



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 13-50  
No-Action  
August 23, 2013  
Division of Swap Dealer and Intermediary Oversight

**Re: Time-Limited No-Action Relief Regarding Commission Regulation 23.502 for Swap Dealers and Major Swap Participants in Connection with Uncleared Swaps Subject to Risk Mitigation Techniques under EMIR**

Ladies and Gentlemen:

This letter is in response to a request from the International Swaps and Derivatives Association (“**ISDA**”), on behalf of its members that are swap dealers (“**SDs**”) or major swap participants (“**MSPs**”), and other similarly situated persons, received by the Division of Swap Dealer and Intermediary Oversight (“**Division**”) of the Commodity Futures Trading Commission (“**Commission**”), that the Commission extend the compliance date for Regulation 23.502 for certain transactions entered into by registered SDs and MSPs who intend to rely on Article 11 of the European Market Infrastructure Regulation (“**EMIR**”), including the related regulatory technical standards. The Division has determined to provide no-action relief, as detailed herein. The relief provided in this no-action letter is available to all SDs and MSPs.

### **Applicable Regulatory Requirements**

Section 731 of the Dodd-Frank Act<sup>1</sup> amended the Commodity Exchange Act (“**CEA**”) by adding a new Section 4s, which established requirements relating to the registration and regulation of SDs and MSPs.<sup>2</sup>

CEA Section 4s(h)(1) requires that SDs and MSPs comply with business conduct standards promulgated by the Commission in the categories set forth in Sections 4s(h)(1)(A)-(D) and 4s(h)(3). Additionally, Section 4s(i)(1) of the CEA requires SDs and MSPs to “conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.”<sup>3</sup>

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. § 6s.

<sup>3</sup> 7 U.S.C. § 6s(i).

On September 11, 2012, the Commission issued final rules governing, among other things, portfolio reconciliation (Regulation 23.502), pursuant to which SDs and MSPs must establish, maintain, and follow written policies and procedures reasonably designed to ensure that they engage in portfolio reconciliation with each of their counterparties who are not SDs or MSPs.<sup>4</sup> In response to requests from market participants, the Commission deferred the compliance date for Regulation 23.502 for all types of counterparties until July 1, 2013.<sup>5</sup>

Subsequent to the Commission's actions, the Division received requests for relief concerning Regulation 23.502, in response to which the Division issued two no-action letters that are relevant here.<sup>6</sup> First, in CFTC Letter No. 13-40, issued by the Division on June 27, 2013, the Division stated that it would not recommend that the Commission take an enforcement action against an SD or MSP for failure to comply, prior to August 23, 2013, with Regulation 23.502. And second, in CFTC Letter No. 13-45 Corrected, issued by the Division on July 11, 2013, the Division stated that it would not recommend that the Commission take an enforcement action against an SD or MSP for failure to comply with the CFTC Risk Mitigation Rules (including Regulation 23.502), and for complying, in the alternative, with the EMIR Risk Mitigation Rules, when entering into certain swaps under certain conditions.

### **Summary of Request for Relief**

In their request, ISDA stated that the compliance date for the portfolio reconciliation rules under EMIR is September 15, 2013. Acknowledging that the relief provided in CFTC Letter No. 13-40 will expire on August 23, 2013, ISDA requested clarification as to the operative compliance date for SDs that intend to rely upon the relief provided in CFTC Letter No. 13-45 Corrected; specifically, whether the operative compliance date is August 23, 2013, or September 15, 2013. ISDA stated that establishing a common compliance date of September 15, 2013, would be beneficial to affected SDs in terms of allocating resources for their compliance efforts.

### **Division No-Action Position**

Based upon the representations made by ISDA, the Division believes that time-limited no-action relief from Regulation 23.502 is warranted. Accordingly, the Division will not recommend that the Commission take an enforcement action against an SD or MSP for failure to

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<sup>4</sup> See Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012). With regard to the portfolio reconciliation requirements found in Regulation 23.502, the Commission staggered the compliance dates by providing extended compliance dates for those SDs and MSPs that have not been previously regulated by a prudential regulator, and thus are least likely to have the infrastructure in place to begin regular reconciliation with their counterparties. *Id.* at 55941-42.

<sup>5</sup> See Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants; Extension of Compliance Date, 78 FR 17 (Jan. 2, 2013). The Federal Register release affected the respective compliance dates of several other Commission regulations, in addition to Regulation 23.502.

<sup>6</sup> Copies of the no-action letters are available on the Commission's website, at [www.cftc.gov](http://www.cftc.gov).

comply, **prior to September 15, 2013**, with Regulation 23.502, provided that the SD or MSP intends to rely upon – and be compliant with – the EMIR portfolio reconciliation rules, beginning on September 15, 2013, and otherwise satisfies the conditions set forth in CFTC Letter No. 13-45 Corrected.

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Act or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact me at (202) 418-5977; or Ward Griffin, Associate Chief Counsel, at (202) 418-5425.

Very truly yours,

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