



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 13-71
No-Action
November 26, 2013
Division of Swap Dealer and Intermediary Oversight
Division of Clearing and Risk
Division of Market Oversight

Re: No-Action Relief: Certain Transaction-Level Requirements for Non-U.S. Swap Dealers

Ladies and Gentlemen:

This letter is issued by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”), the Division of Clearing and Risk, and the Division of Market Oversight (collectively, the “**Divisions**”) of the Commodity Futures Trading Commission (“**Commission**”) to provide time limited relief to swap dealers (“**SDs**”) registered with the Commission that are established under the laws of jurisdictions other than the United States (“**Non-U.S. SDs**”) from certain transaction-level requirements (as described below) under the Commodity Exchange Act (“**CEA**”), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act,¹ and the Commission’s regulations promulgated thereunder when entering into swaps with a certain category of non-U.S. counterparties (as described below).²

I. Background

On November 14, 2013, DSIO issued an advisory³ in response to inquiries from swap market participants regarding the applicability of the Commission’s Transaction-Level

¹ Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010) (the “**Dodd-Frank Act**”).

² As used in this letter, the term “U.S. person” has the same meaning as in the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (the “**Guidance**”), 78 FR 45292 at 44316-17 (July 26, 2013).

³ The DSIO Advisory is available on the Commission’s website:

Requirements⁴ with respect to swaps between a Non-U.S. SD (whether an affiliate or not of a U.S. person) and a non-U.S. person if the swaps are regularly arranged, negotiated, or executed by personnel or agents of the Non-U.S. SD located in the United States. In the advisory, DSIO stated its belief 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, and thus, "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."⁵

Subsequent to issuance of the DSIO advisory, concerns have been raised by certain Non-U.S. SDs regarding compliance with the Transaction-Level Requirements when entering into swaps with non-U.S. persons that are not guaranteed affiliates⁶ or conduit affiliates⁷ of a U.S. person using personnel or agents located in the United States to arrange, negotiate, or execute such swaps (such swaps, the "**Covered Transactions**"). The Non-U.S. SDs represent that, in order to avoid market disruption for their non-U.S. counterparties, additional time is necessary to allow them to organize their internal policies and procedures to come into compliance with the Transaction-Level Requirements when entering into Covered Transactions.

II. Time-Limited Staff No-Action

The Divisions note that, as of the date of this letter, the Divisions have not recommended that the Commission take an enforcement action against a Non-U.S. SD (whether or not an affiliate of a U.S. person) for failure to comply with any applicable Transaction-Level Requirement when entering into any Covered Transaction.

<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>. As stated in the DSIO Advisory, the positions taken therein represent the views of the Division of Swap Dealer and Intermediary Oversight only, and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission.

⁴ For purposes of this letter, the term "Transaction-Level Requirements" refers to the requirements set forth in Commission regulations 23.202, 23.205, 23.400 to 23.451, 23.501, 23.502, 23.503, 23.504, 23.505, 23.506, 23.610 and parts 43 and 50. The Divisions note that (1) the Commission has not yet finalized regulations regarding margin for uncleared swaps, (2) compliance with its regulations regarding segregation for uncleared swaps is not yet required, and (3) it has not yet determined that any swap is "available to trade" such that a trade execution requirement applies to the swap. *See* Exemptive Order Regarding Compliance with Certain Swap Regulations (the "**Exemptive Order**"), 78 FR 43785 at 43794 (July 22, 2013).

⁵ Non-U.S. SDs and MSPs may comply with certain documentation rules of the Commission by complying with "essentially identical" rules enacted under Article 11 of the European Market Infrastructure Regulation (EMIR) and the related EMIR technical standards. *See* CFTC No-Action Letter 13-45 Corrected (July 11, 2013).

⁶ For purposes of this letter, the terms "guarantee" and "guaranteed affiliate" have the same meaning as in the Exemptive Order. *See* 78 FR at 43794.

⁷ For purposes of this letter, the term "conduit affiliate" has the same meaning as in the Guidance. *See* 78 FR at 45358-59.

Based on the foregoing, the Divisions believe that time-limited no-action relief for Non-U.S. SDs is warranted with respect to compliance with the Transaction-Level Requirements when entering into Covered Transactions. Accordingly, until **January 14, 2014**, the Divisions will not recommend that the Commission take an enforcement action against a Non-U.S. SD (whether or not an affiliate of a U.S. person) for failure to comply with:

- (a) Any applicable Transaction-Level Requirement with respect to a Covered Transaction if the Covered Transaction is not with a Non-U.S. SD; and
- (b) If the Covered Transaction is with a Non-U.S. SD, any Transaction-Level Requirement other than (i) the multilateral portfolio compression requirements under Commission regulation 23.503; and (ii) the swap trading relationship requirements under Commission regulation 23.504.

This letter, and the positions taken herein, represent the views of the Division of Swap Dealer and Intermediary Oversight, the Division of Clearing and Risk, and the Division of Market Oversight only, and do not necessarily represent the positions or views 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 CEA or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Divisions. 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 Gary Barnett, Director, DSIO, at (202) 418-5977.

Very truly yours,

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