



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5260
Facsimile: (202) 418-5527

Division of
Market Oversight

CFTC Letter No. 15-56
No-Action
October 15, 2015
Division of Market Oversight

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

Re: Conditional 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:

On December 20, 2013, the Division of Market Oversight (“DMO” or “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”) issued CFTC No-Action Letter No. 13-76 (“December 2013 Letter”)¹ granting time-limited conditional relief to Yieldbroker Pty Limited (“Yieldbroker”). Pursuant to the December 2013 Letter, DMO would 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”)² or Commission Regulation 37.3(a)(1),³ or against any other market participant that uses or has other relationships with Yieldbroker, based on Yieldbroker’s failure to register as a SEF, until May 15, 2014. On May 14, 2014, DMO issued No-Action Letter No. 14-70 extending the conditional no-action relief granted to Yieldbroker by the December 2013 Letter through August 15, 2014.⁴ On August 11, 2014, DMO issued No-Action Letter No. 14-105 extending the same conditional relief to Yieldbroker through November 15, 2014.⁵

¹ See CFTC No-Action Letter No. 13-76 (December 20, 2013), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-76.pdf>.

² 7 U.S.C. 7b-3(a)(1).

³ 17 CFR 37.3(a)(1).

⁴ See CFTC No-Action Letter No. 14-70 (May 14, 2014), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-70.pdf>.

⁵ See CFTC No-Action Letter No. 14-105 (August 11, 2014), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-105.pdf>.

On September 15, 2014, DMO and the CFTC's Division of Swap Dealer and Intermediary Oversight ("DSIO") jointly issued CFTC No-Action Letter No. 14-117 ("Letter 14-117") providing conditional relief with respect to swaps trading on qualifying financial markets that are licensed in Australia and overseen by the Australian Securities & Investments Commission ("ASIC") ("Australian Licensed Markets").⁶ Letter 14-117 is an enabling no-action letter that requires an Australian Licensed Market to affirmatively undertake to DMO that it will comply with the conditions set out in the letter. As such, relief under Letter 14-117 would not be triggered until DMO reviews the applicant's certification and issues a responsive relief letter.

On November 13, 2014, DMO issued No-Action Letter No. 14-139 ("Letter 14-139") extending conditional relief to Yieldbroker through February 15, 2015.⁷ On February 12, 2015, DMO issued No-Action Letter No. 15-04 ("Letter 15-04") extending conditional relief to Yieldbroker through May 15, 2015.⁸ DMO issued Letters 14-139 and 15-04 to allow Yieldbroker additional time to work toward compliance with the conditions set out in Letter 14-117, while Commission staff evaluated certain proposed modifications to Letter 14-117.

On May 15, 2015, DMO and DSIO jointly issued CFTC No-Action Letter No. 15-29 ("Letter 15-29"), which superseded Letter 14-117.⁹ The conditional relief provided in Letter 15-29 generally tracks the conditional relief provided in Letter 14-117, but contains several notable clarifications and changes to the conditions for relief.

On May 15, 2015, DMO also issued CFTC No-Action Letter 15-30 ("Letter 15-30")¹⁰ extending conditional relief to Yieldbroker through October 15, 2015. DMO issued Letter 15-30

⁶ See CFTC No-Action Letter No. 14-117 (September 15, 2014), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-117.pdf>. No-Action Letter 14-117 provides relief for:

- Qualifying Australian Licensed Markets from the SEF registration requirement;
- Parties executing swap transactions on qualifying Australian Licensed Markets from the trade execution mandate; and
- Swap dealers and major swap participants executing swap transactions on qualifying Australian Licensed Markets from certain business conduct requirements.

Such relief would expire upon the effective date of any exempt SEF rulemaking pursuant to CEA section 5h(g).

⁷ See CFTC No-Action Letter No. 14-139 (November 13, 2014), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/14-139.pdf>.

⁸ See CFTC No-Action Letter No. 15-04 (February 12, 2015), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-04.pdf>.

⁹ See CFTC No-Action Letter No. 15-29 (May 15, 2015), *available at* <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-29.pdf>. Similar to Letter 14-117, Letter 15-29 is an enabling no-action letter that requires an Australian Licensed Market to affirmatively undertake to DMO that it will comply with the conditions set out in the letter.

¹⁰ See CFTC No-Action Letter No. 15-30 (May 15, 2015), *available at* <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-30.pdf>.

to allow Yieldbroker additional time to work toward compliance with the amended conditions for relief set out in Letter 15-29.

Yieldbroker has represented to DMO that it expects to submit its application for relief pursuant to Letter 15-29 to DMO by April 8, 2016. Yieldbroker has confirmed with DMO that it will facilitate all modifications necessary for compliance with the conditions in Letter 15-29, in consultation with its home country regulator, ASIC, and with the Australian Treasurer. Based upon these representations, DMO believes it is appropriate to extend conditional no-action relief to Yieldbroker with regard to Section 5h(a)(1) of the Commodity Exchange Act and Commission Regulation 37.3(a)(1) until May 15, 2016, to allow Yieldbroker additional time to comply with the terms and conditions in Letter 15-29.

The no-action relief provided by this letter shall remain contingent on Yieldbroker's satisfaction of the six conditions listed in the December 2013 Letter throughout the relief period,¹¹ and Yieldbroker may offer trading in New Zealand Dollar-denominated interest rate swaps on its platform during the relief period.¹² The Division continues to believe that predicating Yieldbroker's relief upon satisfaction of these conditions will help foster pre- and post-trade transparency on, and impartial access to, Yieldbroker's trading platform during the relief period.

¹¹ No-action relief for Yieldbroker will continue to be predicated on Yieldbroker's satisfaction of the following conditions specified in the December 2013 Letter:

1. Yieldbroker will not offer trading on its platform in any product that is subject to the trade execution mandate, pursuant to Section 2(h)(8) of the Act, during the relief period.
2. Yieldbroker will only offer trading in Australian dollar-denominated interest rate swaps on its platform during the relief period.
3. Yieldbroker will maintain its AML license and will remain an exchange in good standing with ASIC and other applicable regulators.
4. Yieldbroker must provide impartial access to its platform consistent with the requirements of Commission regulation 37.202(a) and with any Commission- or Commission staff-issued guidance and interpretations thereto.
5. Yieldbroker must at all times maintain an "order book" that complies with Commission regulation 37.3(a)(3).
6. Yieldbroker must provide notice to its participants that each swap transaction executed on or pursuant to the rules of its platform during the period of relief provided herein is not occurring on a registered SEF and that the counterparties to such Off-facility swaps may have swap data reporting obligations pursuant to parts 43 and 45 of the Commission's regulations. Additionally, Yieldbroker will undertake to monitor that any trade that is reportable under part 45 that is executed on its platform has been assigned a unique swap identifier ("USI") and has therefore been reported to a provisionally-registered or registered swap data repository ("SDR").

These six conditions are the only conditions upon which the relief provided to Yieldbroker by this letter is predicated.

¹² Thus, as a condition of this relief, Yieldbroker will only offer trading in Australian dollar-denominated or New Zealand dollar-denominated interest rate swaps on its platform during the relief period.

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. The no-action positions announced 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, or David Pepper, Special Counsel, Division of Market Oversight, at (202) 418-5565 or dpepper@cftc.gov.

Sincerely,

Vincent McGonagle
Director, Division of Market Oversight