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Division of Swap Dealer and Intermediary Oversight

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Division of Swap Dealer and Intermediary Oversight

DIVISION OF SWAP DEALER AND INTERMEDIARY OVERSIGHT ADVISORY Applicability of Transaction-Level Requirements to Activity in the United States

The Division of Swap Dealer and Intermediary Oversight (DSIO) of the Commodity Futures Trading Commission (Commission) issues this advisory in response to inquiries from swap market participants regarding the applicability of the Commission's Transaction-Level Requirements with respect to swaps (as defined in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations¹).

Swap market participants have inquired whether a non-U.S. swap dealer (SD) registered with the Commission (whether an affiliate or not of a U.S. person) must comply with the Transaction-Level Requirements when entering into a swap with a non-U.S. person if the swap is arranged, negotiated, or executed by personnel or agents of the non-U.S. SD located in the United States.

DSIO notes that the Commission's Guidance provides, among other things, that substituted compliance should be available for the Transaction-Level Requirements with respect to swaps between a non-U.S. SD and a non-U.S. person, or should not apply at all, depending on whether or not such non-U.S. person is a guaranteed affiliate or affiliate conduit of a U.S. person.²

¹ 78 FR 45292 (July 26, 2013) (hereinafter, the "Guidance").

² See the Guidance, 78 FR at 45350-59.

Under such circumstances, DSIO believes the Commission intended substituted compliance to be available, or Transaction-Level Requirements to not apply, where the activities of the non-U.S. SD take place outside the United States. In this regard, DSIO believes that, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission has a strong supervisory interest in swap dealing activities that occur within the United States, regardless of the status of the counterparties.

DSIO believes that persons regularly arranging, negotiating, or executing swaps for or on behalf of an SD are performing core, front-office activities of that SD's dealing business. Thus, DSIO is of the view that a non-U.S. SD (whether an affiliate or not of a U.S. person) regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with the Transaction-Level Requirements. For the avoidance of doubt, the Division's view would also apply to a swap between a non-U.S. SD and a non-U.S. person booked in a non-U.S. branch of the non-U.S. SD if the non-U.S. SD is using personnel or agents located in the U.S. to arrange, negotiate, or execute such swap.

This advisory, and the views expressed herein, represent the views of DSIO only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. If you have any questions regarding this advisory, please contact Gary Barnett, Director, at gbarnett@cftc.gov or 202-418-5977.

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