



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Thomas J. Smith
Acting Director

CFTC Letter No. 14-157
No-Action
December 29, 2014
Division of Swap Dealer and Intermediary Oversight

**Re: Extension of Time Limited No-Action Position For Futures Commission Merchants
Regarding Receipt of Acknowledgement Letters from Depositories**

Ladies and Gentlemen:

This letter is directed to futures commission merchants (“FCMs”) registered with the Commodity Futures Trading Commission (“Commission”) from the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commission. This letter sets forth an extension of the time-limited no-action position of the Division announced in Staff Letter 14-127, dated October 16, 2014 (the “October No-Action”). This letter extends the time-limited no-action position in the October No-Action until **April 30, 2015**.

This letter describes the no-action position of the Division with respect to compliance by FCMs with the requirement that FCMs shall deposit customer funds only with depositories that agree to provide the Director of the Division (or such director’s designees) with direct, read-only electronic access to transaction and account balance information for futures customer accounts, accounts containing instruments purchased with futures customer funds, 30.7 customer funds, and Cleared Swaps Customer Collateral pursuant to Commission Regulations 1.20(d)(3)(i) and (ii), 1.26, 22.5, 30.7(d)(3)(i) and (ii), and the Appendices thereto.

Applicable Regulatory Requirements

On November 14, 2013, the Commission published in the Federal Register revisions to Commission Regulations 1.20, 1.26, and 30.7.¹

¹ See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations; Final Rule, 78 FR 68506, 68627-55 (Nov. 14, 2013) (the “Customer Protection Rulemaking”), and Commission Regulation 22.5.

As revised, Commission Regulations 1.20, 1.26, and 30.7 require FCMs to deposit futures customer funds,² instruments purchased with futures customer funds,³ and 30.7 customer funds⁴ only with depositories⁵ that agree to provide the Director of the Division (or such Director's designees) with direct, read-only electronic access to transaction and account balance information for futures customer accounts, accounts containing instruments purchased with futures customer funds, and 30.7 customer funds accounts.⁶ In addition, Commission Regulation 22.5 requires FCMs and DCOs to adhere to all requirements of Commission Regulations 1.20 and 1.26, with all references to "futures customer funds" in such regulations modified to apply to Cleared Swaps Customer Collateral.⁷ Thus, FCMs and DCOs may deposit Cleared Swaps Customer Collateral only with depositories that agree to the undertaking described above.

The foregoing revisions require FCMs to obtain standard form acknowledgement letters from each depository that the FCMs use to hold customer funds. The compliance date set by the Commission for obtaining such acknowledgment letters was set as the date that is 180 days after the effective date of the Customer Protection Rulemaking, or July 12, 2014. By means of two no-action letters, the Division announced a no-action position with regard to compliance until December 31, 2014.⁸

Division No-Action Position

Depositories to many FCMs have not provided the acknowledgement letters required by Commission regulations because such depositories require the Commission to enter into a standard on-line access agreement. The depositories require an on-line access agreement to be executed before the depository may provide the Division Director with the required read-only access to transaction and account balance information for FCM customer accounts. The

² "Futures customer funds" is defined in Commission Regulation 1.3(jjjj).

³ As described in Commission Regulation 1.26.

⁴ "30.7 customer funds" is defined in Commission Regulation 30.1(h).

⁵ Depositories for futures customer funds and instruments purchased with futures customer funds may include a bank or trust company, a derivatives clearing organization ("DCO"), or another FCM. *See* Commission Regulation 1.20(b). Depositories for 30.7 customer funds may include (i) a bank or trust company located in the U.S.; (ii) a bank or trust company located outside the U.S. that has in excess of \$1 billion of regulatory capital; (iii) a FCM registered as such with the Commission; (iv) a DCO; (v) the clearing organization of any foreign board of trade; (vi) a member of any foreign board of trade; or (vii) such member's clearing organization's designated depositories. *See* Commission Regulation 30.7(b).

⁶ *See* Commission Regulation 1.20(d)(3)(i) and (ii), Appendix A to 1.20, 1.26(a) and (b), Appendix A to 1.26, 30.7(d)(3)(i) and (ii), Appendix E to part 30, and Appendix F to part 30.

⁷ "Cleared Swaps Customer Collateral" is defined in Commission Regulation 22.1.

⁸ *See* CFTC No-Action Letters 14-91 (July 10, 2014) and 14-127 (October 16, 2014).

Division's review, negotiation, and execution of such agreements will not be completed by December 31, 2014.

Therefore, in order to allow additional time to finalize the depositories' access agreements, until **April 30, 2015**, the Division will not recommend that the Commission commence an enforcement action against an FCM for failure to obtain an acknowledgement letter in accordance with 1.20(d), 1.26, 22.5, or 30.7(d) solely due to the lack of an executed on-line access agreement between the FCM's depository and the Division.

This letter, and the positions 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. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Act or in Commission regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact me at (202) 418-5495; or Frank Fisanich, Chief Counsel, at (202) 418-5949.

Very truly yours,

Thomas J. Smith
Acting Director
Division of Swap Dealer and
Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago