

19 December 2016

Mr. Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

**Yieldbroker Pty Limited –
Comment on the Proposed Rule Entitled
“Cross-Border Application of the Registration Thresholds and External Business Conduct
Standards Applicable to Swap Dealers and Major Swap Participants” – RIN 3038-AE54¹**

Dear Mr. Kirkpatrick:

Yieldbroker Pty Limited (“Yieldbroker”) appreciates the opportunity to submit this comment letter on the above captioned Proposed Rule. We commend the Commission’s initiative to codify by rule the cross-border application of its swap regulatory regime under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Title VII”).

As discussed in more detail below, we urge the Commission to amend Proposed Rules 1.3(ggg)(7)(i)(D) and 1.3(nnn)(1)(iv) to exclude from the cross-border application of the swap dealer de minimis registration threshold calculation and the major swap participant tests, swaps entered into anonymously on a swap execution facility (“SEF”) that is exempt from the registration requirement.

On May 15, 2015, the Commission staff issued conditional no-action relief for qualifying domestic financial markets operating in Australia that are licensed in Australia and regulated by the Australian Securities & Investments Commission (“Qualifying Australian Licensed Markets”).² On September 14, 2016, Commission staff exempted Yieldbroker from having to register as a SEF under section 5h(a)(1) of the Commodity Exchange Act and Commission Rule 37.3(a)(1), subject to the satisfaction of a number of conditions.³

As the Proposed Rule is currently drafted, swaps executed by a non-U.S. person that is not a foreign consolidated subsidiary whose obligations under the relevant swap are not guaranteed by a U.S. person (a “Non-U.S. Person”) on Yieldbroker’s platform with counterparties that are U.S. persons, foreign consolidated subsidiaries or counterparties whose swaps are guaranteed by a U.S. person would not meet

¹ 81 Fed. Reg. 71,946 (Oct. 18, 2016) (the “Proposed Rule”).

² See Commission Letter No. 15-29 (May 15, 2015), available at <http://www.cftc.gov/idc/groups/public/@irlettergeneral/documents/letter/15-29.pdf>.

³ See Commission Letter No. 16-72 (Sept. 14, 2016), available at <http://www.cftc.gov/idc/groups/public/@irlettergeneral/documents/letter/16-72.pdf>.

the exception in the Proposed Rule from counting swaps towards the de minimis threshold for swap dealer registration or the major swap participant tests for swaps executed anonymously on a registered SEF.⁴

As currently drafted, such provision would put Yieldbroker (and other entities that are, or in the future may be, operating in reliance on no action or other exemptive relief) at a significant competitive disadvantage with peer non-U.S. SEFs that are registered with the Commission. For example, a Non-U.S. Person would not need to count swaps entered into in a dealing capacity towards its swap dealer de minimis threshold if such swaps are entered into anonymously on a registered SEF, whereas the same Non-U.S. Person would need to count such swaps towards its de minimis threshold calculation if executed on Yieldbroker's platform.

To account for entities that have been exempted by the Commission staff from having to register as a SEF, we recommend that the relevant language in Proposed Rules 1.3(ggg)(7)(i)(D) and 1.3(nnn)(1)(iv) be amended as follows: ". . . unless the swap is executed anonymously on a registered or exempt swap execution facility. . . ." This change would be consistent with the similar requirement in the same provision of the Proposed Rule that the swap must be "cleared through a registered or exempt derivatives clearing organization" (emphasis added). This change would also ensure that swaps entered into on registered and exempt SEFs receive the same regulatory treatment.

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We appreciate the Commission's consideration of these comments. Please contact Fiona Breen (Company Secretary & Head of Corporate) if you would like to discuss these points in more detail.

Sincerely,



Richard Swift
Managing Director & CEO

CC: Timothy G. Massad, Chairman
Sharon Y. Bowen, Commissioner
J. Christopher Giancarlo, Commissioner

⁴ Specifically, Proposed Rule 1.3(ggg)(7)(i)(D) would require a Non-U.S. Person to include in its *de minimis* threshold calculation its swap dealing activities with U.S. persons, foreign consolidated subsidiaries and swaps with a counterparty that is a non-U.S. person that is not a foreign consolidated subsidiary whose obligations under the relevant swap are guaranteed by a U.S. person, "unless the swap is entered into anonymously on a . . . *registered* swap execution facility. . . and cleared through a *registered or exempt* derivatives clearing organization" (emphasis added). Proposed Rule 1.3(nnn)(1)(iv) includes similar language with respect to the determination of whether a person is a major swap participant.