



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-79
No-Action
December 27, 2012
Division of Market Oversight

Laura J. Schisgall
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Société Générale
1221 Avenue of the Americas
New York, NY 10020

Dear Ms. Schisgall:

This letter is in response to your letter on behalf of Société Générale (“SG”) dated December 11, 2012 (“Letter”), to the Division of Market Oversight (“DMO” or “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”). In the Letter, SG requested time-limited no-action relief with respect to certain reporting requirements promulgated by the Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) under Parts 43,¹ 45,² and 46³ of the Commission’s regulations. Specifically, SG identified six areas⁴ in which full compliance with these reporting requirements, as they pertain to swap dealers, would not be possible as of the relevant compliance deadlines⁵ due to delays in resolving various technological issues with SG’s trading and reporting systems.

¹ See generally Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (January 9, 2012) (“Real-Time Reporting Rule”).

² See generally Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012) (“Regulatory Reporting Rule”).

³ See generally Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012) (“Historical Swap Reporting Rule”).

⁴ SG also requested relief with respect to certain requirements under Part 23. DMO has not addressed these Part 23 requests and is deferring to other divisions within the Commission to consider such requests.

⁵ The earliest date upon which a swap dealer would be required to report swap transaction data for swaps in the interest rate and credit asset classes (“Compliance Date 1 Swaps”) pursuant to Parts 43 and 45 is December 31, 2012, if the swap dealer reaches the de minimis swap dealing threshold in October 2012. See generally Staff No-Action Letter No. 12-32 (November 19, 2012) (establishing the reporting compliance deadline for swap dealers under Parts 43 and 45 as the applicable registration deadline, regardless of whether the swap dealer chooses to register prior to that deadline) (“November 19 Letter”). The earliest date upon which the same swap dealer would be required to report historical Compliance Date 1 Swaps under Part 46 is January 30, 2013. See id. (establishing the reporting compliance deadline for

Generally, SG represented that it is committed to full compliance with Title VII of the Dodd-Frank Act in harmonization with applicable European rules. In terms of its business, SG represented that it books the majority of its global swap transactions in its Paris headquarters, including swaps with both U.S. persons and non-U.S. persons. SG also represented that it uses global front-to-back-end trade capture, processing, and booking systems based in Paris to service its global swap business. The technological challenges SG represented are complicated due to the need for it to calibrate its systems to comply with not only Dodd-Frank requirements, but non-U.S. regulatory requirements as well.

DMO has reviewed each specific request and determined to grant the following relief:

A. Delay in reporting economic amendments to structured commodity and equity swaps under Parts 43 and 45 until April 30, 2013.

In the Letter, SG represented that for structured commodity and equity swaps that are not electronically confirmed, its reporting systems currently are able to report “economic amendments”⁶ on a “snapshot basis” only due to the information having to be entered into the booking system manually, as opposed to being reported in real time as required under Parts 43 and 45. In order to remedy this issue, SG represented that it must implement a significant and complex upgrade to its system that is capable of scanning, in real time, all trade information into the system and identifying those swaps that are modified. To provide additional time to implement these system upgrades, SG requested no-action relief until June 30, 2013.

DMO believes that, in light of the above-described technological difficulties and SG’s representations of good faith efforts to remedy these difficulties, time-limited no-action relief is appropriate to allow SG additional time to implement the technology necessary such that economic amendments that change the price of a swap can be reported in real time. Accordingly, DMO will not recommend that the Commission commence an enforcement action against SG for failure to fulfill its reporting obligations under Parts 43 and 45 by not reporting in real-time any economic amendment⁷ to a structured commodity or equity swap that is not

historical swaps under Part 46 as 30 days after the date upon which the swap dealer is required to begin reporting swap transaction data pursuant to Parts 43 and 45 for the asset class to which the historical swap belongs). For purposes of the discussion herein and as represented by SG in the Letter, DMO assumes that SG will have registered as a swap dealer by December 31, 2012, and thus begin reporting Compliance Date 1 Swaps under Parts 43 and 45 as of December 31, 2012, and historical Compliance Date 1 Swaps under Part 46 as of January 30, 2013.

