



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer
and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-133
No-Action
October 31, 2014
Division of Swap Dealer and Intermediary Oversight

Re: Request for Relief from Regulation 1.57(a)(1)

Dear :

This is in response to your letter dated July 22, 2014, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”), by which you seek relief on behalf of your client, “A”, from Regulation 1.57(a),¹ which concerns the operations and activities of a guaranteed introducing broker (“GIB”) and its guarantor futures commission merchant (“FCM”). Specifically, you request relief from the proviso in Regulation 1.57(a)(1) requiring that a GIB open and carry each customer account solely with its guarantor FCM and on a fully-disclosed basis (“Proviso”).

Based upon the representations made in your letter, we understand the pertinent facts to be as follows: “A” intends to register with the Commission as an introducing broker. To satisfy its financial requirements, “A” will enter into a guarantee agreement with “B”, a registered FCM (“Guarantee Agreement”).² In addition, “A” and “B” plan to enter into an agreement pursuant to the form of the Futures Industry Association International Uniform Brokerage Execution Services Give-up Agreement, which would allow “A” to “give-up” the transactions of certain clients to various other FCMs not including “B”. At this time, “A” plans to conduct its business from within the United States and its business would not involve cleared swaps.³

¹ Commission regulations referred to in this letter are found at 17 C.F.R. Ch. I (2014). They are accessible through the Commission’s website, www.cftc.gov, as are the Commodity Exchange Act (“CEA”) and the *Federal Register* release and CFTC Staff Letters referred to below.

² “C”, the ultimate ___% owner of “B”, is proposed to be the ultimate owner of a ___% interest in “A”.

³ “A” may also give up trades involving non-United States futures and options contracts for United States persons to non-United States foreign brokers who qualify for the exemption from FCM registration in Regulation 30.10.

In support of your request you represent that:

1. As of May 31, 2014, “B” maintained \$__ in net capital and \$__ in excess net capital, which is sufficient to meet its obligations under the Guarantee Agreement.
2. Pursuant to the Guarantee Agreement, “B” would accept joint and several liability for all obligations under the CEA and Commission regulations with respect to the solicitation of, and transactions involving, all customer accounts of “A”.
3. Where “A” “gives up” a transaction, the clearing FCM would be chosen by the client, who would be an eligible contract participant that would already have an existing clearing account with the chosen FCM(s).⁴
4. Pursuant to the give-up agreement, “B” would be obligated to resolve a trade that the clearing FCM failed to accept.
5. “B” would compensate “A” for trades executed by “A” in the first instance, regardless of whether “A” clears the transactions through “B” or a different FCM.

The purpose of the Proviso is to ensure that the financial position of a guarantor FCM carrying the customer accounts of its GIB can protect the customers of the GIB.⁵ In light of the foregoing representations, including your representation that “B” has sufficient excess net capital to meet its obligations under the Guarantee Agreement, and consistent with prior staff practice in this area,⁶ the Division will not recommend that the Commission commence an enforcement action against “A” for failure to clear all customer transactions through its guarantor FCM (*i.e.*, “B”) as required by Regulation 1.57(a)(1).

This letter, and the position taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. Moreover, the relief issued by this letter does not excuse any person relying on it from compliance with any other applicable requirements contained in the Act or the Commission’s regulations. Further, this letter is based upon the representations that have been made to the Division, as stated above. Any different, changed, or omitted material acts or circumstances might render this no-action position void. In this regard, you must notify

⁴ CEA Section 1a(18) defines the term “eligible contract participant” to include such persons as a corporation, partnership, proprietorship or organization that has total assets exceeding \$10,000,000.

⁵ See 56 Fed. Reg. 37026, 37030 (Aug. 3, 1991).

⁶ See CFTC Staff Letter No. 04-04 (January 15, 2004); CFTC Staff Letter No. 01-20 (March 26, 2001).

the Division immediately in the event that the operations or activities of “A” change in any material respect from those represented to us.

If you have any questions concerning this correspondence, please do not hesitate to contact the undersigned or Barbara S. Gold, Associate Director, at (202) 418-6700.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight