



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 14-92

No-Action

July 8, 2014

Division of Clearing and Risk

Division of Swap Dealer and Intermediary Oversight

Mr. Michael J. Kobida
Executive Director, Collateral Services
Chicago Mercantile Exchange, Inc.
20 South Wacker Street
Chicago, IL 60606

RE: Request for Temporary No-Action Relief from the Written Acknowledgment Requirements in Commission Regulations 1.20(d) and 22.5(a)

Dear Mr. Kobida:

This is in response to your letter dated June 11, 2014 (“Letter”), to the Division of Clearing and Risk and the Division of Swap Dealer and Intermediary Oversight (“Divisions”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Divisions confirm that they will not recommend that the Commission take enforcement action against (1) the Clearing House of the Chicago Mercantile Exchange, Inc. (“CME Clearing”), (2) certain clearing members of CME Clearing, or (3) depositories holding futures customer funds or cleared swaps customer funds for such clearing members, for temporarily failing to obtain, or provide the Commission with, an executed version of the template acknowledgment letter set forth in Appendix A to Regulation 1.20 (“Acknowledgment Letter”), as required by Regulations 1.20(d) and 22.5(a).

Regulations 1.20(d) and 22.5(a) require, among other things, that a futures commission merchant (“FCM”) obtain an Acknowledgment Letter from each depository with which the FCM deposits futures customer funds or cleared swaps customer funds.¹ FCMs are required to obtain the Acknowledgment Letter(s) by July 12, 2014.² CME Clearing requests an extension of time to comply with Regulations 1.20(d) and 22.5(a) in order to address a potential conflict between the terms of the Acknowledgment Letter and the requirements of Regulation 39.13(g)(14), as discussed below. In this

¹ See *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations*, 78 Fed. Reg. 68,506 (Nov. 14, 2013). Regulation 22.5 applies the acknowledgment letter requirements of Regulation 1.20 to FCMs in connection with the holding of cleared swaps customer funds, which the Divisions understand to be “Cleared Swaps Customer Collateral,” as defined in Regulation 22.1.

² *Id.* at 68,578 (setting forth the compliance date for Regulation 1.20).

regard, CME Clearing has submitted a separate letter requesting that the Divisions issue no-action relief to permit modifications to the Acknowledgment Letter (“Separate Letter”).

Statement of Facts

Based upon the representations made by CME Clearing to the Divisions in the Letter, we understand the relevant facts to be as follows:

CME Clearing operates a program, Interest Earning Facility 4 (“IEF4”), that permits CME Clearing’s members to pledge certain types of high quality corporate bonds as initial margin for futures and cleared swaps positions (other than credit default swaps). Under the IEF4 program, an FCM clearing member opens customer segregated accounts and/or cleared swaps customer accounts, as appropriate, with a depository that participates in the IEF4 program (each an “IEF4 Depository”) and the high quality corporate bonds are pledged to such account(s) as initial margin.

In accordance with Regulation 39.13(g)(14),³ CME Clearing requires that each of its clearing members participating in the IEF4 program (each an “Affected Clearing Member”) enter into an Account Administration and Control Agreement (“Agreement”) by and between itself (*i.e.*, the Affected Clearing Member), the relevant IEF4 Depository, and CME Clearing. The purpose of the Agreement is to establish that all funds deposited into the account shall be subject to CME Clearing’s first priority, perfected security interest and shall be under the control of CME Clearing, to the fullest extent permitted by applicable law. The result of this control and first priority, perfected security interest is that CME Clearing would be able to exercise remedies against the funds deposited into the account in the event of a default by the Affected Clearing Member of its obligations owing to CME Clearing, including the Affected Clearing Member’s insolvency.

Discussion of Request for No-Action Relief and Applicable Legal Requirements

CME Clearing’s request for temporary relief is premised upon a potential conflict between the terms of the Acknowledgment Letter and the requirements of Regulation 39.13(g)(14). Specifically, an Acknowledgment Letter executed by an IEF4 Depository would not recognize CME Clearing’s control over or first priority, perfected security interest in the funds held in customer segregated accounts or cleared swaps customer accounts created under the IEF4 program. In order to avoid this conflict, CME Clearing has submitted the Separate Letter requesting that the Divisions issue no-action relief to permit specified modifications to the Acknowledgment Letter, which would include language giving effect to CME Clearing’s control over and first priority, perfected security interest in the funds.

The Acknowledgment Letter requirements were recently finalized and are currently being implemented, and the Divisions have not been presented with a request for relief encompassing the issues presented herein. Granting the temporary relief requested by CME Clearing is appropriate in

³ Regulation 39.13(g)(14) requires that “[i]f a [DCO] permits its clearing members to pledge assets for initial margin while retaining such assets in accounts in the names of such clearing members, the [DCO] shall ensure that such assets are unencumbered and that such a pledge has been validly created and validly perfected in the relevant jurisdiction.” 17 C.F.R. § 39.13(g)(14).

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order to avoid the potential conflict described herein and to allow for a thorough review of the Separate Letter.

Grant of No-Action Relief

Based on the facts presented and the representations CME Clearing has made, the Divisions will not recommend that the Commission take enforcement action against (1) CME Clearing, (2) Affected Clearing Members, or (3) IEF4 Depositories, for temporarily failing to obtain, or provide the Commission with, an Acknowledgment Letter, as required by Regulations 1.20(d) and 22.5(a). The no-action relief is limited to the requirements set forth in Regulations 1.20(d)(2) and 22.5(a), to the extent that such provisions require the use of the Acknowledgment Letter set forth in Appendix A to Regulation 1.20. Such relief does not extend to other provisions of Regulation 1.20; thus, for example, Affected Clearing Members must deposit customer funds only with an IEF4 Depository that agrees to comply with the requirements set forth in Regulation 1.20(d)(5)–(6), among others. As represented in the Letter, CME Clearing must continue to use the written acknowledgment that had been in use prior to the recent amendments to Regulation 1.20 and Appendix A thereto. Such relief shall expire the date on which the Divisions respond to the Separate Letter.

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the Commodity Exchange Act or the Commission's regulations. In addition, the Divisions' position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

Should you have any questions, please do not hesitate to contact Parisa Abadi, Attorney-Advisor, at (202) 418-6620.

Sincerely,

Ananda Radhakrishnan
Director, Division of Clearing and Risk

Gary Barnett
Director, Division of Swap Dealer and Intermediary
Oversight