

Commodity Futures Trading Commission

§ 140.98

(d) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight and to the Director of the Division of Clearing and Intermediary Oversight under paragraphs (a) and (b) of this section.

[50 FR 47532, Nov. 19, 1985, as amended at 55 FR 35897, Sept. 4, 1990; 57 FR 20638, May 14, 1992; 67 FR 62353, Oct. 7, 2002]

§ 140.97 Delegation of authority regarding requests for classification of positions as bona fide hedging.

(a) The Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight, or the Director's designee, all functions reserved to the Commission in §§ 1.47 and 1.48 of this chapter.

(b) The Director of the Division of Market Oversight may submit any matter which has been delegated to the Director under paragraph (a) of this section to the Commission for its consideration.

(c) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Market Oversight under paragraph (a) of this section.

[57 FR 12874, Apr. 14, 1992, as amended at 67 FR 62353, Oct. 7, 2002]

§ 140.98 Publication of no-action, interpretative and exemption letters and other written communications.

(a) Except as provided in paragraphs (b) and (c) of this section, and except for applications for orders granting exemptions submitted pursuant to section 4(c) of the Commodity Exchange Act and any written responses thereto, each written response by the Commission or its staff to a letter or other written communication requesting:

(1) Interpretative legal advice with respect to the Commodity Exchange Act or any rule, regulation or order issued or adopted by the Commission thereunder;

(2) A statement that, on the basis of the facts stated in such letter or other communication, the staff would not

recommend that the Commission take any enforcement action; or

(3) An exemption, on the basis of the facts stated in such letter or other communication, from the provisions of the Commodity Exchange Act or any rules, or regulations or orders issued or adopted by the Commission thereunder; shall be made available, together with the letter or other written communication making the request, for inspection and copying by any person as soon as practicable after the response has been sent or given to the person requesting it.

(b) Any person submitting a letter or other written communication making such a request may also submit therewith a request that the letter or other written communication, as well as any Commission or staff response thereto, be accorded confidential treatment for a specified period of time, not exceeding 120 days from the date of the response thereto, together with a statement setting forth the considerations upon which the request for such treatment is based. If the staff determines that the request is reasonable and appropriate it will be granted and the letter or other written communication as well as the response thereto will not be made available for public inspection or copying until the expiration of the specified period. If it appears to the staff that the request for confidential treatment should be denied, the staff shall so advise the person making the request and such person may withdraw the letter or other written communication within 30 days thereafter. In such case, no response will be sent or given and the letter or other written communication shall remain in the Commission's files but will not be made public pursuant to this section. If such letter or other written communication is not so withdrawn, it shall be deemed to be available for public inspection and copying together with any written response thereto.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no portion of a letter or other written communication received by the Commission or its staff of the type described in paragraph (a) of this section, or any written response thereto, shall be made available for inspection and

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copying or otherwise published which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers, except in accordance with the provisions of section 8 of the Commodity Exchange Act.

[57 FR 61291, Dec. 24, 1992]

§ 140.99 Requests for exemptive, no-action and interpretative letters.

(a) *Definitions.* For the purpose of this section:

(1) *Exemptive letter* means a written grant of relief issued by the staff of a Division of the Commission from the applicability of a specific provision of the Act or of a rule, regulation or order issued thereunder by the Commission. An exemptive letter may only be issued by staff of a Division when the Commission itself has exemptive authority and that authority has been delegated by the Commission to the Division in question. An exemptive letter binds the Commission and its staff with respect to the relief provided therein. Only the Beneficiary may rely upon the exemptive letter.

(2) *No-action letter* means a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the Beneficiary. A no-action letter represents the position only of the Division that issued it, or the Office of the General Counsel if issued thereby. A no-action letter binds only the issuing Division or the Office of the General Counsel, as applicable, and not the Commission or other Commission staff. Only the Beneficiary may rely upon the no-action letter.

(3) *Interpretative letter* means written advice or guidance issued by the staff of a Division of the Commission or the Office of the General Counsel. An interpretative letter binds only the issuing Division or the Office of the General Counsel, as applicable, and does not bind the Commission or other Commission staff. An interpretative letter may

be relied upon by persons in addition to the Beneficiary.

(4) *Letter* means an exemptive, no-action or interpretative letter.

(5) *Division* means the Division of Clearing and Intermediary Oversight or the Division of Market Oversight.

(b) *General requirements.* (1) Issuance of a Letter is entirely within the discretion of Commission staff.

(2) Each request for a Letter must comply with the requirements of this section. Commission staff may reject or decline to respond to a request that does not comply with the requirements of this section.

(3) The request must relate to a proposed transaction or a proposed activity. Absent extraordinary circumstances, Commission staff will not issue a Letter based upon transactions or activities that have been completed or activities that have been conducted prior to the date upon which the request is filed with the Commission.

(4) The request must be made by or on behalf of the person whose activities or transactions are the subject of the request. Commission staff will not respond to a request for a Letter that is made by or on behalf of an unidentified person.

(5)(i) The request must set forth as completely as possible all material facts and circumstances giving rise to the request.

(ii) Commission staff will not respond to a request based on a hypothetical situation. However, a requester may set forth one or more alternative structures or fact situations for a proposed transaction or activity; *Provided*, That the request complies with this section with respect to each alternative structure or fact situation.

(c) *Information requirements.* Each request for a Letter must comply with the following information requirements:

(1)(i) A request made by the person on whose behalf the Letter is sought must contain:

(A) The name, main business address, main telephone number and, if applicable, the National Futures Association registration identification number of such person; and