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Via Electronic Mail: dsioletters@cftc.gov

Ms. Eileen Flaherty, Director
Division of Swap Dealer and Intermediary Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Request Pursuant to Commission Regulation 140.99 for No-Action Relief Regarding the Terms of the Exclusion from the Swap Dealer Determination for Certain Swaps Entered Into by a Floor Trader Under Commission Regulation 1.3(ggg)(6)(iv)

Dear Ms. Flaherty:

The FIA Principal Traders Group (“*FIA PTG*”) respectfully requests that the Division of Swap Dealer and Intermediary Oversight (“*Division*”) of the Commodity Futures Trading Commission (“*Commission*”) issue a no-action letter confirming that the Division will not recommend enforcement action against a registered floor trader if such person excludes from consideration in determining whether it is a swap dealer those transactions that it executes in accordance with the requirements of Commission Regulation 1.3(ggg)(6)(iv), notwithstanding that it may also enter into other transactions that do not comply with all of the requirements of such rule. Specifically, under our request, a floor trader could (i) enter into swap transactions that are not executed on or subject to the rules of a designated contract market (“*DCM*”) or swaps execution facility (“*SEF*”) or that are not cleared by a derivatives clearing organization (“*DCO*”); and (ii) negotiate terms for such swap transactions in addition to price and quantity terms, but could still rely upon the relief available under Regulation 1.3(ggg)(6)(iv) with respect to those transactions that meet all the requirements set forth therein. This request replaces our request for an interpretive letter dated June 23, 2015.¹ FIA PTG submits this request pursuant to Commission Regulation 140.99.

¹ <https://ptg.fia.org/sites/default/files/FIA%20PTG%20Request%20for%20Interpretaton%20-%20Floor%20Trader%20Transactions%206-23-2015.pdf>

FIA PTG is an association of more than 20 firms that trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated, and hybrid methods of trading, and are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. Our member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively.

FIA PTG member firms are interested in providing liquidity for swaps offered for trading on SEFs or DCMs, but have been hesitant to do so in light of the substantial regulatory costs they would incur should such trading trigger an obligation to register as a swap dealer and the considerable uncertainty as to whether the exclusion for floor trader activity under Regulation 1.3(ggg)(6)(iv) is a viable alternative. This uncertainty, specifically as it relates to transaction-specific conditions, is the reason we now seek no-action relief.

I. Analysis of Applicable Regulatory Requirements

The Commission adopted Regulation 1.3(ggg) in August 2012 to provide further definition to the term “swap dealer.”² Regulation 1.3(ggg)(4)(i) provides that a person will not be deemed a swap dealer if the person’s total gross notional amount of its swap dealing activity is below a prescribed *de minimis* threshold. Regulation 1.3(ggg)(6) also provides that a person does not have to consider certain swaps transactions when determining if it is a swap dealer. The exclusions include swaps that a person enters into in its capacity as a floor trader, set out in Regulation 1.3(ggg)(6)(iv) (the “*Floor Trader Swaps Exclusion*”), which is the subject of this request.

The Floor Trader Swaps Exclusion is available to a firm (or other person) that registers as a floor trader under Commission Regulation 3.11, subject to certain other conditions set out in Regulation 1.3(ggg)(6)(iv)(B) through (H). Certain of those conditions are specific to the transactions, in particular Regulation 1.3(ggg)(6)(iv)(B) and (D), and others apply at the entity level to the floor trader firm.

It is our understanding that the Floor Trader Swaps Exclusion is intended to allow a registered floor trader to engage in swap dealing activity under the Floor Trader Swaps Exclusion that would not count towards the *de minimis* threshold, and to engage in other swaps trades, which may or may not count towards the *de minimis* threshold depending on the character of the activity – dealing or non-dealing.