⁶ SG represented that its chosen swap data repository (“SDR”) for the other commodity asset class is the Depository Trust and Clearing Corporation (“DTCC”). SG represented that DTCC defines “economic amendments” to include modification on financial and/or legal terms of a swap that impacts pricing.

⁷ For purposes of this no-action position, “economic amendments” refer only to price-forming continuation data that is publicly reportable under part 43. See Real-Time Reporting Rule at 1226, 1255-56 (“An indication of whether such publicly reportable swap transaction is a post-execution event that affects the price of the publicly reportable swap transaction. Such price-forming continuation data may include: Terminations, assignments, novations, exchanges, transfers, amendments conveyances or extinguishing of rights that change the price of the swap.”).

electronically confirmed until as soon as technologically practicable upon resolution of the technological issues preventing timely compliance or **April 30, 2013**, whichever occurs first. As a condition of relief, SG must report the economic amendments subject to this relief as soon as technologically practicable, but no later than on a snap-shot, end-of-day basis.⁸

B. Delay in reporting under the same USI life cycle events of commodity swaps, separate legs of multi-asset swaps, or life cycle events for exotic credit default swaps booked in Paris-based OFE until March 30, 2013.

In the Letter, SG represented that its systems currently report a partial termination, partial novation, and partial exercise of a commodity swap under Part 45 as a new swap or termination with a new USI, which results in new trade activity being reported unnecessarily in real time under Part 43. SG also represented that its Paris-based OFE booking system currently reports a partial termination, partial novation, and partial exercise of an exotic credit default swap under Part 45 as a new swap or termination with a new USI, which results in new trade activity being reported unnecessarily in real time under Part 43.⁹ Similarly, SG represented that for multi-asset swaps (e.g., a swap with both equity and commodity legs), its systems report each leg as a separate swap with its own USI that cannot be linked such that all legs are reported as one swap under a single USI as required under Parts 43, 45, and 46. Accordingly, SG requested no-action relief until June 30, 2013 in order to update its systems to facilitate reporting of certain data under a single USI as required pursuant to Parts 43, 45,¹⁰ and 46.

DMO believes that, based upon the above-described technical difficulties and SG's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is appropriate to provide SG with additional time to update its systems such that they are able to report certain life cycle events and legs from different asset classes of a multi-asset swap under the same USI as required under Parts 43 and 45. DMO will not recommend that the Commission commence an enforcement action against SG for failure to fulfill its reporting obligations under Parts 43 and 45 by incorrectly reporting partial terminations, partial novations, or partial exercises of i) commodity swaps, or ii) exotic¹¹ credit default swaps booked in SG's Paris-based

⁸ For purposes of the no-action position taken in section A, "end-of-day" means by the close of regular business operations of the business day on which the economic amendment or life cycle event occurred in the time zone of the reporting counterparty.

⁹ SG represented that approximately one-to-five new exotic credit default swaps are booked in the OFE system per month.

¹⁰ SG represented that while its systems are capable of reporting this life cycle data under Part 45 in real time as required, the event still would be associated with a USI that is different from the initial swap's USI, and therefore could not be readily linked to the initial swap's data in the SDR.

¹¹ For purposes of the no-action position take in section B, "exotic" credit default swaps are those swaps in the credit asset class that meet all of the following characteristics: (i) not listed for trading on a designated contract market; (ii) not available to be traded on a swap execution facility; (iii) not eligible to be cleared by a derivatives clearing organization; (iv) not eligible to be confirmed through an electronic matching confirmation system; and (v) not represented in FpML.

