



Futures Industry Association

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By Electronic Mail

December 19, 2012

Ananda Radhakrishnan, Director
Division of Clearing and Risk
Commodity Futures Trading Commission
1155 21st Street NW
Washington DC 20581

**Re: Commodity Futures Trading Commission Rule 1.74
Request for Safe Harbor**

Dear Mr. Radhakrishnan:

On behalf of its member futures commission merchants (“FCMs”) and similarly situated FCMs, the Futures Industry Association (“FIA”) requests the Division of Clearing and Risk (“Division”) to adopt the “safe harbor” described below with respect to compliance with the provisions of Commodity Futures Trading Commission (“Commission”) Rule 1.74.¹

By letter October 26, 2012, the Division, in response to individual requests filed by several FCMs in accordance with the provisions of Commission Rule 1.75, established an alternative compliance schedule with respect to the time within which an FCM would be expected to accept or reject a swap submitted for clearing. The current alternative compliance schedule provides that on or before January 1, 2013, each FCM must accept or reject each swap submitted to it for clearing within 120 seconds; on or before March 11, 2013, each FCM must accept or reject each swap submitted to it for clearing within 60 seconds.

FIA member firms have been working diligently to meet this alternative schedule. Nonetheless, we believe the requested safe harbor will: (i) avoid the unnecessary rejection of trades for clearing that are otherwise clearable; (ii) assure that market participants are not exposed to unnecessary liability and disruption; and (iii) encourage the early adoption of clearing for all client types.

¹ Commission Rule 1.74 requires each clearing member FCM to coordinate with each derivatives clearing organization (“DCO”) on which it clears transactions to establish systems that enable the FCM to accept or reject each trade submitted to the DCO for clearing “as quickly as would be technologically practicable if fully automated systems were used.” We understand that Division staff have discussed the terms and conditions of the requested “safe harbor” described herein with representatives of certain FIA members firms.

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In this regard, therefore, we respectfully request the Division, pursuant to its authority under Commission Rule 1.75, to extend the date by which each FCM must accept or reject each trade submitted to it for clearing within 120 seconds to and including February 1, 2013. The date by which each FCM must accept or reject each trade submitted to it for clearing within 60 seconds, March 11, 2013, will not change.

In addition, we request the Division to confirm that it will not recommend that the Commission initiate an administrative action against an FCM for failure to accept or reject each swap submitted for clearing within the revised time frames immediately above (“FCM Response Time”), provided such FCM complies with the following terms and conditions:

1. The FCM files with the Division, within three (3) business days following each weekend, a Timeliness Exception Report, substantially in the form attached hereto. Timeliness Exception Reports will include high-level detail documenting monthly volume, details with respect to trades accepted or rejected outside the FCM Response Time and details surrounding exceptions to the FCM Response Time.
2. The FCM: (i) demonstrates the ability to accept or reject the vast majority of transactions submitted for clearing within the prescribed FCM Response Time; and (ii) where technologically practicable, implements systematic modifications to prevent recurring exceptions.
3. The FCM accepts or rejects all swaps eligible for clearing, which have not been accepted within the FCM Response Time, no later than 60 minutes from time the swap has been submitted to the FCM for clearing.

To facilitate the conversion of *already existing* bilateral uncleared swaps to cleared swaps (backloading) and to allow for movement of *already existing* cleared swaps (porting/transferring) between FCMs and derivatives clearing organizations (“DCOs”), we further ask the Division to confirm that these events are not subject to the requirements of Commission Rule 1.74, although FCMs and DCOs should use reasonable efforts to accept or reject these trades within FCM Response Time.

Thank you for your consideration of this request. If you have any questions or need any additional information, please contact me at 202.466.5460 or wlukken@futuresindustry.org.

Sincerely,



Walt L. Lukken
President and CEO

CERTIFICATION AND UNDERTAKING

I hereby (i) certify that the material facts set forth in the attached letter dated December 19, 2012 are true and complete to the best of my knowledge and (ii) undertake to ensure that the Commission staff is informed promptly in writing if at any time prior to issuance of a response to such letter any material representation made in such letter ceases to be true and complete.



Walt Lukken