UNITED STATES DEPARTMENT OF COMMERCE
The Foreign-Trade Zones Board
Washington, D.C. 20230

May 30, 2014

Dirk Vanderleest
President
Greater Mississippi Foreign-Trade Zone, Inc.
P.O. Box 820363
Vicksburg, MS 39182

Dear Mr. Vanderleest:

I am pleased to inform you that the Foreign-Trade Zones (FTZ) Board has voted to approve the pending waiver requests submitted by FTZs 83, 134 and 158 under 15 CFR 400.43(f), subject to certain conditions or limitations.

As set forth in more detail in the attached, this approval generally authorizes Foreign-Trade Zone Corporation and related entities (collectively "FTZ Corp") to continue to provide zone-related products/services or representation to existing customers and also to offer or provide its FTZ inventory-management software and software-support services to zone participants, regardless of whether FTZ Corp has an existing arrangement with a particular participant.

A copy of the approval documents, signed by the Board members, is attached, as is a related memorandum from the Executive Secretary.

Please let me know if you have any questions or concerns.

Sincerely,

Andrew McGilvray
Executive Secretary

Attachments

RESOLUTION

Waiver Requests under 15 CFR 400.43(f) from
Port of Huntsville, grantee of FTZ 83;
Chattanooga Chamber Foundation, grantee of FTZ 134; and
Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158

The FTZ Board has considered requests from Port of Huntsville, grantee of FTZ 83; Chattanooga Chamber Foundation, grantee of FTZ 134; and Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, for waivers pursuant to 15 CFR 400.43(f). The pending requests seek to enable Foreign-Trade Zone Corporation or a related entity (collectively FTZ Corp) to offer/provide zone-related products/services to or represent "zone participants" (15 CFR 400.2(x)) of a zone while also undertaking a "key function" for the zone's grantee (*i.e.*, being a party to the zone's agreements with zone participants).

DECISION

Upon consideration and review of the recommendations in the memorandum of the Executive Secretary which analyzes the requests, the Board would approve waivers for FTZ 83, FTZ 134 and FTZ 158 with the following conditions or limitations in order that the risk of non-uniform treatment can be mitigated to a satisfactory degree:

1) FTZ Corp is limited to providing the following products/services:

a) Offering or providing its FTZ inventory-management software and software-support services[1] to zone participants, whether or not it has an existing arrangement[2] with a zone participant;

b) Continuing to provide zone-related products/services (in addition to inventory-management software and support services cited in provision 1.a above) or representation to customers with which it already has existing arrangements;

---

[1] A condition regarding FTZ Corp providing its software product(s)/service(s) to zone participants would include FTZ Corp's providing support for users specific to the software product(s)/service(s) but would not include broader advice/expertise from FTZ Corp (*i.e.*, advice/expertise not directly tied to use of the software product(s)/service(s)).

[2] Existing arrangements would include any existing contract that FTZ Corp has with a zone user to provide one or more zone-related product/service or representation to that user, as well as any renewal of such a contract.

2) The waivers will be effective for an initial period of five (5) years, with the possibility of renewal upon request; and,

3) The FTZ Board staff will monitor participants in the zones in question. If checks were to reveal abuse of position in undertaking the key function on behalf a zone grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver pertaining to that zone under 15 CFR 400.43(f). Examples of potential abuse are effectively requiring zone participants to purchase FTZ Corp's software product(s)/service(s), requiring zone participants to pay higher prices for such software product(s)/service(s) relative to other zones, or using a software contract as a vehicle for providing non-software services otherwise not allowed under the waiver.

I hereby vote to approve waivers for FTZs 83, 134 and 158 with the conditions/limitations described above.

