



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5430  
Facsimile: (202) 418-5547  
[aradhakrishnan@cftc.gov](mailto:aradhakrishnan@cftc.gov)

Division of  
Clearing and Risk

Ananda Radhakrishnan  
Director

CFTC Letter No. 13-27  
Interpretation  
April 29, 2013  
Division of Clearing and Risk

### **ELECTRONIC MAIL**

Patrick Hamilton  
Chief Operating Officer - Futures  
ICAP Corporates LLC  
Harborside Financial Center  
1100 Plaza Five, 12<sup>th</sup> Floor  
Jersey City, NJ 07311

Re: Request for Interpretation of Commission Regulation 1.73(a)(2)(iv)

Dear Mr. Hamilton:

This letter responds to your request for an interpretation regarding Commodity Futures Trading Commission (“Commission”) Regulation 1.73(a)(2)(iv).<sup>1</sup> By letter dated April 11, 2013, you have asked for clarification as to:

1. The applicability of the term “executing firm” in Regulation 1.73(a)(2)(iv) to Introducing Brokers (IBs); and
2. The role under Regulation 1.73(a)(2)(iv) of a futures commission merchant (FCM) that provides to an IB sponsored access to a market.

### **Background**

You have stated that ICAP is an executing broker that is registered as an IB. ICAP has “give-up” agreements in place with its customers and their clearing FCMs. ICAP also has agreements with a sponsoring FCM that provides market access for ICAP.

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<sup>1</sup> See 77 FR 21278 (April 9, 2012). Commission regulations referred to herein are found at 17 C.F.R. Chapter 1 (2012).

ICAP executes orders on behalf of its customers. The resulting positions are given up to the accounts specified by the customers in the give-up agreements. Occasionally, for administrative reasons, some trades are not claimed by a customer's clearing FCM by the end of the day. In such cases, the trades are cleared through the sponsoring FCM until the situation is resolved.

Under the give-up agreements, each customer's clearing FCM provides ICAP with risk-based limits for the customer and ICAP screens orders in accordance with those limits. In addition, the sponsoring FCM sets limits for ICAP based on its assessment of the risks of ICAP's business. ICAP's customers typically are not customers of the sponsoring FCM although a few customers have independently entered into an agreement with the sponsoring FCM under which it also serves as that customer's clearing FCM.

### Discussion

Regulation 1.73 addresses risk management by clearing FCMs. Section (a)(2)(iv) provides that when a firm executes an order on behalf of a customer but gives it up to another firm for clearing, the clearing FCM shall establish risk-based limits and enter into an agreement in advance with the executing firm that requires the executing firm to screen orders for compliance with those limits.

Under the fact pattern you have described, ICAP would be the executing firm and the clearing firms selected by the customers would be the clearing FCMs within the meaning of Regulation 1.73(a)(2)(iv). The sponsoring FCM would be the clearing FCM for purposes of this provision only for those customers who had chosen that firm as their clearing FCM. Accordingly, the Division of Clearing and Risk (Division) can confirm that:

1. The term "executing firm" in Regulation 1.73(a)(2)(iv) refers to IBs or FCMs that execute orders for customers; and
2. An FCM that provides to an executing firm sponsored access to a market is not obligated under Regulation 1.73(a)(2)(iv), by virtue of the provision of such access, to conduct order screening of the executing firm's customers.

This letter represents the position of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission. Should you have questions regarding this matter, please contact John C. Lawton, Deputy Director (jlawton@cftc.gov, 202-418-5480), or Christopher Hower, Attorney Advisor (chower@cftc.gov, 202-418-6703).

Sincerely,

Ananda Radhakrishnan  
Director