



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 14-32
No-Action
March 21, 2014
Division of Swap Dealer and Intermediary Oversight

Tatsuya Sugimura
Chief Executive Officer
Mitsui & Co. Precious Metals, Inc.
200 Park Avenue
New York, NY 10166

Re: No-Action Relief from Compliance with Certain Requirements of Commission Regulation 3.3 Relating to the Chief Compliance Officer Annual Report

Dear Mr. Sugimura:

This letter is in response to your request for relief on behalf of Mitsui & Company Precious Metals, Inc. (“**Mitsui**”), in which you requested that the Division of Swap Dealer and Intermediary Oversight (“**Division**”) issue a no-action letter stating that the Division will not recommend that the U.S. Commodity Futures Trading Commission (“**Commission**”) commence an enforcement action against Mitsui for violating Commission Regulation (“**Regulation**”) 3.3¹ by completing a chief compliance officer (“**CCO**”) Annual Report for the fiscal year ending on March 31, 2014, that does not mean certain regulatory requirements.

Regulatory Background

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,² in relevant part, added section 4s(k) to the Commodity Exchange Act (“**CEA**” or “**Act**”),³ which requires each swap dealer (“**SD**”) and major swap participant (“**MSP**”) to designate an individual to serve as its CCO. Section 4s(k) requires that CCOs perform certain duties and fulfill specific responsibilities, including the preparation of an Annual Report “in accordance with rules prescribed by the Commission.”⁴

¹ 17 C.F.R. § 3.3.

² Pub. L. 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. §§ 1 *et seq.*

⁴ 7 U.S.C. § 4s(k)(3).

On April 3, 2012, the Commission promulgated Regulation 3.3, which, among other things, lists the responsibilities of CCOs.⁵ One of the responsibilities of a CCO is to prepare and sign an Annual Report.⁶ The Annual Report must cover the most recently completed fiscal year of the SD, and, at a minimum, must contain the information enumerated in Regulation 3.3,⁷ including a certification by the CCO or chief executive officer.⁸

The Annual Report must be furnished electronically to the Commission not more than 60 days after the end of the fiscal year of the SD, simultaneously with the submission of Form 1-FR-FCM, the Financial and Operational Combined Uniform Single Report, or the financial condition report, as applicable.⁹ The Division previously issued a no-action letter that has temporarily extended the deadline for furnishing an Annual Report to the Commission from 60 days to 90 days after the end of a given SD's fiscal year.¹⁰

On June 26, 2013, the Division granted no-action relief that allowed certain firms,¹¹ with fiscal years that ended on March 31, 2013, to prepare and submit an abbreviated CCO Annual Report for the 2013 fiscal year.¹² The Division granted the June 26, 2013 CCO Annual Report Relief based, in part, on the following representations:

- CCOs covered by the relief would have very little time to prepare their first Annual Report between the compliance date of Regulation 3.3 (March 29, 2013) and the deadline to furnish the annual report to the Commission (July 1, 2013); and

⁵ Regulation 3.3 is applicable to futures commission merchants (“FCMs”), SDs and MSPs. The relief provided in this no-action letter is not applicable to FCMs or MSPs, nor may it be relied upon by any person other than the requester. *See* Regulation 140.99(a)(2).

⁶ 17 C.F.R. § 3.3(d)(6).

⁷ 17 C.F.R. § 3.3(e).

⁸ 17 C.F.R. § 3.3(f)(3).

⁹ 17 C.F.R. § 3.3(f)(2). *See* Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013) (amending the filing period from 90 days to 60 days).

¹⁰ CFTC Letter No. 13-84 (Dec. 30, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-84.pdf>. The no-action relief granted in Letter No. 13-84 was limited to an Annual Report that is required to be furnished to the Commission in calendar year 2014.

¹¹ For purposes of the June 26, 2013 Annual Report relief, the Division defined “Covered Firms” as SDs that: (1) are not registrants of the Securities and Exchange Commission, or regulated by a U.S. prudential regulator; and (2) ended their fiscal year on March 31, 2013. *See* CFTC Letter No. 13-32, <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-32.pdf> (hereinafter “**June 26, 2013 CCO Annual Report Relief**”).

