



U.S. COMMODITY FUTURES TRADING COMMISSION

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No-Action
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Division of Market Oversight
Division of Clearing and Risk

No-Action Relief from the Commodity Exchange Act Sections 2(h)(8) and 5(d)(9) and from Commission Regulation § 37.9 for Swaps Executed as Part of Certain Package Transactions and No-Action Relief for Swap Execution Facilities from Compliance with Certain Requirements of Commission Regulations § 37.9(a)(2), § 37.203(a) and § 38.152 for Package Transactions

Ladies and Gentlemen:

This letter responds to requests received from multiple parties by both the Division of Market Oversight ("DMO") and the Division of Clearing and Risk ("DCR") (together "the Divisions") of the Commodity Futures Trading Commission ("Commission" or "CFTC") for no-action relief from the trade execution requirement in Commodity Exchange Act ("CEA") section 2(h)(8) and from certain requirements of § 37.9(a)(2), § 37.203(a) and § 38.152 of the Commission's regulations for package transactions, as defined herein.¹

I. Time Limited No-Action Relief from the Commodity Exchange Act Sections 2(h)(8) and 5(d)(9) and from Commission Regulation § 37.9 for Swaps Executed as Part of Certain Package Transactions

Trade Execution Requirement

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")² amended the CEA to establish a comprehensive new regulatory framework for swaps. Among other things, CEA section 2(h)(8) requires that transactions involving swaps subject to the CEA section 2(h)(1) clearing requirement be executed on a designated contract market ("DCM") or swap execution facility ("SEF"), unless no DCM or SEF makes such swap

¹ This letter responds to no-action relief requested in the following: (1) Letter from International Swaps and Derivatives Association, Inc. ("ISDA"), Request for Relief from the Trade Execution Requirement for Packaged Transactions (Jan. 10, 2014); (2) Letter from Managed Funds Association, Request for Relief from the Trade Execution Requirement for Swaps Executed as Part of Package Transactions in the Interest Rate Asset Class (Jan. 24, 2014); (3) Letter from TW SEF LLC, Request for No-Action Relief from the Mandatory Trade Execution Requirement for Packaged Trades (Jan. 31, 2014); and (4) Letter from ISDA, Request for Relief from the Trade Execution Requirement for Packaged Transactions (Apr. 23, 2014). Notwithstanding the scope of relief sought in any of these particular requests, relief is limited to that provided herein.

² Pub. L. 111-203, 124 Stat. 1376 (2010).

available to trade or such swap transactions qualify for the clearing exception under CEA section 2(h)(7) (“trade execution requirement”).³

To further implement CEA section 2(h)(8), the Commission adopted rules in parts 37 and 38 of its regulations that specify procedures for DCMs and SEFs to make a swap available to trade, and thus subject to the trade execution requirement.⁴ SEFs or DCMs may submit an available-to-trade determination pursuant to the rule approval procedures under § 40.5 of the Commission’s regulations or the self-certification procedures under § 40.6. At this time, five available-to-trade determinations for various interest rate and credit default swaps have been certified and have become effective pursuant to § 40.6.⁵ Accordingly, these swaps, whether listed or offered for trading by any SEF or DCM, became subject to the trade execution requirement 30 days after the certification’s effective date.⁶

All transactions involving swaps that are subject to the trade execution requirement must be executed on a DCM or a SEF. On a SEF, such swaps must be executed in accordance with the execution methods prescribed by § 37.9 of the Commission’s regulations. Swaps that are subject to the trade execution requirement and traded on a SEF are defined as Required Transactions.⁷ Under § 37.9(a)(2), Required Transactions that are not block trades, as defined under § 43.2 of the Commission’s regulations, must be executed on a SEF by either (1) an Order Book, as defined in § 37.3(a)(3); or (2) a Request for Quote System, as defined in § 37.9(a)(3), that operates in conjunction with an Order Book. On a DCM, such swaps must be executed pursuant to subpart J of part 38 of the Commission’s regulations,⁸ which implements DCM Core Principle 9 under section 5(d)(9) of the CEA.⁹

Discussion

On February 10, 2014, DMO issued a no-action letter (“Package Transaction NAL”) providing relief, until May 15, 2014, from the trade execution requirement and the implementing

³ 7 U.S.C. § 2(h)(8).

⁴ See Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 Fed. Reg. 33606 (June 4, 2013).

⁵ Available-to-trade determinations for certain interest rate and credit default swaps were self-certified by Javelin SEF, LLC; trueEX LLC; TW SEF, LLC; MarketAxess SEF Corporation; and Bloomberg SEF LLC. Those certifications became effective on January 16, 2014, January 22, 2014, January 27, 2014, January 29, 2014, and March 9, 2014, respectively. The swaps submitted as available to trade by MarketAxess SEF and Bloomberg SEF were previously included in prior self-certifications; accordingly, transactions involving swaps included in all of the determinations became subject to the trade execution requirement on February 15, 2014, February 21, 2014, and February 26, 2014.

⁶ 17 C.F.R. § 37.12; 17 C.F.R. § 38.11.

⁷ 17 C.F.R. § 37.9(a)(1).

⁸ 17 C.F.R. § 38.500.

⁹ 7 U.S.C. § 7(d)(9).

Commission regulations referenced above for swaps executed as part of a “package transaction.”¹⁰ DMO provided this relief in response to various requests from entities who expressed concern that applying the trade execution requirement to package transactions would present challenges with the processing of such transactions by futures commission merchants (“FCMs”) and derivatives clearing organizations (“DCOs”), as well as based on its awareness that SEFs and DCMs could face challenges in facilitating trading of trade execution required swaps as part of these package transactions in a manner compliant with § 37.9 of the Commission’s regulations and CEA section 5(d)(9).¹¹ The letter provided time-limited no-action relief to: (1) entities or counterparties transacting “package transactions” from the requirements of CEA section 2(h)(8); and (2) SEFs and DCMs, with respect to “package transactions” for which they facilitate trading, from the requirements of § 37.9 of the Commission’s regulations and CEA section 5(d)(9), respectively.¹²

In issuing the Package Transaction NAL, DMO stated that during the period of relief provided, it would further consider whether, and under what conditions, to grant relief for package transactions such that there is an appropriate balance between recognizing the commercial utility of package transactions while not compromising the policy goals of the trade execution requirement.¹³ During the relief period, DMO hosted a public roundtable on package transactions;¹⁴ and the Divisions participated in discussions with industry participants and received numerous comments.

Time-Limited No-Action Relief

Based on discussions with, and comments from, market participants, the Divisions believe that upon expiration of the existing relief in the Package Transaction NAL, additional relief from the trade execution requirement and implementing regulations should be provided to market participants, DCMs and SEFs. For purposes of the relief granted in this letter, a “package transaction” is a transaction involving two or more instruments: (1) that is executed between two or more counterparties; (2) that is priced or quoted as one economic transaction with simultaneous or near simultaneous execution of all components; (3) that has at least one component that is a swap that is made available to trade and therefore is subject to the CEA section 2(h)(8) trade execution requirement; and (4) where the execution of each component is contingent upon the execution of all other components.¹⁵ Accordingly, the Divisions are

¹⁰ CFTC Letter 14-12.

¹¹ Id. at 3.

¹² Id. at 4.

¹³ Id. at 3.

¹⁴ For a transcript, see “Roundtable on Trade Execution Requirements and Package Transactions,” <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/transcript021214.pdf> (Feb. 12, 2014).

