



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Ananda Radhakrishnan
Director

CFTC Letter No. 14-85
No-Action
June 25, 2014
Division of Clearing and Risk

Mr. David Gilberg
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004

Re: Extension of Time-Limited No-Action Relief with Regard to Clearing Swaps Executed on DCMs or SEFs

Dear Mr. Gilberg:

The purpose of this letter is to inform you that the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”) is extending the expiration date of the no-action relief granted to LCH.Clearnet Ltd. (“LCH”) on September 23, 2013 (“No-Action Relief”).¹

By letter dated July 30, 2013 (“Letter”), you requested on behalf of LCH, a derivatives clearing organization (“DCO”) registered under Section 5b of the Commodity Exchange Act (“CEA”),² that the Division confirm that it would not recommend that the Commission commence an enforcement action against: (1) LCH for clearing certain swaps executed on, or subject to the rules of, designated contract markets (“DCMs”) or swap execution facilities (“SEFs”) (collectively, “DCM/SEF Swaps”), or (2) clearing members of LCH for clearing DCM/SEF Swaps through LCH. The Letter requested that the relief be effective until LCH’s existing DCO registration orders are amended to permit LCH to clear DCM/SEF Swaps, and it represented that LCH intended to apply soon for an amended DCO registration order that would permit it to clear DCM/SEF Swaps.

At the time of the Letter, LCH had been clearing interest rate swaps executed on Tradeweb LLC, and on Bloomberg L.P., both of which had been operating as exempt markets under the CEA.³

¹ CFTC Letter No. 13-52.

² 7 U.S.C. § 7a-1.

³ The Commodity Futures Modernization Act of 2000 (“CFMA”) established two categories of exempt markets under the CEA: exempt commercial markets (“ECMs”), under former Section 2(h)(3)-(7) of the CEA, and exempt boards of trade (“EBOTs”), under Section 5d of the CEA. The CFMA also permitted markets to operate pursuant to former Section 2(d)(2) of the CEA, which excluded bilateral transactions in excluded commodities from most CEA provisions (“2(d)(2) markets”). Subject to certain conditions, ECMs, EBOTs, and 2(d)(2) markets were exempt from most provisions of the

On July 30, 2013, Bloomberg SEF LLC, an affiliate of Bloomberg L.P., and on September 6, 2013, TW SEF LLC and DW SEF LLC, affiliates of Tradeweb LLC, were each granted temporary registration as a SEF,⁴ pursuant to Commission Regulation 37.3(c).⁵ LCH planned to continue clearing the interest rate swaps now executed on these SEFs, but neither of LCH's existing DCO registration orders permits it to clear DCM/SEF Swaps.⁶

Based on LCH's representations and the Division's understanding of the relevant facts, the Division granted the No-Action Relief to LCH. The No-Action Relief was time-limited, set to expire at the earlier of: (i) March 31, 2014, or (ii) the date upon which the Commission approves or denies LCH's application for an amended DCO registration order that would permit it to clear DCM/SEF Swaps.

On January 10, 2014, LCH submitted to the Commission an application to amend its DCO registration order to, among other things, permit LCH to clear DCM/SEF Swaps. The Division, in reviewing the application and supporting materials, determined that it needed additional information from LCH and, thus, it required more time to complete its review. Therefore, in order to avoid a lapse of the No-Action Relief, the Division extended the expiration date to the earlier of June 30, 2014, or the date upon which the Commission approves or denies LCH's application.⁷ The Division is further extending the expiration date of the No-Action Relief to the earlier of December 31, 2014, or the date upon which the Commission approves or denies LCH's application.⁸

CEA and were neither licensed nor registered with the Commission. *See* Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (2000). The Dodd-Frank Wall Street Reform and Consumer Protection Act repealed Sections 2(d)(2) and 2(h)(3)-(7) of the CEA.

⁴ *See* Notice of Grant of Temporary Registration of Bloomberg SEF LLC as a Swap Execution Facility Pursuant to Part 37 of the Commission's Regulations (July 30, 2013); Notice of Grant of Temporary Registration of TW SEF LLC as a Swap Execution Facility Pursuant to Part 37 of the Commission's Regulations (Sept. 6, 2013); and Notice of Grant of Temporary Registration of DW SEF LLC as a Swap Execution Facility Pursuant to Part 37 of the Commission's Regulations (Sept. 6, 2013).

⁵ 17 C.F.R. § 37.3(c).

⁶ On October 29, 2001, the Commission issued an order granting LCH registration as a DCO for the clearing of over-the-counter derivatives contracts, agreements or transactions that were at the time excluded or exempt from the CEA. On May 11, 2004, the Commission issued an additional order that permits LCH to clear financial futures and options on futures traded on, or subject to the rules of, DCMs, derivatives transaction execution facilities, and exempt boards of trade. As the second order did not replace or supersede the first order, both orders are still in effect and LCH currently is permitted to clear all of the products described therein.

⁷ CFTC Letter No. 14-38.

⁸ As part of its application, LCH also requested that the Commission amend its order of registration to allow it to clear futures contracts and options on futures contracts. The Division intends to proceed with making a recommendation to the Commission regarding the requested amendment to permit clearing of DCM/SEF Swaps, and will make a further recommendation regarding the clearing of futures contracts and options on futures contracts at a later date, as may be appropriate.

Grant of No-Action Relief

Based on the facts presented and the representations you have made on behalf of LCH, and subject to the conditions set forth herein, the Division will not recommend that the Commission take enforcement action against (1) LCH for clearing DCM/SEF Swaps, and (2) the clearing members of LCH for clearing DCM/SEF Swaps through LCH, subject to the following conditions:

- (1) Product Scope. This relief is limited to the same classes of swaps currently accepted for clearing by LCH.
- (2) Participant Scope. This relief applies to current and future clearing members of LCH.
- (3) Limited Duration. This relief shall expire on the earlier of: (i) December 31, 2014, or (ii) the date upon which the Commission approves or denies LCH's application for an amended DCO registration order to permit it to clear DCM/SEF Swaps.⁹

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations made by and on behalf of LCH to the Division, including the representations made in the Letter, it should be noted that any materially different, changed, or omitted facts or circumstances may require a different conclusion or render this letter void. Finally, 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.

Sincerely,

Ananda Radhakrishnan
Director

⁹ Should the Commission deny LCH's application for an amended DCO registration order, the Division will provide LCH and its clearing members with guidance and, as appropriate, no-action relief to facilitate the orderly disposition of open DCM/SEF Swaps positions.