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**Division of
Market Oversight**

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Other Written Communication
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Division of Market Oversight

Division of Market Oversight Guidance on Calculating Projected Operating Costs by Swap Execution Facilities

The Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission ("Commission") is providing guidance ("Guidance") to swap execution facilities ("SEFs") regarding the calculation of projected operating costs or expenses for the purpose of meeting the financial resource requirements under SEF Core Principle 13 in Section 5h(13) of the Commodity Exchange Act and Commission Regulation 37.1303. This Guidance clarifies for SEFs the staff's view that certain commissions paid to employee-brokers do not have to be included in a SEF's calculation of its projected operating costs.

SEF Core Principle 13 requires SEFs to have "adequate financial, operational, and managerial resources to discharge each responsibility" of the SEF and states that the "financial resources of a SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SEF to cover the operating costs of the SEF for a one-year period, as calculated on a rolling basis." Commission Regulation 37.1301(a) (General Requirements) requires that a SEF "shall maintain financial resources sufficient to enable it to perform its functions in compliance with core principles set forth in section 5h of the Act. Regulation 37.1301(c) states that "[f]inancial resources shall be considered sufficient if their value is at least equal to a total amount that would enable the swap execution facility to cover its operating costs for a period of a least one year, calculated on a rolling basis."

Further, Commission Regulation 37.1303 requires a SEF to make a reasonable calculation every fiscal quarter of its projected operating costs over a 12-month period in order to determine the amount needed to meet the financial resources requirements.

To this end, one expense incurred by voice-based SEFs – the variable commissions such SEFs might pay their employee-brokers, calculated as a percentage of transaction revenue generated by the voice-based SEF – is, unlike fixed salaries or compensation, an expense not payable unless and until revenue is collected by the SEF. The staff's view is that these variable commissions do not have to be included in a SEF's calculation of projected operating costs. In contrast to variable commissions, any fixed salaries or compensation payable to employee-brokers of the SEF must be included in the calculation of projected operating expenses.

This Guidance supersedes any previous guidance issued by the Division on this matter to the extent that it is inconsistent with such guidance. This Guidance, and the positions taken herein, represent the views of the Division only and do not necessarily represent the views of the Commission or of any other office or division of the Commission. If you have any questions concerning this Guidance, please contact Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453 or nmarkowitz@cftc.gov; or Lois Gregory, Associate Director, Division of Market Oversight, at 202 418- 5569 or lgregory@cftc.gov.

Sincerely,

Vincent A. McGonagle
Director
Division of Market Oversight