¹⁵ For purposes of the expiring relief granted in the Package Transaction NAL, DMO defined “package transaction” to be a transaction “executed between two counterparties . . . with simultaneous execution of all components. . . .” CFTC Letter 14-12 at 4. Based on discussions with industry participants about the different types of execution workflows available for certain package transactions, for purposes of this relief, the

granting relief for the following categories of package transactions set forth below for the time periods indicated.¹⁶

1. Package transactions in which the components include at least one individual swap component that has been made available to trade and is subject to the trade execution requirement; and each of the other swap components is subject to the clearing requirement under CEA section 2(h)(1)(A) and § 50.4 of the Commission's regulations ("MAT/Non-MAT Cleared Package Transactions"):
 - a. The Divisions will grant time-limited no-action relief to (1) entities or counterparties transacting a MAT/Non-MAT Cleared Package Transaction from the requirements of CEA section 2(h)(8); and (2) SEFs and DCMs, with respect to any MAT/Non-MAT Cleared Package Transaction for which they facilitate trading, from the requirements of § 37.9 of the Commission's regulations and CEA section 5(d)(9), respectively, until 11:59 p.m. (Eastern time) **June 1, 2014**.
 - b. The Divisions will grant the above time-limited no-action relief, and will not recommend that the Commission take enforcement action against any entity or counterparty which executes a MAT/Non-MAT Cleared Package Transaction without complying with CEA section 2(h)(8), or against any SEF or DCM which facilitates trading in a swap subject to CEA section 2(h)(8) as part of a MAT/Non-MAT Cleared Package Transaction without complying with § 37.9 of the Commission's regulations or CEA section 5(d)(9), respectively.
2. Package transactions in which each of the swap components has been made available to trade and is subject to the trade execution requirement; and all other components are U.S. Treasury securities ("U.S. Dollar Swap Spreads"):¹⁷
 - a. The Divisions will grant time-limited no-action relief to: (1) entities or counterparties transacting a U.S. Dollar Swap Spread from the requirements of CEA section 2(h)(8); and (2) SEFs and DCMs, with respect to any U.S.

Divisions are amending the definition to include transactions executed between more than two counterparties that may occur at a substantially similar point in time.

¹⁶ Given the diverse types of package transactions identified by industry participants, *see, e.g., id.* at n.11, the Divisions are using the broad-based categories described below to provide targeted relief to different categories of package transactions. Although the Divisions are granting targeted relief for several different categories of package transactions, the Divisions grant no additional relief to package transactions in which each of the components has been made available to trade and is subject to the trade execution requirement.

¹⁷ To the extent that SEFs and DCMs may be facilitating package transactions on their respective trading systems or platforms that involve a security, or any component agreement, contract, or transaction over which the Commission does not have exclusive jurisdiction, the Divisions do not opine on whether such activity complies with other applicable law and regulations. The no-action positions taken herein represent only the position of the Divisions and do not bind the Commission, other Commission staff, or any other Federal agency.

Dollar Swap Spread for which they facilitate trading, from the requirements of § 37.9 of the Commission's regulations and CEA section 5(d)(9), respectively, until 11:59 p.m. (Eastern time) **June 15, 2014**.

- b. The Divisions will grant the above time-limited no-action relief, and will not recommend that the Commission take enforcement action against any entity or counterparty which executes a U.S. Dollar Swap Spread without complying with CEA section 2(h)(8), or against any SEF or DCM which facilitates trading in a swap subject to CEA section 2(h)(8) as part of a U.S. Dollar Swap Spread without complying with § 37.9 of the Commission's regulations or CEA section 5(d)(9), respectively.
3. Package transactions in which the components include at least one individual swap component that has been made available to trade and is subject to the trade execution requirement; and at least one individual swap component that is under the Commission's exclusive jurisdiction and not subject to the clearing requirement under CEA section 2(h)(1)(A) and § 50.4 of the Commission's regulations ("MAT/Non-MAT Uncleared Package Transactions"):
 - a. The Divisions will grant time-limited no-action relief to: (1) entities or counterparties transacting a MAT/Non-MAT Uncleared Package Transaction from the requirements of CEA section 2(h)(8); and (2) SEFs and DCMs, with respect to any MAT/Non-MAT Uncleared Package Transaction for which they facilitate trading, from the requirements of § 37.9 of the Commission's regulations and CEA section 5(d)(9), respectively, until 11:59 p.m. (Eastern time) **November 15, 2014**.
 - b. The Divisions will grant the above time-limited no-action relief, and will not recommend that the Commission take enforcement action against any entity or counterparty which executes a MAT/Non-MAT Uncleared Package Transaction without complying with CEA section 2(h)(8), or against any SEF or DCM which facilitates trading in a swap subject to CEA section 2(h)(8) as part of a MAT/Non-MAT Uncleared Package Transaction without complying with § 37.9 of the Commission's regulations or CEA section 5(d)(9), respectively.
4. Package transactions in which the components include at least one individual swap component that has been made available to trade and is subject to the trade execution requirement; and at least one individual component that is not a swap ("MAT/Non-Swap Instruments Package Transaction").¹⁸ This category of package transactions specifically excludes U.S. Dollar Swap Spreads.