Signed: _____ Date: 30 MAY 2014

Paul Piquado
Assistant Secretary of Commerce
for Enforcement and Compliance

RESOLUTION

Waiver Requests under 15 CFR 400.43(f) from
Port of Huntsville, grantee of FTZ 83;
Chattanooga Chamber Foundation, grantee of FTZ 134; and
Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158

The FTZ Board has considered requests from Port of Huntsville, grantee of FTZ 83; Chattanooga Chamber Foundation, grantee of FTZ 134; and Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, for waivers pursuant to 15 CFR 400.43(f). The pending requests seek to enable Foreign-Trade Zone Corporation or a related entity (collectively FTZ Corp) to offer/provide zone-related products/services to or represent "zone participants" (15 CFR 400.2(x)) of a zone while also undertaking a "key function" for the zone's grantee (*i.e.*, being a party to the zone's agreements with zone participants).

DECISION

Upon consideration and review of the recommendations in the memorandum of the Executive Secretary which analyzes the requests, the Board would approve waivers for FTZ 83, FTZ 134 and FTZ 158 with the following conditions or limitations in order that the risk of non-uniform treatment can be mitigated to a satisfactory degree:

1) FTZ Corp is limited to providing the following products/services:

a) Offering or providing its FTZ inventory-management software and software-support services[1] to zone participants, whether or not it has an existing arrangement[2] with a zone participant;

b) Continuing to provide zone-related products/services (in addition to inventory-management software and support services cited in provision 1.a above) or representation to customers with which it already has existing arrangements;

---

[1] A condition regarding FTZ Corp providing its software product(s)/service(s) to zone participants would include FTZ Corp's providing support for users specific to the software product(s)/service(s) but would not include broader advice/expertise from FTZ Corp (*i.e.*, advice/expertise not directly tied to use of the software product(s)/service(s)).

[2] Existing arrangements would include any existing contract that FTZ Corp has with a zone user to provide one or more zone-related product/service or representation to that user, as well as any renewal of such a contract.

2) The waivers will be effective for an initial period of five (5) years, with the possibility of renewal upon request; and,

3) The FTZ Board staff will monitor participants in the zones in question. If checks were to reveal abuse of position in undertaking the key function on behalf a zone grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver pertaining to that zone under 15 CFR 400.43(f). Examples of potential abuse are effectively requiring zone participants to purchase FTZ Corp's software product(s)/service(s), requiring zone participants to pay higher prices for such software product(s)/service(s) relative to other zones, or using a software contract as a vehicle for providing non-software services otherwise not allowed under the waiver.

I hereby vote to approve waivers for FTZs 83, 134 and 158 with the conditions/limitations described above.

Signed: Timothy E. Skud

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
(Tax, Trade and Tariff Policy)

Date: 2a May 2014

UNITED STATES DEPARTMENT OF COMMERCE
The Foreign-Trade Zones Board
Washington, D.C. 20230

Memorandum for: Paul Piquado
Assistant Secretary of Commerce
for Enforcement and Compliance

Timothy E. Skud
Deputy Assistant Secretary of the Treasury
(Tax, Trade, and Tariff Policy)

From: Andrew McGilvray
Executive Secretary
Foreign-Trade Zones Board

Through: Scott McBride
Senior Attorney, Office of the Chief Counsel
for Trade Enforcement & Compliance

Date: May 28, 2014

Subject: Three Waiver Requests under 15 CFR 400.43(f)

BACKGROUND

The Regulations Have a Default Bar on Certain Conflicts of Interest but Allow for Waivers

Section 81n of the FTZ Act (19 U.S.C. 81a-81u) requires that grantees provide "uniform treatment under like conditions" for zone participants[1]. In 2007, the Foreign-Trade Zones Board (the Board) published a *Federal Register* notice citing "[c]oncerns [that] ha[d] been raised to the FTZ Board" and inviting comment "related to potential conflicts of interest in local access to FTZ procedures" in the context of the FTZ Act's uniform treatment requirement. In 2012, after an extensive notice-and-comment process, the Board adopted regulations (15 CFR Part 400) that include a provision (§ 400.43(d)) designed to prevent certain conflicts of interest within a given FTZ.[2] Responding to comments on the similar

[1] 15 CFR 400.2(x) defines a "zone participant" as "a current or prospective zone operator, zone user, or property owner."

