



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Rules Prohibiting the Aggregation of Orders to Satisfy Minimum Block Sizes or Cap Size Requirements, and Establishing Eligibility Requirements for Parties to Block Trades

The Commodity Futures Trading Commission (Commission) is issuing a notice of proposed rulemaking to add certain provisions to part 43 of the Commission's regulations pertaining to block trades in swap contracts. The proposed provisions would: (i) prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements, except for orders aggregated by certain commodity trading advisors (CTAs), investment advisers and foreign persons (as described in the notice of proposed rulemaking), if such person has more than \$25,000,000 in total assets under management (AUM); (ii) provide that parties to a block trade must individually qualify as eligible contract participants (ECPs), except where a designated contract market (DCM) allows certain CTAs, investment advisers and foreign persons (as described in the notice of proposed rulemaking), to transact block trades for customers who are not ECPs, if such CTA, investment adviser or foreign person has more than \$25,000,000 in total AUM; and (iii) require that persons transacting block trades on behalf of customers must receive prior written instruction or consent from the customer to do so.

The Dodd-Frank Wall Street Reform and Consumer Protection Act

On July 21, 2010, Congress passed the Dodd-Frank Act, which amended the Commodity Exchange Act (CEA).

In order to implement the various statutory requirements imposed under section 2(a)(13) of the CEA, the Commission published an initial notice of proposed rulemaking on December 7, 2010 (Initial Proposal). Among other requirements, the Initial Proposal included a proposed rule that provided that eligible parties to a block trade (or large notional swap) must be ECPs, except that a DCM may allow certain CTAs, or principals thereof, including certain investment advisers, or certain foreign persons performing a similar role or function, to transact block trades for customers who are not ECPs, if such CTA, investment adviser or foreign person has more than \$25,000,000 in total AUM. The proposed rule further required that a person transacting a block trade on behalf of a customer must receive written instruction or prior consent from the customer to do so. Furthermore, proposed § 43.5(m) of the Initial Proposal prohibited the aggregation of orders for different trading accounts in order to satisfy the minimum block size requirement, except if done on a DCM by certain CTAs, or principals thereof, including certain investment advisers, or certain foreign persons performing a similar role or function, if such CTA, investment adviser or foreign person has more than \$25,000,000 in total AUM.

The Commission is re-proposing these provisions, with certain revisions.

Proposed Rules Prohibiting the Aggregation of Orders to Satisfy the Minimum Block Size or Cap Size Requirements

The notice of proposed rulemaking proposes a provision that would prohibit the aggregation of orders for different trading accounts in order to satisfy the minimum block size or cap size requirements, except if done on a DCM or SEF by a person who: (i)(A) is a CTA registered pursuant to Section 4n of the CEA or exempt from such registration under the CEA, or a principal thereof, and who has discretionary trading authority or directs client

accounts, (B) is an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (C) is a foreign person who performs a similar role or function as the persons described in (A) or (B) and is subject as such to foreign regulation; and (ii) has more than \$25,000,000 in total AUM.

Proposed Rules Establishing Eligibility Requirements for Parties to Block Trades

The notice of proposed rulemaking would require that parties to a block trade must be ECPs, as that term is defined under the CEA and the Commission's regulations. The proposed rule would include an exception to the ECP requirement by providing that a DCM may allow: (i) a CTA registered pursuant to Section 4n of the CEA, or exempt from registration under the CEA, or a principal thereof, who has discretionary trading authority or directs client accounts, (ii) an investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of § 4.7(a)(2)(v) of the Commission's regulations, or (iii) a foreign person who performs a similar role or function to the persons described in (i) or (ii) and is subject as such to foreign regulation, to transact block trades for customers who are not ECPs, if such CTA, investment adviser or foreign person has more than \$25,000,000 in total AUM.

The notice of proposed rulemaking would require that a person transacting a block trade on behalf of a customer must receive prior written instruction or consent from the customer to do so.