



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. 15-15
No-Action
March 27, 2015
Division of Swap Dealer and Intermediary Oversight

Re: 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:

This letter is in response to a request from the Futures Industry Association and International Swaps and Derivatives Association, dated March 10, 2015, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) for relief from the timing requirements for submitting an annual report, as set forth in Commission Regulation 3.3(f)(2),¹ by futures commission merchants (“FCMs”) and swap dealers (“SDs”). The requested relief would be applicable to annual reports required to be submitted to the Commission by the chief compliance officers (“CCOs”) of such firms.² The Division notes that the associations requesting relief limited the request to FCMs and SDs because their memberships do not include major swap participants (“MSPs”). However, given that the regulatory requirements of Regulation 3.3(f)(2) also apply to MSPs, the Division believes it appropriate to extend the relief equally to MSPs.

Regulatory Background

As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Dodd-Frank Act**”),³ the Commodity Exchange Act (“CEA”) requires the Commission to promulgate rules concerning the duties of CCOs of FCMs, SDs, and MSPs.⁴ With respect to SDs and MSPs, Section 4s(k)(3) specifically requires SD and MSP CCOs to prepare an annual report that must accompany each appropriate financial report of the SD or MSP.⁵ CEA Section 4d(d)

¹ 17 C.F.R. § 3.3(f)(2) (2012).

² The Division previously issued time-limited no-action relief to FCMs, SDs, and major swap participants with fiscal years ending on or before January 31, 2015 for the submission of annual reports. *See* CFTC Letter No. 14-154. This letter does not replace or supersede the relief granted in CFTC Letter No. 14-154.

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

⁴ *See* 7 U.S.C. §§ 6s(k) (SDs), 6d(d) (FCMs).

⁵ The statutory financial reporting requirements for SDs and MSPs are addressed in CEA Section 4s(f).

addresses FCM CCO duties. Sections 4s(k) and 4d(d) differ in that Section 4d(d) only generally addresses the designation and duties of a CCO, and does not mention the specific requirement to prepare and file an annual report.

Pursuant to its statutory authority, the Commission promulgated Commission Regulation 3.3, which applies to FCMs, SDs and MSPs (collectively, “registrants”). Among other things, Regulation 3.3 requires each registrant’s CCO to prepare and sign an annual report.⁶ The annual report must cover the registrant’s most recently completed fiscal year, and at a minimum, must contain the enumerated information in Regulation 3.3(e).⁷ Regulation 3.3(f)(2) requires the registrant’s CCO to furnish the annual report to the Commission not more than 60 days after the end of their fiscal year, simultaneously with the submission of Form 1-FR-FCM or the Financial and Operational Combined Uniform Single Report (the “FOCUS Report”).⁸ The financial condition report requirement for SDs and MSPs is addressed in the Proposed Capital Requirements Rule, which, if adopted as proposed, would require SDs and MSPs to file their financial condition reports 90 days after their fiscal year-end.

Requested No-Action Relief and Discussion

For the reasons summarized below, you request no-action relief permitting registrants to submit their annual reports 90 days after their fiscal year-end, rather than the 60 days currently required under Regulation 3.3(f)(2). In your request you cite three reasons for why an additional 30 days is required. You further request relief from the requirement to file the annual report simultaneously with the submission of Form 1-FR-FCM or the FOCUS Report.

⁶ 17 C.F.R. § 3.3(d)(6).

⁷ Regulation 3.3(e) provides that the Annual Report must, at a minimum:

- Contain a description of the written policies and procedures, including the code of ethics and conflicts of interest policies;
- Review each applicable requirement under the Act and Commission Regulations, and with respect to each, identify the policies and procedures that are reasonably designed to ensure compliance with the requirement under the Act and Commission Regulations; provide an assessment as to the effectiveness of these policies and procedures, and discuss areas for improvement; and recommend potential or prospective changes or improvements to the compliance program and resources devoted to compliance;
- List any material changes to compliance policies and procedures during the coverage period for the report;
- Describe the financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission Regulations, including any material deficiencies in such resources; and
- Describe any material non-compliance issue identified and the corresponding action taken.

See 17 C.F.R. § 3.3(e).

⁸ 17 C.F.R. § 3.3(f)(2). Regulation 3.3(f)(2) also incorporates the statutory requirement in CEA Section 4s(k) that the annual report for SDs and MSPs accompany their financial condition reports. The Commission has proposed, but not yet adopted, a financial condition report requirement for SDs and MSPs. *See* Capital Requirements of Swap Dealers and Major Swap Participants, 76 Fed. Reg. 27802, 27838 (proposed May 12, 2011) (“Proposed Capital Requirements Rule”).

Your request indicated that, to fulfill the requirements of Regulation 3.3(e), registrants must conduct an extensive review and documentation process involving personnel across the registrant's business, including entity-wide functions. You state that this process:

entails gathering and analyzing numerous FCM/SD policies and procedures and reviewing changes thereto, analyzing the results of testing and assessments, identifying and investigating non-compliance issues during the prior year, determining any planned improvements, and meeting with, and/or obtaining sub-certifications from, personnel at various levels of the FCM/SD, up to and including senior supervisory and management personnel.

You further state that having had the benefit of experiencing the first full-year, full-scope report, you are confident that the additional 30 days were not needed solely to address the difficulties in building the framework for preparing the report, but will be needed each year in order to conduct the substantive review Regulation 3.3(e) requires.

In addition, you state that FCMs/SDs dually registered as broker-dealers have an annual report requirement as well under FINRA's broker-dealer rules that occurs on or near 90 days after their fiscal year-end. You state that dually registered FCMs/SDs "would benefit from using the same extensive processes for assembling and verifying information that they already have in place for their broker-dealer annual reports," and being on the same timeline would be "efficient and beneficial." You further state that the Commission's annual report requirements "seek information at a far more granular and descriptive level than the broker-dealer annual report requirements," and having approximately the same turnaround time to produce a report based on complementary but different facts would be reasonable.

Finally, you state that annual testing plans, "which are used in connection with the annual report preparation and content, are often not concluded until the end of the fiscal year, and the resulting reports may not be issued until sometime during the first quarter of the following fiscal year." As a result, you state that registrants "need the additional time to prepare and analyze the results of these reviews, given that they will contribute to a firm's assessment of the effectiveness of its policies and procedures, as well as help to identify any material, non-compliance issues and attendant remediation plans." You conclude that the granting of relief will accordingly provide the Commission with more fulsome information regarding each registrant's compliance infrastructure and status.

In addition to your stated reasons for requesting relief, the Division recognizes that the work and time that a CCO dedicates to the preparation of the annual report has value apart from informing the Commission as to the status of compliance at the registrant. The Division believes an additional 30 days will allow CCOs to devote sufficient time and resources to the creation of a report that facilitates an in-depth, substantial discussion on the state of the compliance program with the registrant's senior management or board of directors.

Furthermore, the Division notes that, in light of the proposed 90-day filing requirement for the financial condition reports for SDs and MSPs in the Proposed Capital Requirements Rule, described above, allowing registrants 90 days to file the CCO annual report is consistent with the current statutory requirement SDs and MSPs have to file the annual report with the financial condition report.⁹

No-Action Relief Granted

The Division has reviewed your request and determined that granting no-action relief is warranted. Accordingly, the Division will not recommend that the Commission take an enforcement action against a registrant, or against a CCO of any such registrant, for failure to furnish an annual report within the 60-day period prescribed in Commission regulation 3.3(f)(2); provided, however, that such annual report is furnished to the Commission no later than 90 days after the end of the registrant's fiscal year. Additionally, the Division will not recommend that the Commission take an enforcement action against an FCM, or against a CCO of an FCM, for failure to furnish the annual report simultaneously with the Form 1-FR-FCM or the FOCUS Report.

The relief issued by this letter shall remain in effect until the adoption of a rule or rule amendment that modifies the timing requirements of Regulation 3.3(f)(2) relating to annual reports by CCOs. This letter, and the positions taken herein, represent the views 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. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact Erik Remmler, Deputy Director, at 202-418-7630, Brian Mulherin, Associate Director, at 202-418-6622, or Pamela M. Geraghty, Special Counsel, at 202-418-5634.

Very truly yours,

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⁹ See supra note 7.