



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 13-76
No-Action
December 20, 2013
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 September 30, 2013, the Division of Market Oversight (“DMO” or “Division”) of the Commodity Futures Trading Commission (“Commission”) issued No-Action Letter 13-59 (“September 2013 Letter”)¹ granting temporary relief to Yieldbroker Pty Limited (“Yieldbroker”). Pursuant to the September 2013 Letter, DMO would 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 expiring on November 1, 2013.² Specifically, DMO confirmed in the September 2013 Letter that it 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”)³ or Commission Regulation 37.3(a)(1),⁴ or against any other market participant that uses or has other relationships with Yieldbroker, based on Yieldbroker’s failure to register as a SEF. On October 30, 2013, DMO issued No-Action Letter 13-67 (“October 2013 Letter”) extending the temporary no-action relief granted to Yieldbroker through December 1, 2013.⁵ On

¹ See CFTC No-Action Letter No. 13-59 (September 30, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-59.pdf>.

² 17 CFR part 37.

³ 7 U.S.C. 7b-3(a)(1).

⁴ 17 CFR 37.3(a)(1).

⁵ See CFTC No-Action Letter No. 13-67 (October 30, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-67.pdf>.

November 26, 2013, DMO extended the temporary no-action relief granted to Yieldbroker by the October 2013 Letter until December 15, 2013. On December 12, 2013, DMO extended the temporary no-action relief granted to Yieldbroker by the October 2013 Letter until December 20, 2013.

In order to ensure that Yieldbroker's business activities continue not to be unduly disrupted, the Division believes it is appropriate to provide conditional, temporary no-action relief to Yieldbroker with regard to Section 5h(a)(1) of the Commodity Exchange Act and Commission Regulation 37.3(a)(1). Pursuant to this relief, DMO would 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. This no-action relief shall commence upon publication of this letter, and shall expire on the earlier of (1) May 15, 2014, or (2) the date upon which Yieldbroker achieves SEF registration status. During the relief period, Yieldbroker will continue to work diligently toward accomplishing SEF registration status and will comply with certain conditions, as detailed below. This no-action letter shall supersede all terms and conditions of the October 2013 Letter.

I. Background

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.⁶ 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.⁷

II. Conditional Time-Limited No-Action Relief

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

⁶ 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.

⁷ 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.

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 upon publication of this letter, and shall expire on the earlier of (1) May 16, 2014, at 12:01 am EST, or (2) the date upon which Yieldbroker achieves SEF registration status.

This temporary no-action relief is contingent on Yieldbroker's satisfaction of the below-provided conditions throughout the time-limited relief period. The Division believes 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 while it works toward achieving SEF registration status.

Conditions for Time-Limited Relief

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,⁸ 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.⁹
5. Yieldbroker must at all times maintain an "order book" that complies with Commission regulation 37.3(a)(3).¹⁰
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 swaps¹¹

⁸ Section 2(h)(8) of the Act requires that swap transactions subject to the clearing requirement must be traded on either a designated contract market ("DCM") or SEF unless no DCM or SEF "makes the swap available to trade" or the transaction is not subject to the clearing requirement under section 2(h)(7). Commission regulation 37.10 established a process for a SEF to make a swap available to trade and, consequently, subject to the trade execution mandate under section 2(h)(8) of the CEA. 17 CFR 37.10.

⁹ 17 CFR 37.202(a); see e.g. *Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities*, November 14, 2013 (available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmostaffguidance111413.pdf>).

¹⁰ 17 CFR 37.3(a)(3).

¹¹ The Division notes that "Off-facility swap" is defined in Commission regulations 43.2 and 45.1 as a swap that is not executed on or pursuant to the rules of a swap execution facility or designated contract market and that swap

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")¹² and has therefore been reported to a provisionally-registered or registered swap data repository ("SDR").

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, Attorney Advisor, Division of Market Oversight, at (202) 418-5565 or dpepper@cftc.gov.

Sincerely,

Vincent McGonagle
Director, Division of Market Oversight

cc: David Van Wagner
Nancy Markowitz
David Pepper

data reporting responsibilities for such swap transactions rest with the counterparties to the swap in accordance with Commission regulations 43.3 and 45.3.

¹² Pursuant to Commission regulation 45.5, "[e]ach swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by the use of a unique swap identifier . . ." The USI serves to identify the swap uniquely, thereby facilitating the aggregation of all data regarding the swap into a single data record that can track the swap over the course of its existence. See 77 Fed. Reg. 2136, 2158 (January 13, 2012).