[2] A "person" in a "key category" may not undertake any "key function" for a grantee. Key categories are: (1) A person that engages in, or has during the preceding 12 months engaged in, offering/providing a zone-related product/service to or representing a user of a zone; (2) A person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a user of a zone; or (3) A person "related" to the persons in (1) or (2). Key functions are: (1) Taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone users pertaining

regulatory provision proposed by the FTZ Board in 2010, section 400.43(f) of the 2012 regulations also allows a party to request a waiver by the Board of the requirements of § 400.43(d) based on the circumstances presented by the party. Absent approval of a waiver, "existing business arrangements" which would otherwise be precluded by § 400.43(d) were required to be terminated or brought into compliance no later than February 28, 2014.

Three Pending Requests for Waivers

Now pending are requests from three zones for waivers pursuant to 15 CFR 400.43(f). Specifically, the following grantees have submitted the waiver requests: Port of Huntsville, grantee of FTZ 83; Chattanooga Chamber Foundation, grantee of FTZ 134; and, Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158. FTZ 83 subsequently transmitted via e-mail additional arguments regarding its waiver request. The waiver requests pertain to a consultant, in each case Foreign-Trade Zone Corporation or a related entity (collectively, FTZ Corp) as "administrator" of each of those zones. The pending requests seek to allow FTZ Corp to offer/provide zone-related products/services to or represent zone participants of a zone while also undertaking a "key function" for the zone's grantee (*i.e.*, being a party to the zone's agreements with zone participants)[3].

KEY ARGUMENTS PRESENTED BY THE REQUESTERS

Key arguments presented in the waiver requests and additional e-mails from FTZ 83 include the following (with notations regarding the zone(s) that made each argument):

- "[I]ndividual Zone participants are free to use Zone-related services and products from whomever they may choose." (FTZs 83, 134 and 158)

---

to FTZ authority or activity (including activation by CBP); (2) Approving, or being a party to, a zone user's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP); or (3) Overseeing zone users' operations on behalf of a grantee.

[3] An additional, fourth waiver request pertaining to FTZ Corp was received from FTZ 92 (Gulfport, MS). However, a waiver pertains to a party that offers/provides zone-related products/services to, or represents, users of a zone and whether the FTZ Board will permit that party to also undertake on behalf of the zone's grantee one or more of the "key functions" cited in 15 CFR 400.43(d)(1). To make a decision on a given waiver request, 15 CFR 400.43(f) states that "the Board shall consider the specific circumstances presented, including the nature and extent of the person's involvement in undertaking a key function(s)..." Given that regulatory standard for evaluation, it would be impossible for the Board to assess a waiver request that does not propose for any key function to be undertaken. For that reason, the Board's standard format for waiver requests requires the requester to specify the key function(s) that would be undertaken on behalf of a zone's grantee. Because FTZ 92's waiver request does not propose the undertaking of any key function, it does not qualify for consideration.

- "[I]n order for future Zone participants to have complete freedom of choice with regard to FTZ consultants – and any real choice for a robust FTZ management system – a waiver from your office is required." (FTZ 83)

- The grantee "will not permit any of its contractors – including its Zone Project Administrator – to act in any manner that might result in more cost and/or less efficiency" for businesses. The grantee "may terminate [its] agreement [with FTZ Corp] for any reason." (FTZ 83)

- "Under the Zone Project Administration Agreement between [FTZ Corp] and the Grantee, [FTZ Corp's] income is entirely dependent on its success in seeing that members of the [regional] trade community successfully utilize Zone procedures." (FTZs 83, 134 and 158)

