

<sup>16</sup> Request Letter at 1 and 3.