OFE system, as new swaps or terminations under new USIs.¹² Additionally, DMO will not recommend that the Commission commence an enforcement action against SG for failure to fulfill its reporting obligations under Parts 43, 45, and 46 by incorrectly reporting the legs of a multi-asset swap as separate swaps under different USIs, provided that the separate swaps are reported as soon as technologically practicable, as required under Parts 43 and 45. Both no-action positions taken herein expire upon the resolution of the technological issues preventing timely compliance, but in no case later than **March 30, 2013**. DMO believes that an extra thirty days from the date that Compliance Date 2 Swaps must be reported pursuant to Parts 43 and 45 is sufficient to allow SG to come into full compliance with linking together certain life cycle events and reporting legs of a multi-asset swap as a single swap under one USI. While this relief expires no later than March 30, 2012, as a further condition of relief, SG must correct its SDR reporting records with respect to life cycle events and legs of a multi-asset swap that were reported incorrectly pursuant to this no-action position as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, but in no case later than April 30, 2013.

C. Delay in reporting combination options with swap economics under Parts 43, 45 and 46 until April 30, 2013.

In the Letter, SG represented that under current Commission guidance, it is unclear to SG whether certain combination options with swap economics in the equity asset class are swaps, and thus subject to the Commission's swap data reporting rules. SG represented that its systems currently are not capable of reporting equity options to an SDR as it was assumed that equity options with swap-like feature were outside the jurisdiction of the Commission. Accordingly, SG requested no-action relief with respect to reporting obligations for these products under Parts 43 and 45 until June 30, 2013.

DMO believes that, in light of SG's representation that it is uncertain about the characterization of certain combination options with swap economics in the equity asset class and SG's representation that it will make good faith efforts to submit timely reports for such swaps with U.S. persons to the best of its technological capabilities and will continue in good faith to remediate the issues impeding timely compliance, time-limited no-action relief is appropriate. For combination options with swap economics in the equity asset class,¹³ DMO will

¹² As a condition of this no-action position, SG should attempt to withhold reporting of these life cycle events altogether, in which case DMO would not recommend that the Commission commence an enforcement action against SG for under-reporting of this continuation data. If such a temporary solution were possible, SG would be required to update its SDR reporting records as soon as technologically practicable upon resolution of the issue preventing reporting of life-cycle events as part of the initial swap, as required under Parts 43 and 45, but no later than April 30, 2013. If withholding the reporting of affected life-cycle events is technologically impracticable, then the no-action position in section B will apply, subject to the condition that SG's chief information officer (or equivalent) must document a determination as to the inability of SG's systems to withhold such life-cycle event reporting altogether until a permanent resolution to the over-reporting issue can be implemented.

¹³ For purposes of the no-action position in section C, in a December 14, 2012 communication with Staff, SG represented that the products in question were "combination options with swap economics," which it defined as "options treated as swaps [that] are a combination of two or more options based on a broad-

not recommend that the Commission commence an enforcement action against SG for failure to fulfill its reporting obligations under Parts 43, 45 and 46 until **April 30, 2013**.¹⁴ For any swap transaction not reported to an SDR pursuant to this no-action position that SG determines to be a swap during the relief period,¹⁵ SG must report such swap pursuant to the applicable Part 43, 45 and 46 regulations as soon as technologically practicable upon resolution of the technological issues preventing timely compliance after such a determination is made, but in no case later than May 31, 2013.

D. Delay in reporting confirmation data memorialized in paper Master Confirmation Agreements for equity swaps under Part 45 until April 30, 2013.

In the Letter, SG represented that its reporting systems currently do not capture certain confirmation data for equity swaps,¹⁶ which currently is only memorialized in paper Master Confirmation Agreements (“MCA”)¹⁷ and not stored electronically. Until SG is able to build an electronic repository and enter all of the data memorialized in its MCAs into that repository, SG represented that electronic reporting of specific terms or elections contained in the MCA pursuant to Part 45 would not be possible. In order to build an electronic repository and input the information, SG requested no-action relief until June 30, 2013.

