



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Letter No. 14-154
No-Action
December 22, 2014
Division of Swap Dealer and Intermediary Oversight

Re: Time Limited No-Action Relief for Futures Commission Merchants, Swap Dealers, and Major Swap Participants from Compliance with the Timing Requirements of Commission Regulation 3.3(f)(2) Relating to Annual Reports by Chief Compliance Officers

Ladies and Gentlemen:

The Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) is providing time-limited no-action relief from the time requirements for submitting an annual report set forth in Commission Regulation 3.3(f)(2),¹ by futures commission merchants (“FCMs”), swap dealers (“SDs”), and major swap participants (“MSPs”). The relief applies to the timing for submitting an annual report for a registrant that has a fiscal year ending on or before January 31, 2015.²

Regulatory Background

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank Act**”)³ added Section 4s(k) to the Commodity Exchange Act (“**CEA**”),⁴ which requires each SD and MSP to designate an individual to serve as its CCO, who must perform the duties and responsibilities required by Commission Regulations. In addition, section 732 of the

¹ 17 CFR 3.3.(f)(2)

² The Division previously issued time-limited no-action relief to FCMs, SDs, and MSPs for the submission of annual reports required to be furnished during calendar year 2014. *See* CFTC Letter No. 13-84. This letter does not replace or supersede the relief granted in CFTC Letter No. 13-84.

³ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁴ 7 U.S.C. § 1 *et seq.*

Dodd-Frank Act added Section 4d(d) to the CEA, which imposes similar requirements on FCMs. Pursuant to that authority, the Commission has promulgated Commission regulation 3.3, which, among other things, requires that FCMs, SDs, and MSPs designate a CCO meeting certain qualifications and sets forth the duties and responsibilities of a CCO.

One of the duties of a CCO is to prepare and sign an annual report.⁵ The annual report must cover the most recently completed fiscal year of the FCM, SD, or MSP, and at a minimum, must contain the information enumerated in Regulation 3.3, including a certification by the CCO or chief executive officer.⁶ Regulation 3.3(f)(2) requires that all FCMs, SDs, and MSPs file their annual report no later than 60 days after the end of their fiscal year.⁷

Annual Report Advisory

Today, the Division is also issuing an advisory to FCMs, SDs, and MSPs regarding the annual reporting requirements of the Commission's regulations to foster better compliance. The Division believes that the information provided in the annual report advisory will assist the registrants in achieving the stated purposes of the annual report and accordingly seeks to encourage the registrants to incorporate the information provided in the advisory in the annual report preparation process going forward.

The Division is aware that many of these registrants have a fiscal year that corresponds to the calendar year and accordingly may be in the process of preparing the annual reports at this time. For most of these registrants, this next annual report will be only the second such report prepared since the adoption of Commission regulation 3.3. Many registrants may want to make adjustments to their annual reports in light of the information provided in the advisory, but may face time constraints if they are nearing the end of their current fiscal years. In light of these timing issues, the Division believes that it is appropriate to provide additional time to FCMs, SDs, and MSPs for preparing their current fiscal year annual reports such that each registrant has a minimum of 90 days to make adjustments to incorporate the information provided in the advisory before the report must be submitted to the Commission.

Limited No-Action Relief Granted

Based on the foregoing, the Division believes that granting time-limited no-action relief is warranted. Accordingly, the Division will not recommend that the Commission take an enforcement action against an FCM, SD, MSP, or against a CCO of such firm for failure to furnish an annual report for a fiscal year ending on or before January 31, 2015, within the 60 day period prescribed in Commission regulation 3.3(f)(2); provided that such annual report is furnished to the Commission no later than 90 days after the end of the firm's fiscal year.

⁵ 17 CFR 3.3(d)(6).

⁶ 17 CFR 3.3(f)(3).

⁷ 17 CFR 3.3(f)(2).

Furthermore, if any such FCM, SD, or MSP is unable to comply with the requirement to furnish the annual report to the Commission no later than 90 days after the end of the firm's fiscal year, such firm may furnish its annual report to the Commission no later than 120 days after the end of the firm's fiscal year; provided that, no later than 90 days after the end of the firm's fiscal year, the firm informs the Division of any material non-compliance events that occurred during the fiscal year that is the subject of the annual report.

This no-action relief is limited to annual reports required to be furnished by FCMs, SDs, and MSPs for fiscal years ending on or before January 31, 2015. It does not extend relief to annual reports required to be furnished for fiscal years ending after January 31, 2015.

This letter, and the positions taken herein, represent the view of the Division only, and do not necessarily represent the positions or views 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.

Should you have any questions, please do not hesitate to contact Erik Remmler, Deputy Director, at 202-418-7630, Katherine Driscoll, Associate Director, at 202-418-5544, Brian Mulherin, Associate Director, at 202-418-6622, or Fern Simmons, Special Counsel, at 202-418-5901.

Very truly yours,

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Division of Swap Dealer and Intermediary Oversight