- FTZ Corp's "existing and future services to both Zone participants and the Grantee represent a confluence of interests, not a conflict of interests." (FTZ 158) "The interests of Grantees, our contracted experts, and our members of the trade community operate in concert, no conflict." (FTZ 83)

STANDARD FOR DECISIONS

The regulatory standard (in Sec. 400.43(f)) for decisions on waiver requests is as follows:

> In deciding whether to grant a waiver, the Board shall determine whether there is an unacceptable risk that the waiver would result in non-uniform treatment being afforded by the person undertaking a key function(s) listed in paragraph (d)(1) of this section. In its assessment, the Board shall consider the specific circumstances presented, including the nature and extent of the person's involvement in undertaking a key function(s) listed in paragraph (d)(1) of this section. In general, the more significant the requester's involvement or interest in the undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be afforded and, thus, the less likely it will be that a waiver will be granted. The Board may attach to individual waivers such conditions or limitations (including, for example, the length of time a waiver is to be effective) as it deems necessary.

The Preamble to the regulations included the following additional explanation pertaining to the waiver provision:

> [I]n response to comments received, we have added new Sec. 400.43(f) that will allow the Board to issue case-by-case waivers of the provision in Sec. 400.43(d) that bars certain categories of persons from performing certain key functions. This approach strikes an appropriate balance in order to avoid the types of broad,

negative impacts projected by commenters while continuing to reflect the fact that a zone grantee often has a monopoly in its region for valuable access to the federal privilege of FTZ use (with zone participants reluctant to make uniform treatment-related complaints to the FTZ Board because of a perceived risk of jeopardizing key relationships with grantees or with third parties undertaking key functions on behalf of grantees)... In considering whether to approve an individual application for a waiver, the Board will take into account the specific circumstances presented, and the Board will also impose conditions on individual waivers, as warranted. As raised by one commenter, a key factor the Board will consider is whether a grantee's specific arrangement presents a significant risk that zone users will experience implied pressure to procure a particular private party's services as a condition of obtaining access to the federal FTZ program.

DISCUSSION

As detailed above, the regulatory standard for decisions on waivers[4] includes: "In general, the more significant the requester's involvement or interest in the undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be afforded and, thus, the less likely it will be that a waiver will be granted." The "key function(s) listed in paragraph (d)(1)" include "[a]pproving, or being a party to, a zone participant's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP)." The "activity(ies) identified in paragraph (d)(2)(i)" are "engag[ing] in... offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone."

Regarding the significance of FTZ Corp's involvement or interest in "the undertaking of a key function(s)," each of the three pending waiver requests indicates that FTZ Corp is a party to the operators' agreements in the requesting zone (which constitutes the "key function" that FTZ Corp currently undertakes in that zone). Without the conclusion of such an operator's agreement, a potential operator cannot "activate" its zone site(s) with U.S.

---

[4] In addition to addressing the regulatory factors for waiver decisions, the documents submitted by FTZ 83 also include expressions of concern about "due process" in the Board's adoption of the 2012 regulations. Although those concerns are not directly germane to consideration of the pending waiver requests, it is worth noting that the 2012 regulations were adopted after an extensive notice-and-comment process on the proposed regulations which were published in late 2010. During that notice-and-comment process, the FTZ Staff held eight regional forums to provide information about the proposed regulations, and more than 100 parties submitted comments during the comment period which the Board extended to 147 days to maximize the opportunity for parties' participation. As the Board stated in the adopted regulations, section 400.43(d) is intended "to avoid non-uniform treatment of zone participants." The Board also stated in the Preamble to the 2012 regulations that, with the changes made to the proposed regulations in response to comments received, "this section substantively addresses the concerns expressed about potential impacts on the ability of grantees or zone participants to procure zone-related services while maintaining safeguards to ensure the integrity of the FTZ program." The basis for the regulation itself – including questions of consistency with the provisions of applicable Executive Orders – was also addressed in the Preamble to the regulations.

Customs and Border Protection (CBP) and achieve the financial benefits of FTZ use. Thus, a potential new operator in any of these zones is unable to achieve FTZ financial benefits unless FTZ Corp signs an operator's agreement with the company.

Regarding the significance of FTZ Corp's involvement or interest in "engag[ing] in... offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone," FTZ 134's waiver request states that FTZ Corp has one current client among users of the zone and FTZ 158's request states that FTZ Corp provides "Zone-related services to a number of Zone participants." FTZ 83's waiver request indicates that FTZ Corp has no current clients among users of the zone and states that "[o]bviously, consulting and software services within [FTZ 83] have been of no importance in terms of income derived and resources committed by [FTZ Corp]." However, FTZ Corp's "involvement or interest" in offering/providing a zone-related product/service to or representing zone participants cannot be gauged only in terms of FTZ Corp's current user base in that zone. In particular, a firm's "interest" in providing products/services to or representing companies clearly can relate to clients the firm would like to solicit in the future. Indeed, the submission of a waiver request for FTZ 83 can only be based on interest in FTZ Corp serving new clients in the zone (since FTZ Corp has no current clients in that zone for its zone-related products/services or representation).

The standard form for waiver requests includes a question regarding the importance to the firm in question of offering/providing zone-related products/services to or representing zone participants. None of the three waiver requests responds to the substance of that question directly.[5] However, FTZ Corp's website appears to provide one indication of the firm's interest in offering/providing zone-related products/services to or representing zone participants. Specifically, the firm's website states that "The Foreign-Trade Zone Corporation is the only firm that limits its practice to FTZ consulting and foreign trade zone

[5] In response to the question, the three waiver requests include statements that are identical except for references to the specific FTZ Corp entity, specific FTZ and its geographic situation: "With regard to the importance of providing Zone-related services or products, such services and/or products are, in terms of [FTZ Corp's] services as the Zone Project Administrator, entirely distinct and separate. If the [FTZ Corp] derives income from providing consulting and software services to participants within the [FTZ 83/134/158] Zone project, then the income derived from those services and products is to its benefit. Likewise, the resources - including personnel, expenses, and overhead - are entirely the responsibility of [FTZ Corp]. With regard to its services as the Zone Project Administrator, those remain the same whether or not [FTZ Corp] has any clients from among the population of [FTZ 83/134/158] Zone participants. Accordingly, [FTZ Corp] remains entirely responsible for providing the resources necessary to serve the Zone project. Under the Zone Project Administration Agreement between [FTZ Corp] and the Grantee, [FTZ Corp's] income is entirely dependent on its success in seeing that members of the [regional] trade community successfully utilize Zone procedures. [FTZ Corp's] income from its consulting and software product is entirely dependent on it success in seeing that members of the U.S. trade community successfully utilize Zone procedures, regardless of which Zone project sponsors their participation. With regard to [the grantee's] Foreign-Trade Zone project, the offer of a complete set of services and products by a firm that also has a responsibility to local and regional public entities is seen as an asset. At the same time, individual Zone participants are free to use Zone-related services and products from whomever they may choose."

software" and cites "[t]he firm's focus on Foreign-Trade Zone consulting..." Given that FTZ Corp's sole line of business is "FTZ consulting and foreign-trade zone software," characterizing FTZ Corp's "involvement or interest" in offering or providing zone-related products/services to or representing participants in a given zone as insignificant may be difficult. Further, the greater FTZ Corp's interest in selling its products/services to or representing participants in a given zone, the greater the risk of FTZ Corp using leverage such as the potential for delay in concluding operators' agreements – without which companies cannot obtain FTZ benefits – as a means of encouraging companies to choose FTZ Corp's products/services or representation over competing providers of products/services or representation.

