



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 13-78
No-Action
December 20, 2013
Division of Swap Dealer and Intermediary Oversight

Re: Time-Limited No-Action Relief from Certain Entity-Level Internal Business Conduct Requirements for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan, and Switzerland

This letter is issued by the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) to provide Commission-registered swap dealers (“SDs”) and major swap participants (“MSPs”) that are non-U.S. persons¹ established under the laws of Australia, Canada, the European Union, Japan, or Switzerland with time-limited no-action relief from certain Internal Business Conduct Requirements that have been excepted from a substituted compliance comparability determination or for which a substituted compliance comparability determination has not been made.

I. Background

On July 22, 2013, the Commission published in the Federal Register the Exemptive Order Regarding Compliance With Certain Swap Regulations (the “Exemptive Order”),² which, among other things, permits non-U.S. SDs and non-U.S. MSPs established in specified non-U.S. jurisdictions to delay compliance with certain Entity-Level requirements, as defined in the Guidance and the Exemptive Order. Such relief expires on the earlier of (i) December 21, 2013, or (ii) 30 days following the issuance of a substituted compliance determination (as defined in the Exemptive Order) with respect to an Entity-Level requirement for the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established.³

¹ For purposes of this letter, the term “U.S. person” has the meaning used in the Commission’s Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013) (hereinafter the “Guidance”), and a person that is not a U.S. person is a “non-U.S. person.” For purposes of this letter, an SD that is a non-U.S. person is a “non-U.S. SD” and an MSP that is a non-U.S. person is a “non-U.S. MSP.”

² Exemptive Order Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 43785 (July 22, 2013).

³ See the Exemptive Order, 78 FR at 43794.

As of [December 20, 2013] the Commission issued a series of comparability determinations for certain SD/MSP business conduct requirements included in the Entity-Level requirements with respect to the law and regulations applicable in Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland. The Commission excepted Commission regulation 23.600(c)(2) from the determinations, and the Commission declined to take up determinations for Commission regulation 23.608 for any jurisdiction, or for Commission regulation 23.609 for Hong Kong and Switzerland, each of which regulations were the subject of the compliance relief that expires on December 21, 2013.

II. No-Action Relief

The Division notes that as of December 21, 2013, no non-U.S. SD or non-U.S. MSP established in Hong Kong would be required to comply with 23.600(c)(2), 23.608, or 23.609, and thus no relief for any such SD or MSP is necessary. To provide non-U.S. SDs and non-U.S. MSPs established in Australia, Canada, the European Union, Japan, and Switzerland with an opportunity to prepare for compliance with Commission regulations 23.600(c)(2) and 23.608, and, in the case of a non-U.S. SD or non-U.S. MSP established in Switzerland, 23.609, the Division believes that time-limited no-action relief is warranted.

Accordingly, prior to **March 3, 2014**, the Division will not recommend that the Commission take an enforcement action against a non-U.S. SD or a non-U.S. MSP established in Australia, Canada, the European Union, Japan, or Switzerland for failure to comply with Commission regulation 23.600(c)(2) or 23.608. In addition, prior to **March 3, 2014**, the Division will not recommend that the Commission take an enforcement action against a non-U.S. SD or a non-U.S. MSP established in Switzerland for failure to comply with Commission regulation 23.609.

This letter, and the no-action position taken herein, represent the views of the Division only, and do not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the Commodity Exchange Act or the regulations thereunder. This letter does not create or confer any rights for or obligations on any person or persons subject to compliance with the CEA that bind the Commission or any of its other offices or divisions. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Page 3
Cleared Swaps

Should you have any questions concerning this correspondence, please contact me at 202-418-5977, Frank Fisanich, Chief Counsel, at 202-418-5949, or Ellie Jester, Special Counsel, at 202-418-5874.

Sincerely,

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