



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5977
Facsimile: (202) 418-5407
gbarnett@cftc.gov

Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 13-40
No-Action
June 27, 2013
Division of Swap Dealer and Intermediary Oversight

Re: Time-Limited No-Action Relief Regarding Commission Regulation 23.502 for Swap Dealers and Major Swap Participants

Ladies and Gentlemen:

This letter is in response to a request from the International Swaps and Derivatives Association (“ISDA”), on behalf of its members that are swap dealers (“SDs”) or major swap participants (“MSPs”), and other similarly situated persons, received by the Division of Swap Dealer and Intermediary Oversight (“**Division**”) of the Commodity Futures Trading Commission (“**Commission**”), that the Commission extend the July 1, 2013 compliance date for Regulations 23.502 and 23.504.¹

ISDA represents that, despite good faith efforts, SDs and MSPs face unforeseen delays in the development of market-wide operational infrastructure needed for an efficient portfolio reconciliation process. The relief provided in this no-action letter is available to all SDs and MSPs. The Division has determined to provide no-action relief, as detailed herein.

Applicable Regulatory Requirements

Section 731 of the Dodd-Frank Act² amended the Commodity Exchange Act (“CEA”) by adding a new Section 4s, which established requirements relating to the registration and regulation of SDs and MSPs.³

CEA Section 4s(h)(1) requires that SDs and MSPs comply with business conduct standards promulgated by the Commission in the categories set forth in Sections 4s(h)(1)(A)-(D) and 4s(h)(3). Additionally, Section 4s(i)(1) of the CEA requires SDs and MSPs to “conform with such standards as may be prescribed by the Commission by rule or regulation that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.”⁴

¹ 17 C.F.R. §§ 23.502 and 23.504. However, the scope of this no-action letter is limited to Regulation 23.502.

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. § 6s.

⁴ 7 U.S.C. § 6s(i).

On September 11, 2012, the Commission issued final rules governing swap confirmation (§ 23.501), portfolio reconciliation (§ 23.502), portfolio compression (§ 23.503), swap trading documentation (§ 23.504), and end user exception documentation (§ 23.505) (collectively, the “Documentation Rule”).⁵ Among other things, § 23.502 requires SDs and MSPs to establish, maintain, and follow written policies and procedures reasonably designed to ensure they engage in portfolio reconciliation with each of their counterparties who are not SDs or MSPs.⁶

In response to requests from market participants, on January 2, 2013, the Commission deferred the compliance date for Regulation 23.502 for all types of counterparties until July 1, 2013.⁷

Summary of Request for Relief

In their request, ISDA represents that the industry effort to implement the necessary infrastructure and processes for portfolio reconciliation, as defined in Regulation 23.500, requires additional time for completion. According to ISDA’s letter, the industry had set a March 2013 milestone date for delivery by DTCC of enhanced data feeds, which is necessary for compliance with the portfolio reconciliation rule. However, according to ISDA, DTCC made enhanced swap data repository (“**SDR**”) data feeds for all asset classes, except for rates, available to market participants for user acceptance testing (“**UAT**”) on April 29 and made such data feeds for rates available for UAT on May 20. Moreover, the availability of the enhanced SDR data feeds to UAT enables, but does not complete, the necessary development for portfolio reconciliation, and, to date, UAT by market participants remains ongoing and must be completed before DTCC migrates its SDR enhanced data feeds from testing to production. In separate letters, DTCC and TriOptima confirmed the assertions made by ISDA regarding the delay from the original estimated delivery date of March 2013 for the delivery of the enhanced reports and supported granting the requested relief.⁸

⁵ See Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904 (Sept. 11, 2012) (hereinafter “Documentation Rules”). With regard to the portfolio reconciliation requirements found in § 23.502, the Commission staggered the compliance dates by providing extended compliance dates for those SDs and MSPs that have not been previously regulated by a prudential regulator, and thus are least likely to have the infrastructure in place to begin regular reconciliation with their counterparties. *Id.* at 55941-42.

⁶ See § 23.502(b).

⁷ See Business Conduct and Documentation Requirements for Swap Dealers and Major Swap Participants; Extension of Compliance Date, 78 FR 17 (Jan. 2, 2013) (hereinafter, “Extension of Compliance Date”). The Extension of Compliance Dates announced on January 2, 2013 applied to several other Regulations, in addition to Regulation 23.502.

⁸ See Letter from Christopher M. Childs, Chief Executive Officer, DDRL (US) LLC, to Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight (June 5, 2013) and Letter from Raf Pritchard, Chief Executive Officer, TriOptima, to Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight (June 7, 2013) (both supporting ISDA’s June 4, 2013 letter as it relates to portfolio reconciliation).

Division No-Action Position

Based upon the representations made by ISDA (and by DTCC and TriOptima in the supporting letters), the Division believes that time-limited no-action relief from Regulation 23.502 is warranted. Accordingly, the Division will not recommend that the Commission take an enforcement action against an SD or MSP for failure to comply, prior to **August 23, 2013**, with Regulation 23.502.

This letter, and the positions taken herein, represent the view of this 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 persons relying on it from compliance with any other applicable requirements contained in the Act or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. 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 me at (202) 418-5977; Ward Griffin, Associate Chief Counsel, at (202) 418-5425; or Jason Shafer, Attorney-Advisor, at (202) 418-5097.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago

Jamila A. Piracci, OTC Derivatives
National Futures Association, New York