If the Board determines that there is an unacceptable risk of non-uniform treatment associated with approval of the waivers without limitation or condition, the Board should also consider the impact on zone participants that already procure zone-related products/services or representation from FTZ Corp. It appears likely that such existing customers of FTZ Corp are dissimilarly situated relative to potential new customers in that the existing customers have already invested in – and potentially become reliant on – FTZ Corp's products/services or representation. Further, with regard to the degree to which each of the zone's arrangements at issue "presents a significant risk that zone participants will experience implied pressure" to procure FTZ Corp's products/services in order to obtain access to zone in question, it appears that such implied pressure is inherently less likely to occur after a participant has made a decision on procuring products/services from FTZ Corp.

FTZ 83 has also raised the issue of the impact of the FTZ Board's waiver decisions on the market for specialized software used to manage FTZ inventories. For FTZ consulting services in general, there appears to be a large number of firms offering to provide such services (for example, the program for the most recent annual conference of the National Association of Foreign-Trade Zones lists at least 15 different firms that offer FTZ consulting services). However, FTZ 83 indicates that there are very few providers of FTZ inventory-management software – with FTZ Corp offering "one of the two most robust FTZ management systems that are available to Zone users nationwide" – and that the FTZ Board's regulations "have impinged on the freedom of choice of Zone Operators in Alabama when it comes to FTZ management software." Based on research by the FTZ Board staff, it does appear that zone participants presently have far fewer choices for providers of FTZ inventory-management software than for providers of general FTZ consulting services.

CONCLUSIONS AND RECOMMENDATIONS

As noted, 15 CFR 400.43(f) states that "[i]n its assessment [of waiver requests], the Board shall consider the specific circumstances presented, including the nature and extent of the person's involvement in undertaking a key function(s) listed in paragraph (d)(1) of this section. In general, the more significant the requester's involvement or interest in the

undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be afforded and, thus, the less likely it will be that a waiver will be granted." As outlined above, given the key function that FTZ Corp would undertake if granted a waiver in the requested zones, a potential new operator in any of those zones would be unable to achieve FTZ benefits without FTZ Corp signing an agreement for that operator. As also outlined above, providing zone-related products/services to, or representing, zone participants is FTZ Corp's sole line of business. Therefore, it is difficult to view FTZ Corp's involvement or interest in providing those products/services or representation as insignificant.

This analysis is not specific only to FTZ Corp, but would apply to any company in FTZ Corp's situation. The greater such a company's involvement or interest in selling its products/services to, or representing, participants in a given zone, the increased possibility that the company could use its leverage to the disadvantage of existing and possible future competitors. In that context, a consulting company that is a party to a zone's operators' agreements could delay or deny the completion of operators' agreements, without which companies cannot obtain FTZ benefits, as a means of encouraging companies to choose its products/services or representation over competing providers of products/services or representation. The Board's adoption of 15 CFR 400.43(d) and the related waiver provision in 15 CFR 400.43(f) "strikes an appropriate balance in order to avoid the types of broad, negative impacts projected by commenters while continuing to reflect the fact that a zone grantee often has a monopoly in its region for valuable access to the federal privilege of FTZ use (with zone participants reluctant to make uniform treatment-related complaints to the FTZ Board because of a perceived risk of jeopardizing key relationships with grantees or with third parties undertaking key functions on behalf of grantees)." [6]

The Preamble to the Board's regulations also states that "a key factor the Board will consider is whether a grantee's specific arrangement presents a significant risk that zone users will experience implied pressure to procure a particular private party's services as a condition of obtaining access to the federal FTZ program."[7] Given the facts and analysis outlined above, it appears there is an unacceptable risk that an approval of a waiver without condition or limitation for any of the waiver requests at issue could result in the affording of non-uniform treatment to different private parties.

Beyond a consideration of the policy justification for general or blanket waivers such as those requested in this case, there appear to be facts specific to the FTZ inventory-management software produced and sold by FTZ Corp that warrant additional consideration. Preserving "freedom of choice" (as cited by FTZ 83 regarding inventory-management software) in the context of the particularly limited range of options for such

---

[6] *Preamble, Foreign-Trade Zones in the United States, Final Rule*, 77 FR 12112, 12131 (Feb. 28, 2012).

