



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

CFTC Letter No. 13-24

No-Action

June 7, 2013

Division of Clearing and Risk

RE: Time-Limited No-Action Relief from the Clearing Requirement for Swaps Entered into by Cooperatives

On July 17, 2012, the Commodity Futures Trading Commission (“Commission”) published for public comment a notice of proposed rulemaking to exempt certain swaps entered into by qualifying cooperatives from required clearing, subject to certain conditions (the “Proposed Cooperative Exemption”).¹ The Commission received 25 comment letters on its proposal. Many commenters noted the importance of exempting these swaps from the clearing requirement and expressed support for the proposal. The Commission has not yet finalized the proposed cooperative exemption.

On November 28, 2012, in CFTC Letter No. 12-36, the Division of Clearing and Risk (“Division”) granted time-limited no-action relief (“November 28 No-Action Relief”) for swaps where one of the counterparties is an “exempt cooperative,” as defined in No-Action Letter No. 12-36, subject to certain conditions, in order to alleviate the uncertainty for all market participants during the period between when the clearing requirement became effective and when the Commission finalizes the Proposed Cooperative Exemption.² The November 28 No-Action Relief provided that the Division would not recommend that the Commission commence an enforcement action against a person for failure to comply with the requirements under section 2(h)(1)(A) of the Commodity Exchange Act (“CEA”) and part 50 of the Commission’s regulations to clear a credit default swap (“CDS”) or interest rate swap subject to required clearing in § 50.4 of the Commission’s regulations, provided that certain conditions were met.

¹ See Clearing Exemption for Certain Swaps Entered Into by Cooperatives, 77 FR 41940 (July 17, 2012).

² See Staff No-Action Letter 12-36, available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-36>. Under section 2(h)(1)(A) of the Commodity Exchange Act, “it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization [(DCO)] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.” On December 13, 2013, the Commission issued its first clearing requirement determination for credit default swaps and interest rate swaps. Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (hereinafter “Clearing Requirement Determination”). The Clearing Requirement Determination and attendant rules became effective on February 11, 2013, subject to phased-in compliance deadlines, described below.

The November 28 No-Action Relief expired on April 1, 2013. Without further action by the Division or the Commission, starting on June 10, 2013, all Category 2 Entities, as defined in the Swap Transaction Compliance and Implementation Schedule,³ that are not able to claim an exception or exemption from clearing pursuant to section 2(h)(7) of the CEA or part 50 of the Commission's regulations, will be required to clear swaps subject to the clearing requirement in § 50.4 of the Commission's regulations.⁴

In view of the foregoing, the Division is issuing no-action relief, consistent with the relief that was granted in the November 28 No-Action Relief. Accordingly, the Division will not recommend that the Commission commence an enforcement action against a person for failure to comply with the requirement under section 2(h)(1)(A) of the CEA and part 50 of the Commission's regulation to clear a CDS or interest rate swap subject to required clearing in § 50.4 of the Commission's regulations, provided that the following conditions are met:

1. One of the counterparties is an “exempt cooperative,” which, for purposes of the no-action relief, means a cooperative:
 - (a) That is formed and existing pursuant to Federal or state law as a cooperative;
 - (b) That is a “financial entity,” as defined in section 2(h)(7)(C)(i) of the CEA, solely because of section 2(h)(7)(C)(i)(VIII) of the CEA; and
 - (c) Each member of which is not a “financial entity,” as defined in section 2(h)(7)(C)(i) of the CEA, or if any member is a financial entity solely because of section 2(h)(7)(C)(i)(VIII) of the CEA, such

³ See Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012).

⁴ Pursuant to the compliance schedule, swap dealers major swap participants and private funds active in the swaps market were required to comply with the clearing requirement starting on March 11, 2013 (“Category 1 Entities”). Accounts managed by third-party investment managers, as well as ERISA pension plans, have until September 9, 2013, to begin clearing swaps entered into on or after that date (“Category 3 Entities”). All other financial entities are required to clear swaps beginning on June 10, 2013, for swaps entered into on or after that date (“Category 2 Entities”). See Clearing Requirement Determination, 77 FR at 74319-21. With regard to the CDS indices on European corporate names, iTraxx, the Clearing Requirement Determination provided that, if no DCO offered iTraxx for client clearing by February 11, 2013, the Commission would delay compliance for those swaps until 60 days after an eligible DCO offers iTraxx indices for client clearing. On February 25, 2013, the Commission received notice from ICE Clear Credit LLC, a Commission-registered DCO, that it had begun offering customer clearing of the iTraxx CDS indices that are subject to the clearing requirement in § 50.4(b) of the Commission's regulations. In accordance with the timeframe previously set forth by the Commission, the following compliance dates apply to the clearing of iTraxx indices: Category 1 Entities: Friday, April 26, 2013; Category 2 Entities: Thursday, July 25, 2013; and Category 3 Entities: Wednesday, October 23, 2013. See Press Release, CFTC's Division of Clearing and Risk Announces Revised Compliance Schedule for Required Clearing of iTraxx CDS Indices (Feb. 25, 2013), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6521-13>.

member is: (i) Exempt from the definition of “financial entity” pursuant to § 50.50(d) (previously designated as § 39.6(d)) of the Commission’s regulations; or (ii) A cooperative formed under Federal or state law as a cooperative and each member thereof is either not a “financial entity,” as defined in section 2(h)(7)(C)(i) of the CEA, or is exempt from the definition of “financial entity” pursuant to § 50.50(d) of the Commission’s regulations.

2. The swap:

- (a) Is entered into with a member of the exempt cooperative in connection with originating a loan or loans for the member, which means the requirements of § 1.3(ggg)(5)(i), (ii), and (iii) are satisfied; provided that, for this purpose, the term “insured depository institution” as used in those sections is replaced with the term “exempt cooperative” and the word “customer” is replaced with the word “member”; or
- (b) Hedges or mitigates commercial risk, in accordance with § 50.50(c) (previously designated as § 39.6(c)) of the Commission’s regulations, related to, or associated with, loans to members or arising from a swap or swaps that meet the requirements of paragraph (2)(a) above.

The conditions above are essentially the same as the requirements in the proposed cooperative exemption.⁵ This no-action relief expires on the earlier of June 21, 2013 or the effective date of a Commission rulemaking finalizing the proposed cooperative exemption.

This no-action letter, and the positions taken herein, represent the view of the 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 the affected persons from compliance with any other applicable requirements contained in the CEA or in the Commission’s regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the information available to the Division. Any different or changed material facts or circumstances might render this letter void. As with all no-action letters, the Division retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

⁵ See 77 FR 41940 (proposed as § 39.6).

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If you have any questions, please do not hesitate to contact Brian O'Keefe at (202) 418-5658.

Sincerely,

Ananda Radhakrishnan
Director