

MEMO# 27608

October 1, 2013

CFTC Provides Time-Limited No-Action Relief for FCMs from Requirement to Screen Orders for Risk-Based Limits and for SEFs to Facilitate Pre-Execution Screening

[27608]

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TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 85-13
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 74-13
ICI GLOBAL MEMBERS
INVESTMENT ADVISER MEMBERS No. 67-13
INTERNATIONAL MEMBERS No. 48-13
SEC RULES MEMBERS No. 92-13 RE: CFTC PROVIDES TIME-LIMITED NO-ACTION RELIEF FOR FCMs FROM REQUIREMENT TO SCREEN ORDERS FOR RISK-BASED LIMITS AND FOR SEFS TO FACILITATE PRE-EXECUTION SCREENING

On September 30, 2013, the Division of Clearing and Risk and the Division of Market Oversight (“Divisions”) of the Commodity Futures Trading Commission (“CFTC”) issued a time-limited and specific no-action relief for futures commission merchants (“FCMs”) from the requirement to comply with CFTC Regulations 1.73(a)(2)(i) and (a)(2)(ii). [\[1\]](#) The Divisions also provided time-limited and specific no-action relief for temporarily registered swap execution facilities (“SEFs”) from the requirement to comply with CFTC Regulation 37.702(b). The relief expires on November 1, 2013.

Regulation 1.73 requires an FCM that is a clearing member (“Clearing FCM”) of a registered derivatives clearing organization (“DCO”) to establish risk-based limits and screen orders for compliance with those limits. [\[2\]](#) Regulation 1.73(a)(2)(i) states that when a Clearing FCM provides electronic market access to a designated contract market (“DCM”) or SEF or accepts orders for automated execution on a DCM or SEF, the Clearing FCM must use automated means to screen orders for compliance with such risk-based limits. Regulation 1.73(a)(2)(ii) provides that when a Clearing FCM accepts orders for non-automated execution, it shall establish and maintain systems of risk controls reasonably designed to ensure compliance with the limits. [\[3\]](#)

Regulation 37.702(b) 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 in accordance with the requirements of Regulation 39.12(b)(7), which sets forth time frames for DCOs to accept or reject trades for clearing. SEFs must facilitate pre-execution screening by each clearing FCM in accordance with Regulation 1.73 on an order-by-order basis. [4]

In providing relief, the Divisions noted that some Clearing FCMs and temporarily registered SEFs are facing obstacles to achieving compliance with the specific requirements prior to the October 2, 2013 compliance date for the SEF final rules. One of the particular challenges is that SEFs have not had an adequate amount of time to update their rulebooks or implement means to facilitate pre-execution credit checks by Clearing FCMs. Therefore, the Divisions are providing time-limited and specific relief for Clearing FCMs for swaps trading on or subject to the rules of any SEF that does not currently have the rules and procedures to facilitate pre-execution screening by Clearing FCMs in accordance with Regulation 1.73 on an order-by-order basis. The relief is also provided to SEFs that are temporarily registered as of October 2, 2013 from the requirement that they facilitate pre-execution screening by each Clearing FCM in accordance with Commission Regulation 1.73 on an order-by-order basis if the SEFs do not already have the ability to facilitate pre-execution screening. [5]

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endnotes

[1] CFTC Letter No. 13-62 (Sept. 30, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-62.pdf>.

[2] Regulation 1.73(a)(1) requires each Clearing FCM to establish risk-based limits for each proprietary account and each customer account, which are based on position size, order size, margin requirements, or similar factors. Regulation 1.73(a)(2) requires each Clearing FCM to screen orders for compliance with those limits.

[3] CFTC has noted that orders executed by non-automated means (e.g., voice broker) can be screened automatically if they are routed automatically.

[4] On September 26, 2013, the Divisions issued staff guidance on straight-through processing (“STP”) of swaps and described the interaction of the pre-execution risk controls in Regulation 1.73 with STP requirements. The Divisions noted that orders that have satisfied the Clearing FCMs’ pre-execution limits are deemed accepted for clearing and that a Clearing FCM may not reject a trade that has passed its pre-execution filter. In addition, the Divisions stated that DCOs clearing swaps that are executed competitively on or subject to the rules of a DCM or SEF must be accepted or rejected within 10 seconds after submission. Finally, the Divisions expect DCMs and SEFs to have rules stating that trades that are rejected from clearing are void ab initio and that DCMs, SEFs, FCMs, and swap dealers should not require breakage agreements as a condition for access to trading on a SEF or DCM. See Staff Guidance on Swaps Straight-Through Processing (Sept. 26, 2013), available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/stpguidance.pdf>.

[\[5\]](#) SEFs that intend to avail themselves of the relief must submit certain information to the Commission by October 10.

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