



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of  
Market Oversight

CFTC Letter No. 13-59  
No-Action  
September 30, 2013  
Division of Market Oversight

Richard Swift  
Chief Executive Officer  
Yieldbroker Pty Limited  
Level 12, 130 Pitt Street  
Sydney, NSW 2000, Australia

Re: Time-Limited No-Action Relief with Regard to Section 5h(a)(1) of the  
Commodity Exchange Act and Commission Regulation 37.3(a)(1)

Dear Mr. Swift:

This is in response to your letter dated September 29, 2013 (“Letter”) to the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request, on behalf of Yieldbroker Pty Limited (“Yieldbroker”), that DMO will not recommend that the Commission take enforcement action against Yieldbroker for failure to register as a SEF, or against any market participants for use of, or other relationships with, Yieldbroker, for a 30-day period commencing on October 2, 2013, which is the compliance date for the Commission’s swap execution facility (“SEF”) final rules, and expiring on November 1, 2013.<sup>1</sup> Specifically, Yieldbroker requests that DMO confirm it will not recommend to the Commission that it commence an enforcement action against Yieldbroker for violation of section 5h(a)(1) of the Commodity Exchange Act (the “Act”)<sup>2</sup> or Commission Regulation 37.3(a)(1),<sup>3</sup> or against any other market participant that uses or has other relationships with Yieldbroker, based on Yieldbroker’s failure to register as a SEF.

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<sup>1</sup> 17 CFR part 37.

<sup>2</sup> CEA section 5h(a)(1) of the Act provides that “No person may operate a facility for the trading or processing of swaps unless the facility is registered as a swap execution facility or as a designated contract market under this section.” 7 U.S.C. § 7b-3.

<sup>3</sup> Commission Regulation 37.3(a)(1) provides that “Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform shall register the facility as a swap execution facility under this part or as a designated contract market under part 38 of this chapter.” 17 CFR 37.3(a)(1).

Yieldbroker is licensed as an exchange under an Australian Market License (“AML”) and is regulated by the Australian Securities and Investment Commission (“ASIC”). Yieldbroker operates a multilateral trading platform in Australia which brings together multiple third-party buying and selling interests in swaps. Yieldbroker currently permits direct access to U.S. persons to transact in swaps on its platform.

On September 27, 2013, Yieldbroker provided DMO with a confidential draft SEF application, which DMO is in the process of reviewing. Yieldbroker also provided DMO with a draft no-action request contemplating an alternative compliance plan.<sup>4</sup> Yieldbroker, DMO and ASIC staff are engaged in discussions in connection with an arrangement under which Yieldbroker would register with the Commission as a SEF while maintaining its AML. Such an arrangement would include Yieldbroker’s provision of an order book, a sufficient level of pre- and post-trade price transparency, non-discriminatory access by market participants, and an appropriate level of self-regulatory oversight. In addition, Commission staff and ASIC staff are developing an arrangement that provides for information sharing and other cooperation with respect to Yieldbroker.<sup>5</sup>

Given the progress made to date and Yieldbroker’s diligent work in suggesting an alternative compliance plan, which would include SEF registration, DMO will not recommend that the Commission take enforcement action against Yieldbroker for failure to register as a SEF under section 5h(a)(1) of the Act or Commission Regulation 37.3(a)(1), or against any market participants for use of, or other relationships with, Yieldbroker. This no-action relief shall commence on October 2, 2013, which is the compliance date for the SEF final rules, and shall expire on November 1, 2013 at 12:01 am EST.

This letter, and the no-action position taken herein, represents the views of DMO only, and does not necessarily represent the positions or views of the Commission or of any other division or office of the Commission’s staff. The no-action positions taken herein do not excuse Yieldbroker from compliance with any other applicable requirements of the Act or the Commission’s regulations thereunder. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact David Van Wagner, Chief Counsel, Division of Market Oversight, at (202) 418-5481 or [dvanwagner@cftc.gov](mailto:dvanwagner@cftc.gov), Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453, [nmarkowitz@cftc.gov](mailto:nmarkowitz@cftc.gov), or David Pepper, Attorney Advisor, Division of Market Oversight, at (202) 418-5565 or [dpepper@cftc.gov](mailto:dpepper@cftc.gov).

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<sup>4</sup> Nothing in this letter presupposes the merits of either Yieldbroker’s draft SEF application or of its draft alternative compliance plan. Those documents are pending DMO review and subject to change.

<sup>5</sup> Staff of the Commission and ASIC currently are negotiating a supervisory memorandum of understanding (“MOU”) that will include SEFs, among other types of entities, within its scope. During the pendency of MOU negotiations, staff will sign an interim cooperative arrangement with ASIC with respect to Yieldbroker.

Sincerely,

David Van Wagner  
Chief Counsel, Division of Market Oversight

Nancy Markowitz  
Deputy Director, Division of Market Oversight