DMO believes that, in light of the above-described technological difficulties and SG’s representations of good faith efforts to remedy these difficulties, time-limited no-action relief is warranted to provide SG additional time to update its reporting systems to accommodate the electronic reporting of confirmation data for equity swaps memorialized in paper MCAs. For equity swaps, DMO will not recommend that the Commission pursue an enforcement action against SG for failure to fulfill its reporting obligations under Part 45 by not reporting all

based security index that, when combined, are economically the same as a swap that references the same underlying broad-based index.” SG represented that for purposes of the relief it was requesting, “in order for such option combinations to be treated like a swap, each option in the combination must: (a) have the exact same term or maturity; (b) be of the same option style (that is, either both American style or both European style); (c) have identical strike prices; (d) be structured so that the exercise of one option must automatically exercise (or cancel) the other options in the combination; and (e) have identical terms. Such identical terms shall include, but not be limited to, adjustment events for extraordinary events related to the underlying.”

¹⁴ Consistent with other DMO no-action relief extending reporting deadlines for Compliance Date 1 Swaps by three months, all three-month relief provided in this response expires on March 30, 2013, and all four month relief expires on April 30, 2013. DMO notes that the relief provided in the November 19 Letter and December 5 Letter applies to SG, meaning that any relief provided in this response is supplemental and therefore should be interpreted in conjunction with the relief already issued.

¹⁵ See global condition 5 herein.

¹⁶ SG represented that this confirmation data does not consist of any real-time, primary economic terms, valuation, or daily snapshot reporting data. Rather, the data consists of confirmation terms such as the Hedging Party Prefix, Hedging Party Value, Hedging disruption, Increased Cost of Hedging, Change in Law, and Failure to Deliver.

¹⁷ SG represented that MCAs are bilaterally signed paper documents that serve as addendums to equity confirmations.

confirmation data captured in paper MCAs by the applicable compliance deadline until **April 30, 2013**. As a condition of relief, SG must complete the SDR reporting records with respect to the confirmation data not reported pursuant to this no-action position as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, but in no case later than May 31, 2013.

E. Reporting security-based swaps that should not be reported under Parts 43 and 45 until April 30, 2013.

In the Letter, SG represented that it temporarily has adopted a simplified logic for distinguishing between broad- and narrow-based security indexes that only looks at how many components are in the index. SG represented that the result of this simplified logic is that its system may inadvertently report security-based swaps, but that it will notify its counterparties to these transactions of the potential for over-reporting to an SDR. In order to reprogram its systems to capture the nuances of broad- versus narrow-based indexes, SG requested no-action relief to over-report under Parts 43 and 45 until December 31, 2013.

DMO believes that, based upon the above-described technological difficulties and SG's good faith efforts to resolve these difficulties, time-limited no-action relief is warranted. Accordingly, DMO will not recommend that the Commission commence an enforcement action against SG for failure to fulfill its reporting obligations under Parts 43 and 45 by reporting security-based swaps that should not be reported until **April 30, 2013**. As a condition of relief, SG must maintain documentation, which sufficiently identifies each SBS that was errantly reported to any SDR, to be made available to the Commission for inspection and production immediately upon request.

F. Delay in reporting interest rate and FX swaps by certain foreign branches under Parts 43, 45, and 46 until April 30, 2013.

In the Letter, SG represented that certain of its foreign branches maintain their own local swap booking system, "Kondor+," that is independent from SG's centralized Paris-based system.¹⁸ Until the trades booked into Kondor+ are integrated into SG's main global processing applications, SG represented that it will not be able to report by the applicable compliance deadlines a small proportional volume of its global swap transactions with U.S. persons¹⁹ for the interest rate and FX asset classes (approximately less than one percent of gross notional trading volume measured on an annual basis across both asset classes).²⁰ In order to provide the affected

¹⁸ SG represented that these foreign branches are located in Warsaw, Istanbul, Singapore, Taipei, and Mumbai.