¹⁸ The Divisions understand that non-swap instruments that may constitute part of a package transaction include a futures contract; or a "security," as defined in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934, which includes a "security-based swap." To the extent that SEFs and

- a. The Divisions will grant time-limited no-action relief to: (1) entities or counterparties transacting a MAT/Non-Swap Instruments Package Transaction from the requirements of CEA section 2(h)(8); and (2) SEFs and DCMs, with respect to any MAT/Non-Swap Instruments Package Transaction for which they facilitate trading, from the requirements of § 37.9 of the Commission's regulations and CEA section 5(d)(9), respectively, until 11:59 p.m. (Eastern time) **November 15, 2014**.
 - b. The Divisions will grant the above time-limited no-action relief, and will not recommend that the Commission take enforcement action against any entity or counterparty which executes a MAT/Non-Swap Instruments Package Transaction without complying with CEA section 2(h)(8), or against any SEF or DCM which facilitates trading in a swap subject to CEA section 2(h)(8) as part of a MAT/Non-Swap Instruments Package Transaction without complying with § 37.9 of the Commission's regulations or CEA section 5(d)(9), respectively.
5. Package transactions in which the components include at least one individual swap component that has been made available to trade and is subject to the trade execution requirement; and at least one individual swap component that is a swap over which the Commission does not have exclusive jurisdiction ("MAT/Non-CFTC Swap Package Transactions").¹⁹
- a. The Divisions will grant time-limited no-action relief to: (1) entities or counterparties transacting a MAT/Non-CFTC Swap Package Transaction from the requirements of CEA section 2(h)(8); and (2) SEFs and DCMs, with respect to any MAT/Non-CFTC Swap Package Transaction for which they facilitate trading, from the requirements of § 37.9 of the Commission's regulations and CEA section 5(d)(9), respectively, until 11:59 p.m. (Eastern time) **November 15, 2014**.

DCMs may be facilitating package transactions on their respective trading systems or platforms that involve a security, or any component agreement, contract, or transaction over which the Commission does not have exclusive jurisdiction, the Divisions do not opine on whether such activity complies with other applicable law and regulations. The no-action positions taken herein represent only the position of the Divisions and do not bind the Commission, other Commission staff, or any other Federal agency.

¹⁹ A "mixed swap," as defined in section 1a(47)(D) of the CEA, is an example of a swap over which the CFTC may share jurisdiction with the U.S. Securities and Exchange Commission. See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 Fed. Reg. 48208, 48291-93 (Aug. 13, 2012). To the extent that SEFs and DCMs may be facilitating package transactions on their respective trading systems or platforms that involve a security, or any component agreement, contract, or transaction over which the Commission does not have exclusive jurisdiction, the Divisions do not opine on whether such activity complies with other applicable law and regulations. The no-action positions taken herein represent only the position of the Divisions and do not bind the Commission, other Commission staff, or any other Federal agency.

