



Regulatory Circular RG04-117

Date: November 17, 2004

To: Market-Maker Firms and DPM Firms

From: Legal Division

Re: Relief from Commodity Pool Operator and Commodity Trading Advisor
Registration Requirements for Security Futures Trading

The Commodity Futures Trading Commission (CFTC) issued a No-Action Letter to CBOE in 2002 related to Commodity Pool Operator (CPO) and Commodity Trading Advisor (CTA) registration requirements under the Commodity Exchange Act (CEA) in the context of trading security futures products. (CFTC No-Action Letter 02-103 (August 21, 2002)). CPOs and CTAs are generally required to register with the CFTC.¹ The No-Action Letter grants certain relief with respect to these two registration requirements. The relief granted only applies to trading in security futures products and does not apply to trading in other future products, including those that will be traded on CBOE Futures Exchange, LLC.

As further explained below, a CBOE market maker firm or DPM firm that desires to take advantage of the relief granted by the No-Action Letter in 2005 must file a claim form with the CFTC between December 1, 2004 and January 15, 2005.

Relief from CPO Registration Requirements

The No-Action Letter grants relief from CPO registration requirements to operators of CBOE market maker firms and DPM firms that trade security futures products on a proprietary basis provided that certain criteria are satisfied. CBOE market maker firms and DPM firms are collectively referred to in this circular as Market Maker Firms.

The operator of a Market Maker Firm is a person or entity with authority to bind the Firm. The operator of a Market Maker Firm organized as a general partnership or a limited partnership would be a general partner. The operator of a Market Maker Firm organized as a limited liability company would be a managing member or manager. The operator of a Market Maker Firm organized as a corporation would be the chief executive officer or president of the corporation (or another officer with authority to bind the corporation).

Pursuant to the No-Action Letter, the operator of a Market Maker Firm that trades security futures products is not required to register as a CPO if the Firm meets the following criteria:

¹See CEA Sections 1a(5) and 1a(6) (defining CPO and CTA) and CEA Sections 4m and 4n (describing CPO and CTA registration requirements).

1. The Market Maker Firm is registered with the Securities and Exchange Commission as a broker-dealer;
2. The Market Maker Firm is a member in good standing of CBOE;
3. Anyone who participates in the profits/losses associated with the trading of security futures products by the Market Maker Firm is not statutorily disqualified under Section 8a(2) or (3) of the CEA and is one of the following:
 - (a) a "knowledgeable employee" (as defined in Investment Company Act Rule 3c-5(a)(4)) of the Market Maker Firm or an immediate family member of a such a person (defined as a child, parent, sibling, or spouse, or family trust for the benefit of one or more immediate family members);
 - (b) a retired knowledgeable employee of the Market Maker Firm or of another CBOE member firm, or an immediate family member of such a person; or
 - (c) one of up to ten natural persons who does not qualify under subparagraphs (a) or (b) above and who is either (i) an officer, director, employee, or principal of a registered broker-dealer or (ii) a "qualified eligible person" (as defined in CEA Rule 4.7(a));
4. The Market Maker Firm does not solicit public investors in the Firm; and
5. In no event does or will an interest in the Market Maker Firm represent an indirect investment by another individual, except in the case that the beneficial owner of the interest is a natural person who meets the criteria of paragraph 3 above.

These criteria are referred to in the No-Action Letter as the Market Maker Criteria.

Relief from CTA Registration Requirements

The No-Action Letter also grants relief from CTA registration requirements to CBOE market makers that trade security futures products on a proprietary basis on behalf of Market Maker Firms provided that certain criteria are satisfied.

Specifically, pursuant to the No-Action Letter, an individual CBOE market maker trader that trades security futures products on behalf of a Market Maker Firm is not required to register as a CTA if the trader meets the following criteria:

1. The trader is an associated person of a Market Maker Firm that meets the Market Maker Criteria and is operating pursuant to the terms of the No-Action Letter without CPO registration;
2. The trader will provide commodity interest trading advice solely to the Market Maker Firm and to persons associated with the Firm whose trading, in whole or in part, is for the benefit of the Firm;

3. The trader does not hold himself or herself out generally to the public as a CTA; and
4. The trader is not statutorily disqualified under Section 8a(2) or (3) of the CEA.

These criteria are referred to in the No-Action Letter as the Trader Criteria.

Filing Requirement

In order for a Market Maker Firm's operator and market maker traders to receive the benefit of the relief granted by the No-Action Letter, the Market Maker Firm must file with the CFTC a "Claim of CPO and CTA Registration No-Action Position" prior to entering into a transaction involving a security futures product. In order to continue to receive the benefit of the No-Action Letter, the Market Maker Firm must annually file an updated Claim with the CFTC by January 15th of each year. The updated Claim may be filed no earlier than December 1st of the year prior to the year for which the Claim is being filed.