We believe that intention is reflected in the preamble to Regulation 1.3(ggg)(6)(iv), which states:

² The Commission adopted this definition, along with other swap entity definitional rules, in a joint rulemaking with the Securities and Exchange Commission. *Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,”* 77 FR 30506 (May 23, 2012) (the “*Adopting Release*”).

In determining whether a person is a swap dealer, each swap *that the person enters into in its capacity as a floor trader* as defined by section 1a(23) of the Act or on or subject to the rules of a swap execution facility shall not be considered for the purpose of determining whether the person is a swap dealer if the person: [text followed by the conditions in clauses (A) through (H)]. (Emphasis added.)

The phrase “that the person enters into in its capacity as a floor trader” clearly acknowledges that a floor trader may enter into swap transactions either in its capacity as a floor trader or in a non-floor trader capacity.³

If the Division issues the no-action relief we are requesting, we believe more principal trading firms, including member firms of FIA PTG, will register as floor traders and become active liquidity providers on centrally cleared, centrally traded swap markets. That could be of significant benefit in promoting the viability of the relatively young SEF markets, a number of which are struggling to attract a critical mass of trading volume.

II. Request for No-Action Relief

We ask that the Division confirm that it will not recommend enforcement action against a registered floor trader if such person relies upon the Floor Trader Swaps Exclusion with respect to its transactions in swaps that meet all the requirements under Regulation 1.3(ggg)(6)(iv), but enters into other swaps that do not comply with the following transaction-specific requirements:

1. The requirements under Regulation 1.3(ggg)(6)(iv)(B) that a registered floor trader must enter into swaps only on or subject to the rules of a SEF or DCM, and must submit its swap transactions for clearing to a DCO. It will encourage principal trading firms to register as floor traders if they have the comfort of knowing that this requirement will not interfere with their current or future participation in off-facility or uncleared swap transactions.
2. For transactions that are not executed on or subject to the rules of a SEF or DCM or that are not cleared, the restriction under Regulation 1.3(ggg)(6)(iv)(D) against a registered floor trader, directly or through an affiliate, negotiating the terms of a swap transaction other than price and quantity. Such transactions may involve negotiation of more tailored terms beyond price and quantity. Moreover, those transactions that are uncleared will typically be executed under the terms of a master agreement and related ancillary documentation, which of necessity means a person needs the flexibility to negotiate myriad terms beyond just price and quantity with its counterparty.

FIA PTG believes this relief would provide needed clarity with respect to what is stated in the rule preamble, and would result in more firms registering as Floor Traders under the rule. By

³ FN 234 in the rule states, “Also, the final rule provision discussed here does not exclude floor traders from the definition of the term “swap dealer;” rather, it provides that if the stated conditions are met, certain swaps entered into by floor traders are excluded from the swap dealer analysis

way of example, this relief would permit a principal trading firm registered as a floor trader to undertake three types of swaps activity:

1. “Dealing” in swaps where the firm meets all of the prongs of the Floor Trader Swaps Exclusion. These swaps would not count in determining whether a firm exceeds the *de minimis* threshold.
2. “Dealing” in swaps where the firm does not meet prongs (B) or (D) of the Floor Trader Swaps Exclusion. These swaps would be considered in determining whether a firm exceeds the *de minimis* threshold.
3. “Non-dealing” swaps. These swaps would not count towards the *de minimis* threshold, as non-dealing swaps are not part of the swap dealer analysis.

III. **Conclusion**

For the reasons explained above, we believe it is appropriate for the Division to issue the no-action letter we request. FIA PTG would be pleased to discuss any questions that Division staff might have with respect to this request. Any questions about this letter may be directed to Mary Ann Burns at maburns@fia.org.

Sincerely,

FIA Principal Traders Group



Mary Ann Burns
Chief Operating Officer
FIA

cc: The Honorable Timothy G. Massad
The Honorable Sharon Y. Bowen
The Honorable J. Christopher Giancarlo
Vince A. McGonagle, Director, Division of Market Oversight
Jonathan L. Marcus, General Counsel