¹⁹ SG represented that it believes most, if not all, of the affected transactions are entered into with non-U.S. branches of U.S. banks, and that it will make a good faith effort to agree with such non-U.S. branches of U.S. banks that they will be the reporting counterparty.

²⁰ SG represented that as of December 7, 2012, the affected branches have booked 200 interest rate swaps into the Kondor+ system since January 1, 2012 as follows: Warsaw (94); Mumbai (93); Taipei (11); Istanbul (2); Singapore (0).

foreign branches additional time to migrate trading activity in the interest rate and FX asset classes from Kondor+ to SG's centralized booking platform, SG requested no-action relief from reporting requirements under Parts 43, 45, and 46.

DMO believes that, in light of the above-described technical difficulties and SG's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is appropriate. Additionally, given the small volume of trades affected relative to SG's overall dealing in interest rate and FX swaps, DMO is satisfied that the impact on market transparency will be minimal. For swaps in the interest rate and FX asset classes executed between a U.S. person and one of the affected foreign branches,²¹ DMO will not recommend that the Commission commence an enforcement action against SG for failure to fulfill its reporting obligations under Parts 43, 45, or 46 due to non-reporting of any data to an SDR as required under those rules until **April 30, 2013**. DMO believes that a four-month timeframe should be sufficient for SG to migrate its trading volume in interest rate and FX swaps from its Kondor+ system to its centralized reporting hub.²² As a condition of relief, SG must promptly notify DMO if the volume of interest rate or FX swaps transacted in the affected foreign branches increases by fifty percent or more during any single month of the no-action relief period, as compared to the same month during the 2012 calendar year. Additionally, affected foreign branches of SG must report those trades subject to this no-action position pursuant to Parts 43, 45, and 46 as soon as technologically practicable upon resolution of the technological issues preventing timely compliance,²³ but in no case later than May 31, 2013. Finally, with respect to interest rate and FX swaps entered into by the affected foreign branches with non-U.S. branches of U.S. banks, SG must make good faith efforts to have such non-U.S. branches of U.S. banks agree to be the reporting counterparty for the transactions.

The following conditions apply to each no-action position taken in sections A through F, above:

- 1) Despite each staff no-action position taken herein expiring upon a certain future date, SG is required to begin reporting in full compliance with the CEA and Commission's regulations as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, even if such resolution occurs prior to the applicable no-action position expiration date.

²¹ See supra note 18.

²² Generally, DMO has determined not to provide more than four months of relief in any no-action position taken in this response. If necessary, SG may submit a formal request to the Division that any no-action position taken herein be extended past the current expiration date, but in doing so must provide a detailed report on the progress made in remediating the relevant technological issues that continue to prevent timely compliance, as is required to be documented as a condition of this relief.

²³ If technologically practicable at any point during the no-action relief period in section F, SG must report data subject to this no-action position on an end-of-day basis.

- 2) During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, SG must retain records with respect to all transactions covered by the relief in this response and make such records available to the Commission for inspection and production immediately upon request.
- 3) For each no-action position taken in sections A through F, above, SG's chief information officer (or equivalent) must document an internal determination with respect to the technological difficulties that have resulted in an inability to comply with the applicable Commission regulations by the relevant compliance deadlines.
- 4) If any representation made by SG in the Letter ceases to be true or materially changes with respect to any no-action position contained in this response, this no-action position is void.
- 5) Should the Commission promulgate additional swap data reporting rules applicable to the subject matter covered herein during the pendency of this no-action relief period, such rules could supersede the no-action relief granted herein.

This Division letter, and the no-action positions taken herein, represent the views of DMO 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 positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or Commission regulations thereunder, and applies only to SG in its capacity as the requestor of this relief. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions regarding the content of this staff no-action letter, please contact Graham McCall, Attorney-Advisor, at 202-418-6150 or gmccall@cftc.gov.

Sincerely,

Richard A. Shilts
Acting Director