- b. The Divisions will grant the above time-limited no-action relief, and will not recommend that the Commission take enforcement action against any entity or counterparty which executes a MAT/Non-CFTC Swap Package Transaction without complying with CEA section 2(h)(8), or against any SEF or DCM which facilitates trading in a swap subject to CEA section 2(h)(8) as part of a MAT/Non-CFTC Swap Package Transaction without complying with § 37.9 of the Commission's regulations or CEA section 5(d)(9), respectively.

II. Time-Limited No-Action Relief for SEFs and DCMs from Compliance with Certain Requirements of Commission Regulation § 37.9(a)(2), § 37.203(a) and § 38.152 for Package Transactions

Clearing of Package Transactions

The Divisions have been informed by market participants that issues may arise as a result of the current clearing of the packages—on a leg-by-leg basis and not on the totality of the package. The Divisions have been told that individual legs of a package transaction may be rejected by a DCO because the risk of that leg, measured in isolation, could cause the trader to exceed its credit limit. The market participants state that if the legs of the package trade are measured together, then the net risk may not exceed the credit limit. Accordingly, the market participants request relief from the straight-through processing requirements currently in place.

By way of background, the Commission published regulations on April 9, 2012 addressing the timing of acceptance for clearing and clearing member risk management.²⁰ Section 1.73 and Section 23.609 of the Commission's regulations require FCMs and swap dealers ("SDs") respectively, that are clearing members of a DCO, to establish risk-based limits and screen orders for compliance with those limits. Section 37.702(b) of the Commission's regulations requires a SEF to coordinate with each DCO to which it submits transactions for clearing to develop rules and procedures to facilitate prompt and efficient transaction processing. Section 38.601(b) of the Commission's regulations requires a DCM to coordinate with each DCO to which it submits transactions for clearing, to develop rules and procedures to facilitate prompt and efficient transaction processing. Sections 1.74, 23.610, and 39.12(b)(7) of the Commission's regulations set forth time frames for FCMs, SDs, and DCOs, respectively, to accept or reject trades for clearing.

On June 19, 2012, the Commission published regulations governing DCMs.²¹ Section 38.152 of the Commission's regulations requires a DCM to prohibit certain abusive trading practices, including pre-arranged trading (except for block trades or other types of transactions certified to or approved by the Commission).

²⁰ Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 Fed. Reg. 21278 (Apr. 9, 2012).

²¹ Core Principles and Other Requirements for Designated Contract Markets, 77 Fed. Reg. 36611 (June 19, 2012).

On September 26, 2013, the Divisions issued Staff Guidance on Swaps Straight-Through Processing (“Staff Guidance”). In the guidance, the staff stated, among other things, that:

- (i) Clearing FCMs must screen orders for execution on a SEF or DCM pursuant to either Commission Regulation 1.73(a)(2)(i) or (ii) regardless of the method of execution;²²
- (ii) Pursuant to Commission Regulations 37.702(b) and 38.601(b), each SEF and DCM must make it possible for Clearing FCMs to screen as required by Regulation 1.73 on an order-by-order basis;²³
- (iii) SEFs and DCMs must have rules stating that trades that are rejected from clearing are void *ab initio*;²⁴ and
- (iv) SEFs, DCMs, FCMs, and SDs may not require breakage agreements as a condition for trading swaps intended for clearing on a SEF.²⁵

Subsequent to this guidance, market participants told the Divisions that from time to time, swap trades are rejected by a DCO because of flaws that are readily correctable. For example, an operational error may cause the clearing submissions to fail to match on a material economic term. In response, on October 25, 2013, the Divisions issued a no-action letter providing that, subject to specified conditions, SEFs were permitted to establish a “new trade, old terms” procedure for certain trades that had been rejected from clearing.²⁶

Finally, on April 18, 2014, the Divisions issued a no-action letter providing that, subject to specified conditions, DCMs also were permitted to establish a “new trade, old terms” procedure for certain trades that had been rejected from clearing.²⁷

Time-Limited No-Action Relief

The Divisions are issuing this no-action letter to permit a similar procedure to be followed for package transactions executed on or subject to the rules of a SEF or DCM. Specifically, subject to the conditions listed below, which are largely the same as those in CFTC Letters 13-66 and 14-50,²⁸ the Divisions will not recommend that the Commission take any

²² Staff Guidance at 2.