¹² *See id.*

- Legal and compliance resources of SDs were severely constrained, because SDs were devoting considerable resources toward developing policies and procedures to ensure compliance with Commission regulations implementing Section 4s of the Act.¹³

In addition to the June 26, 2013 CCO Annual Report Relief, on December 30, 2013, the Division granted relief to SDs that had a fiscal year-end of December 31, 2013, and that were required to register on that same date.¹⁴ In granting the December 30, 2013 CCO Annual Report Relief, the Division noted that, as part of the registration process, the SDs covered by the relief would be required to submit policies and procedures establishing compliance with the CEA and Regulations to the National Futures Association (“NFA”), and that the content and adequacy of such policies and procedures are major components of the Annual Report.¹⁵

Request for No-Action Relief

You have represented that Mitsui and its non-U.S. affiliates collectively exceeded the aggregate gross notional amount of swap dealing activity in October 2013, requiring registration of at least one of the affiliates as an SD. Accordingly, Mitsui registered as an SD as of December 31, 2013.¹⁶ As a result, Mitsui’s compliance date for designating a CCO and otherwise adhering to the compliance framework in Regulation 3.3 was December 31, 2013 (the date on which Mitsui became provisionally registered as an SD). Like the firms that received no-action relief from the Division in the June 26, 2013 CCO Annual Report Relief, Mitsui is not registered with the SEC or a U.S. prudential regulator. Unlike the SDs covered by the December 30, 2013 CCO Annual Report Relief, Mitsui’s fiscal year-end is March 31, 2014, not December 31, 2013. Absent no-action relief from the Division, Mitsui would be required to draft a CCO Annual Report that satisfies all of the conditions of Regulation 3.3.

You have requested that the Division confirm that it will not recommend that the Commission take an enforcement action against Mitsui for submitting an Annual Report for the fiscal year ending on March 31, 2014, that fails to satisfy certain requirements of Regulation 3.3(e) and (f) if, at a minimum, the following conditions (“**Required Conditions**”) are satisfied with respect to Mitsui’s Fiscal Year 2014 Annual Report:

¹³ *Id.* at 4-5.

¹⁴ CFTC Letter No. 13-85 (Dec. 30, 2013), <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-85.pdf> (hereinafter “**December 30, 2013 CCO Annual Report Relief**”).

¹⁵ *Id.* at 2.

¹⁶ Regulation 1.3(ggg)(4)(i) provides that a person shall not be deemed to be an SD if the aggregate gross notional amount of their swap dealing activity falls below specified thresholds. Under Regulation 1.3(ggg)(4)(iii), a person whose aggregate gross notional amount of swap dealing activity exceeds an applicable threshold must register as an SD no later than “two months after the end of the month in which that person becomes no longer able to take advantage of the exception.”

- (1) The Annual Report contains the following information:
 - a. An introduction and executive summary that contain:
 - i. A description of Mitsui's business.
 - ii. Identification of the CEO and CCO of Mitsui.
 - b. The time period covered by the Annual Report (i.e., the time period between the date on which Mitsui was required to register as an SD—December 31, 2013—and March 31, 2014).
 - c. A review of policies and procedures reasonably designed to ensure compliance with the Commission Regulations as follows:
 - i. Identification and description of such policies and procedures required as of March 31, 2014;
 - ii. Assessment of the effectiveness of such policies and procedures as of March 31, 2014;
 - iii. Discussion of areas for improvement of such policies and procedures.
 - d. A description of any material noncompliance issues identified and the corresponding action taken in relation to the Regulations.
 - e. CEO and/or CCO Certification(s) that states the following: "To the best of my knowledge and reasonable belief, and under penalty of law, the information contained in the attached annual report pertaining to the period from December 31, 2013, through March 31, 2014 is accurate and complete."
- (2) The Annual Report is electronically furnished to the Commission no later than 90 days after Mitsui's fiscal year end.
- (3) Mitsui satisfies the requirements of Regulation 3.3(f)(1) and (f)(4).

You have represented that, like the firms in the June 26, 2013 CCO Annual Report Relief, Mitsui's CCO would have a relatively short period of time to prepare and submit a full annual report. You also have stated that Mitsui's request is limited to the Annual Report that Mitsui must furnish the Commission under Regulation 3.3 for the fiscal year ending on March 31, 2014. Further, you have represented that Mitsui will comply with all other applicable reporting requirements.

Conclusion

The Division has reviewed your request and determined that providing Mitsui with no-action relief is appropriate. Based on the representations made in your request, the Division will not recommend that the Commission take an enforcement action against Mitsui, or its CCO, for preparing an Annual Report for the fiscal year that ends on March 31, 2014, that does not meet certain requirements of Regulation 3.3(e) and (f) but that otherwise meets all of the Required Conditions referenced above in this letter. This no-action relief is limited only to the Annual Report required to be furnished by Mitsui to the Commission for the fiscal year that ends on March 31, 2014.

This letter, and the positions taken herein, represent the Division's recommendation of enforcement action only and do not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. Nor do the positions taken herein 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 Mitsui from compliance with any other applicable requirements contained in the Act or in the Commission's 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 letter void.

Should you have any questions, please do not hesitate to contact me at (202) 418-5977, or Gregory Scopino, an attorney on my staff, at (202) 418-5175.

Very truly yours,

Gary Barnett

cc: Regina Thoele, Compliance
National Futures Association, Chicago

Jamila A. Piracci, OTC Derivatives
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