[7] *Id.*

software in the marketplace is a factor that warrants serious consideration, as the FTZ regulations are intended to help promote, and not prohibit, commerce and competition. Nonetheless, absent additional conditions, there would still appear to an unacceptable risk of non-uniform treatment being afforded to potential software purchasers. In the unique context of the market for FTZ inventory-management software, however, it appears that the risk of non-uniform treatment can be mitigated to a satisfactory degree by the FTZ Board staff's monitoring of activities in the zones in question pertaining to uniformity of treatment for zone participants. In this context, I recommend approving waivers which would allow FTZ Corp to continue to offer/provide its inventory-management software even if it is undertaking the proposed "key function" on behalf of one of the requesting grantees, provided the FTZ Board staff conducts monitoring to ensure it does not abuse that privilege.

In addition, the degree to which each of the zone's arrangements at issue "presents a significant risk that zone users will experience implied pressure" to procure FTZ Corp's products/services in order to obtain access to zone benefits appears likely to vary significantly depending on whether a given zone participant has already made a decision on procuring products/services from FTZ Corp. In particular, it appears that such implied pressure is inherently most likely to occur prior to a participant's deciding to procure products/services from a particular provider. Further, not allowing FTZ Corp to continue to provide products/services to existing customers could cause hardships to those customers and unreasonably interfere with established contracts and commercial relations between FTZ Corp and its pre-existing business partners. Thus, in accordance with the requirements and spirit of the regulation, I further recommend that the Board approve the requested waivers with a condition that FTZ Corp be able to continue to provide products/services or representation under existing arrangements with current zone participants.

Finally, I recommend any waiver should be limited in time. The waiver process is relatively new, and therefore the Board has no past experience on which to rely in gauging the likely impact(s) of a waiver approval. By limiting the waiver period initially, the Board could assess proposed renewal requests near the end of the waiver's initial effective period, and consider the actual experience of zone participants while the waiver had been in place.

Summary

In sum, based on consideration of the information presented by the requesters in the applicable regulatory context (as outlined above), I recommend waivers for FTZ 83, FTZ 134 and FTZ 158 with the following conditions or limitations[8]:

1) FTZ Corp is limited to providing the following products/services:

a) Offering or providing its FTZ inventory-management software and software-support services[9] to zone participants, whether or not it has an existing arrangement[10] with a zone participant;

b) Continuing to provide zone-related products/services (in addition to inventory-management software and support services cited in provision 1.a above) or representation to customers with which it already has existing arrangements;

2) Approval of the waivers would be for an initial period of five (5) years, with the possibility of renewal upon request; and,

3) The FTZ Board staff will monitor participants in the zones in question. If checks were to reveal abuse of position in undertaking the key function on behalf a zone grantee, as determined by the Board in its sole discretion, the Board could "discontinue" the waiver pertaining to that zone under 15 CFR 400.43(f). Examples of potential abuse are effectively requiring zone participants to purchase FTZ Corp's software product(s)/service(s), requiring zone participants to pay higher prices for such software product(s)/service(s) relative to other zones, or using a software contract as a vehicle for providing non-software services otherwise not allowed under the waiver.

---

[8] § 400.43(f) states that "[t]he Board may attach to individual waivers such conditions or limitations (including, for example, the length of time a waiver is to be effective) as it deems necessary."

[9] A condition regarding FTZ Corp providing its software product(s)/service(s) to zone participants would include FTZ Corp's providing support for users specific to the software product(s)/service(s) but would not include broader advice/expertise from FTZ Corp (*i.e.*, advice/expertise not directly tied to use of the software product(s)/service(s)).

[10] Existing arrangements would include any existing contract that FTZ Corp has with a zone user to provide one or more zone-related product/service or representation to that user, as well as any renewal of such a contract.