²³ Id. at 3.

²⁴ Id. at 6.

²⁵ Id.

²⁶ CFTC Letter 13-66.

²⁷ CFTC Letter 14-50.

²⁸ The Divisions note a material difference—the sixth condition, as set forth below, permits trades to be resubmitted within 60 minutes of the DCO’s issuance of a notice of rejection to the clearing members; CFTC Letters 13-66 and 14-50, in contrast, permit resubmission for errors within 30 minutes. Market participants

enforcement action against a SEF for failure to comply with Commission Regulation 37.9(a)(2) regarding methods of execution for required or permitted transactions or Commission Regulation 37.203(a)'s prohibition of pre-arranged trading if, after a leg of a "package transaction" has been rejected for clearing, the SEF permits a new trade,²⁹ with terms and conditions that match the terms and conditions of the original trade, other than the time of execution, to be submitted for clearing without having been executed pursuant to the methods set forth in Commission Regulation 37.9(a)(2). The Divisions will also not recommend that the Commission take any enforcement action against a DCM for failure to comply with Commission Regulation 38.152's prohibition of pre-arranged trading, if, after a leg of a "package transaction" has been rejected for clearing, the DCM permits a new trade, with terms and conditions that match the terms and conditions of the original trade, other than the time of execution, to be submitted for clearing. Effectively, SEFs and DCMs will be permitted to implement rules that establish a "new trade, old terms" procedure. This no-action relief shall commence on the date of issuance of this letter and shall expire on September 30, 2014.

The following conditions apply:

1. The procedure must only be available for trades that are rejected because of the sequencing of submission of the legs of a package transaction. The procedure must not be available for trades that are rejected because the package transaction as a whole breached a credit limit.
2. The SEF or DCM must have rules stating that any component leg of a package transaction executed on or subject to the rules of the SEF or DCM in which a component leg is not accepted for clearing shall be void *ab initio*. The rules may not permit trades to be held in a suspended state and then re-submitted.
3. Both clearing members must agree to submit the new trade.
4. Each clearing member must obtain the consent of its customer, if any, to submit the new trade.
5. Neither a clearing member nor a SEF or DCM may require a customer to agree in advance to consent to the submission of the new trade. The consent must be sought on a case-by-case basis, after a component of a package transaction has been rejected.

have indicated to the Divisions that in their experience, more time is needed to resolve package transaction issues than is needed to resolve the types of errors addressed in CFTC Letters 13-66 and 14-50.

²⁹ The term "trade," as used herein, does not refer to the entire package transaction, but rather the execution of the component leg that was rejected. For example, a risk-reducing component leg could be accepted for clearing, but a risk-increasing leg could be not accepted for clearing. This relief would not bust or cancel the leg that was accepted for clearing, but would allow the parties to resubmit the component leg that was not accepted for clearing, with terms and conditions that match the terms and conditions of the original trade of the component leg.