The No-Action Letter requires that the Claim provide the name, main business address and main business telephone number of the Market Maker Firm and its operator; provide the name and CBOE acronym of each of the Firm's market maker traders; and be signed and dated by a duly authorized representative of the Firm. If the Market Maker Firm has more than one operator, only one operator needs to be identified in the Claim. The No-Action Letter also requires that the Market Maker Firm represent in the Claim that:

1. The Market Maker Firm meets the Market Maker Criteria and the Market Maker Firm's traders meet the Trader Criteria (collectively referred to in the No-Action Letter as the Criteria);
2. The Market Maker Firm will permit the CFTC or its delegee to inspect the Market Maker Firm's books and records to confirm that the Criteria are being met without the need for a formal CFTC-issued order of investigation or other judicial process; and
3. The Market Maker Firm will advise the CFTC in writing within thirty days when it or any previously identified trader is statutorily disqualified under Section 8a(2) or (3) of the CEA.

A Claim form that may be completed by Market Maker Firms and submitted to the CFTC in order to receive the benefit of the No-Action Letter is attached to this circular.

Generally Applicable Provisions

Each CBOE member with trading rights on CBOE is a member of OneChicago, LLC, and to the extent provided in OneChicago rules, becomes bound by OneChicago rules and subject to the jurisdiction of OneChicago by accessing or entering any order into the OneChicago System. Accordingly, CBOE members that trade security futures products on OneChicago will be subject to OneChicago rules and to applicable CFTC and SEC regulations relating to the trading of security futures products even if relieved from CPO or CTA registration requirements. For example, even if relieved of CPO or CTA registration requirements, CBOE Market Maker Firms and their market maker traders will remain subject to the antifraud provisions of the CEA and CFTC regulations and to CFTC large trader reporting requirements.

Sole Proprietor Market-Makers and Single Shareholder/LLC Member Market-Maker Firms

Individual sole proprietor Market-Makers and Market-Maker Firms with a single shareholder or LLC member that do not solicit, accept, or receive funds, securities, or property from others for the purpose of trading futures products (including security futures products) and do not trade futures products through a joint account arrangement are not commodity pools. Accordingly, neither they nor their operators are required to register with the CFTC as CPOs, and they have no need to seek to receive the benefit of the No-Action Letter.

Contact Information and Resources

This circular is not intended to provide a complete description of the provisions of the No-Action Letter and related CEA provisions and CFTC regulations. Market Maker Firms are advised to consult the No-Action Letter and these related provisions and regulations for additional detail. Market Maker Firms may also wish to consult with their own legal counsel to discuss how the No Action Letter and the related provisions and regulations may apply to their particular circumstances.

Copies of the No-Action Letter and the specific legal provisions cited in this circular are available from the Legal Division.

Any questions regarding this circular may be directed to Arthur Reinstein of the Legal Division at (312) 786-7570.

(Regulatory Circular RG03-109 Revised)

Claim of CPO and CTA Registration No-Action Position Form

Date: _____

Commodity Futures Trading Commission
Central Region
Division of Clearing and Intermediary Oversight
525 Monroe Street
Suite 1100
Chicago, Illinois 60661

Attn: Branch Chief

Re: Claim Pursuant to No-Action Letter dated August 21, 2002
under Section 4m of the Commodity Exchange Act ("CEA")

Dear Sir or Madam:

As a duly authorized representative, I write on behalf of the operator¹ and Traders (as defined below) of _____ ("Market Maker Firm") to claim relief pursuant to the No-Action Letter dated August 21, 2002 from the requirements to register as a commodity pool operator and/or commodity trading advisor. Market Maker Firm acts as a market maker firm or a designated primary market maker firm on the Chicago Board Options Exchange ("CBOE"). Please be advised of the following information:

Main business address of Market Maker Firm:

Main business telephone number:

Operator of Market Maker Firm:

Attached to this letter as Annex A are the names and unique CBOE acronyms of each of the Market Maker Firm's traders who act as market makers ("Traders") who desire to claim the relief available under the No-Action Letter.

Market Maker Firm hereby represents that: (1) it meets the Market Maker Criteria (as defined in the No-Action Letter) and the Traders meet the Trader Criteria (as defined in the No-Action Letter) (together, the "Criteria"); (2) it will permit the Commodity Futures Trading Commission or its delegate to inspect the Market Maker Firm's books and records to confirm that the Criteria are being met without the need for a formal Commission-issued order of investigation or other judicial process; and (3) it will advise the Commission in writing within thirty days when

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it or any previously identified Trader is statutorily disqualified under Section 8a(2) or (3) of the CEA. Market Maker Firm understands that the No-Action Letter provides that in order to take advantage of the relief described in the No-Action Letter, it is required to re-file this claim annually between December 1 and January 15.

Please contact _____ at _____ should you have any questions about this notice.

Sincerely,

Name:
Title:

Annex A

Name of Market Maker Firm: _____

Date of Claim: _____

Names and CBOE Acronyms of Firm Market Maker Traders:

[illegible]