

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

CFR

§ 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 [Swap Dealer](#) and Intermediary Oversight, the Division of Clearing and Risk 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

(B) The name and, if applicable, the National Futures Association registration identification number of each other [person](#) for whose benefit the [person](#) is seeking the Letter.

(ii) When made by a requester other than the [person](#) on whose behalf the Letter is sought, the request must contain:

(A) The name, main business address and main business telephone number of the requester;

(B) The name and, if applicable, the National Futures Association registration identification number of the [person](#) on whose behalf the Letter is sought; and

(C) The name and, if applicable, the National Futures Association registration identification number of each other [person](#) for whose benefit the requester is seeking the Letter.

(iii) The request must provide the name, address and telephone number of a contact [person](#) from whom [Commission](#) staff may obtain additional information if necessary.

(2) The section number of the particular provision of the Act and/or [Commission](#) rules, regulations or [orders](#) to which the request relates must be set forth in the upper right-hand corner of the first page of the request.

(3) The request must be accompanied by:

(i) A certification by a [person](#) with knowledge of the facts that the material facts as represented in the request are true and complete. The following form of certification is sufficient for this purpose:

I hereby certify that the material facts set forth in the attached letter dated _____ are true and complete to the best of my knowledge.

(name and title)

and

(ii) An undertaking made by the [person](#) on whose behalf the Letter is sought or by that [person's](#) authorized representative that, if at any time prior to issuance of a Letter, any material representation made in the request ceases to be true and complete, the [person](#) who made the undertaking will ensure that [Commission](#) staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a Letter, the [person](#) on whose behalf the Letter is sought (or that [person's](#) authorized representative at the time of the change) must promptly so inform [Commission](#) staff.

(4) The request must identify the type of relief requested and Letter sought and must clearly [state](#) why a Letter is needed. The request must identify all relevant legal and factual issues and discuss the legal and public policy bases supporting issuance of the Letter.

(5) The request must contain references to all relevant authorities, including applicable provisions of the Act, [Commission](#) rules, regulations and orders, judicial decisions, administrative decisions, relevant statutory interpretations and policy statements. Adverse authority must be cited and discussed.

(6) The request must identify prior publicly available Letters issued by [Commission](#) staff in response to circumstances similar to those surrounding the request (including adverse Letters), and must identify any conditions imposed by prior Letters as prerequisites for the issuance of those Letters. Citation of a representative sample of prior Letters is sufficient where a comprehensive recitation of prior Letters on a given topic would be repetitious or would not assist the staff in considering the request.

(7) Requests may ask that, if the requested exemptive relief, no-action position or interpretative guidance is denied, the staff consider granting alternative relief or adopting an alternative position.

(d) Filing requirements. Each request for a Letter must comply with the following filing requirements:

(1) The request must be in writing and signed.

(2)

(i) A request for a Letter relating to the provisions of the Act or the [Commission's](#) rules, regulations or [orders](#) governing designated contract markets, registered [swap](#) execution facilities, registered [swap](#) data repositories, registered foreign boards of trade, the nature of particular transactions and whether they are exempt or excluded from being required to be traded on one of the foregoing entities, made available for trading determinations, position limits, hedging exemptions, position aggregation treatment or the reporting of market positions shall be filed with the Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(ii) A request for a Letter relating to the provisions of the Act or the [Commission's](#) rules, regulations or [orders](#) governing or related to derivatives clearing organizations and other central counterparties, the clearing process, the clearing requirement determination, [Commission](#) regulation 1.25 jointly with the Director of the Division of [Swap Dealer](#) and Intermediary Oversight, risk assessment, financial surveillance, the end user exemption, and bankruptcy shall be filed with the Director, Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(iii) A request for a Letter relating to all other provisions of the Act or [Commission](#) rules, including [Commission](#) regulation 1.25 jointly with the Director of the Division of Clearing and Risk, shall be filed with the Director, Division of [Swap Dealer](#) and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

(iv) The requests described in paragraphs (d)(2)(i) through [\(iii\)](#) of this section must be submitted electronically using the email address dmoletters@cftc.gov (for a request filed with the Division of Market Oversight), dcrletters@cftc.gov (for a request filed with the Division of Clearing and Risk), or dsioletters@cftc.gov (for a request filed with the Division of [Swap Dealer](#) and Intermediary Oversight), as appropriate, and a properly signed paper copy of the request must be provided to the Division of Market Oversight, the Division of Clearing and Risk, or the Division of [Swap Dealer](#) and Intermediary Oversight, as appropriate, within ten days for purposes of verification of the electronic submission.

(e) Form of staff response. No response to any request governed by this section is effective unless it is in writing, signed by appropriate [Commission](#) staff, and transmitted in final form to the recipient. Failure by [Commission](#) staff to respond to a request for a Letter does not constitute approval of the request. Nothing in this section shall preclude [Commission](#) staff from responding to a request for a Letter by way of endorsement or any other abbreviated, written form of response.

(f) Withdrawal of requests.

(1) A request for a Letter may be withdrawn by filing with [Commission](#) staff a written request for withdrawal, signed by the [person](#) on whose behalf the Letter was sought or by that [person's](#) authorized representative, that [states](#) whether the [person](#) on whose behalf the Letter was sought will proceed with the proposed transaction or activity.

(2) Where a request has been submitted by an authorized representative of the [person](#) on whose behalf a Letter is sought, the authorized representative may withdraw from representation at any time without explanation, Provided, That [Commission](#) staff is promptly so notified.

(g) Failure to pursue a request. In the event that [Commission](#) staff requests additional information or analysis from a requester and the requester does not provide that information or analysis within thirty calendar days, [Commission](#) staff generally will issue a denial of the request; Provided, however, that [Commission](#) staff in its discretion may issue an extension of time to provide the information and or analysis.

(h) Confidential treatment. Confidential treatment of a request for a Letter must be requested separately in accordance with [§ 140.98](#) or [§ 145.9](#) of this chapter, as applicable.

(i) Applicability to other sections. The provisions of this section shall not affect the requirements of, or otherwise be applicable to:

- (1)** Notice filings required to be made to claim relief from the Act or from a [Commission](#) rule, regulation, or [order](#) including, without limitations, §§ [4.5](#), [4.7\(a\)](#), [4.7\(b\)](#), [4.12\(b\)](#), [4.13\(b\)](#) and [4.14\(a\)\(8\)](#) of this chapter;
- (2)** Requests for exemption pursuant to section 4(c) of the Act; or
- (3)** Requests for exemption pursuant to [§ 41.33](#) of this chapter.

[[63 FR 68181](#), Dec. 10, 1998, as amended at [65 FR 47859](#), Aug. 4, 2000; [66 FR 44967](#), Aug. 27, 2001; [67 FR 62353](#), Oct. 7, 2002; [69 FR 41426](#), July 9, 2004; [77 FR 66347](#), Nov. 2, 2012; [78 FR 22419](#), Apr. 16, 2013; [80 FR 59578](#), Oct. 2, 2015]