6. The new trade must be submitted as quickly as technologically practicable after receipt by the clearing members of notice of the rejection from clearing but, in any case, no later than 60 minutes from the issuance of a notice of rejection by the DCO to the clearing members.
7. Both the original trade and the new trade must be subject to pre-execution credit checks that comply with Commission Regulation 1.73 and/or Commission Regulation 23.609 and the Staff Guidance.
8. Both the original trade and the new trade must be processed in accordance with the time frames set forth in Commission Regulations 1.74, 23.610, 39.12(b)(7) and the Staff Guidance.
9. The SEF or DCM reports the swap transaction data to the relevant swap data repository (“SDR”) as soon as technologically practicable after the original trade is rejected by the DCO,³⁰ including:
 - i. A part 43 cancellation for the original trade;³¹
 - ii. A part 45 termination indicating that the original package transaction is void *ab initio*;³²
 - iii. Swap transaction data pursuant to parts 43 and 45 of the Commission’s regulations for the newly executed trade. This data must reference the original cancelled trade and indicate that it has been reported pursuant to the procedures described in this letter. This data must also link the original trade to the new trade for both parts 43 and 45 reporting to the relevant SDR.
10. The SEF and DCM must enable the relevant SDR to publicly disseminate the new trade—which may be at a price that is away from the current market—pursuant to part 43 and in a manner that references the original cancelled trade that was previously publicly disseminated.³³

³⁰ The Divisions note that under a “new trade, old terms” procedure, the SEF or DCM must report the original trade and the newly executed trade to the SDR pursuant to parts 43 and 45, in addition to reporting the appropriate messages to the relevant SDR for the original rejected trade, reflecting that it is void *ab initio*.

³¹ Section 43.3(e) of the Commission’s regulations governs the reporting of errors or omissions in previously reported real-time swap data. In adopting part 43, the Commission noted that “[t]he correction of errors or omissions in real time is necessary to fulfill the price discovery mandate of section 727 of the Dodd-Frank Act. . . . For example, a cancellation may occur where a clearinghouse does not accept a particular swap for clearing” Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1204 (Jan. 9, 2012).

³² Section 45.14 of the Commission’s regulations governs the reporting of errors or omissions in data previously reported to an SDR pursuant to part 45.

³³ A SEF or DCM may take up to 90 days from the issuance of this letter to implement and/or make appropriate arrangements with respect to meeting the eighth and ninth conditions above.

11. The procedure established by the SEF or DCM does not operate in any way to impair impartial access to the SEF or DCM as required by Commission Regulations 37.202 or 38.151, respectively, and the Staff Guidance. In particular, SEF or DCM rules must not require breakage agreements³⁴ among participants as a condition of access and must prohibit a participant from requiring breakage agreements with other participants as a condition of trading with them.
12. The SEF or DCM must have rules stating that if the new trade is also rejected, it is void *ab initio* and the parties will not be provided a second opportunity to submit a new trade.

III. Conclusion

Industry participants should note that the no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the Commission's regulations thereunder.³⁵ This letter, and the no-action positions taken herein, represent the positions of the Divisions only, and do not necessarily represent the positions of, or bind, the Commission, any other division or office of the Commission's staff, or any other Federal agency. 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 its discretion.

If you have any questions concerning this correspondence, please contact Nancy Markowitz, Deputy Director, at (202) 418-5453 or nmarkowitz@cftc.gov, Nhan Nguyen, Special Counsel, at (202) 418-5932 or nnguyen@cftc.gov, or Roger Smith, Attorney Advisor, at (202) 418-5344 or rsmith@cftc.gov, DMO or John C. Lawton, Deputy Director, 202-418-5480, jlawton@cftc.gov, DCR.

Sincerely,

Vincent A. McGonagle
Director
Division of Market Oversight

Ananda Radhakrishnan
Director
Division of Clearing and Risk

³⁴ A breakage agreement is any arrangement, whether contained in an agreement between the parties or the rules of a SEF or DCM, that provides for the assessment of liability or payment of damages between the parties to a trade intended for clearing in the event that the trade is rejected from clearing.

³⁵ The applicable swap reporting requirements are set forth under parts 43, 45, and 50 of the Commission's regulations. The applicable clearing requirements are set forth under CEA section 2(h)(1) and part 50 of the Commission's regulations. The applicable pre-execution credit check requirements are set forth under § 1.73 of the Commission's regulations. The applicable straight-through processing requirements are set forth under § 1.74, § 37.702(b), § 38.601, and § 39.12(b)(7) of the Commission's regulations.