



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

Ananda Radhakrishnan
Director

CFTC Letter No. 14-94
No-Action
July 10, 2014
Division of Clearing and Risk

Mr. Julian Oliver
Director, Compliance and Public Affairs
LCH.Clearnet Limited
33 Aldgate High Street
London EC3N 1EA

RE: Request for Temporary No-Action Relief from the Written Acknowledgment Requirements in Commission Regulations 1.20(g)(4) and 22.5

Dear Mr. Oliver:

This is in response to your letter dated June 25, 2014 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division confirm that it will not recommend that the Commission take enforcement action against LCH.Clearnet Limited (“LCH”) for temporarily failing to obtain, or provide the Commission with, an executed version of the template acknowledgment letter set forth in Appendix B to Regulation 1.20 (“Acknowledgment Letter”), as required by Regulations 1.20(g)(4) and 22.5.

Regulations 1.20(g)(4) and 22.5 require, among other things, that a derivatives clearing organization (“DCO”) obtain an Acknowledgment Letter from each depository with which the DCO deposits futures customer funds or cleared swaps customer funds.¹ DCOs are required to obtain the Acknowledgment Letter(s) for existing customer segregated accounts by July 12, 2014.² LCH requests an extension of time to comply with Regulations 1.20(g)(4) and 22.5 to obtain and execute a modified version of the Acknowledgment Letter with the Bank of England

¹ See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 Fed. Reg. 68,506 (Nov. 14, 2013). Regulation 22.5 applies the acknowledgment letter requirements of Regulation 1.20(g)(4) to DCOs in connection with the holding of cleared swaps customer funds, which the Division understands to be “Cleared Swaps Customer Collateral,” as defined in Regulation 22.1.

² *Id.* at 68,578 (setting forth the compliance date for Regulation 1.20).

("BoE"). In this regard, LCH has represented that it will submit a separate letter requesting that the Division issue no-action relief to permit specified modifications to the Acknowledgment Letter ("Separate Request"), which will be acceptable to both the Division and the BoE.

Statement of Facts

Based upon the representations made by LCH to the Division in the Letter, we understand the relevant facts to be as follows:

In addition to its registration with the Commission as a DCO, LCH is a Recognised Clearing House in the United Kingdom, subject to the direct supervisory oversight of the BoE. LCH seeks to maintain accounts at the BoE into which LCH may deposit cleared swaps customer funds. The BoE has indicated to LCH that it requires certain modifications to the Acknowledgment Letter.

Discussion of Request for No-Action Relief and Applicable Legal Requirements

The Commission recognizes that the BoE is a central bank and its provision of account services to LCH is distinguishable from the provision of account services by a commercial bank.³ In addition, the Commission had contemplated the possibility that foreign depositories might require modifications to the Acknowledgment Letter in certain situations, in which case "the Commission would consider alternative approaches, including no-action relief, on a case-by-case basis."⁴ In light of the above facts and circumstances, the Division has had discussions with the BoE regarding a mutually acceptable version of the Acknowledgment Letter.

The Acknowledgment Letter requirements were recently finalized and are currently being implemented, and the Division has not been presented with a request for relief encompassing the issues presented in the Letter. Granting the temporary relief requested by LCH is appropriate to allow for continued discussions between the Division staff and the staff of the BoE, and to allow LCH to submit the Separate Request for relief in accordance with the outcome of the Division's discussions with the BoE.

Grant of No-Action Relief

Based on the facts presented and the representations LCH has made, the Division will not recommend that the Commission take enforcement action against LCH for temporarily failing to obtain, or provide the Commission with, an Acknowledgment Letter with the BoE, as required by Regulations 1.20(g)(4) and 22.5. Such relief shall expire the earlier of 90 days from the issuance of this letter, or the date on which the Division responds to LCH's Separate Request.

³ *Cf. id.* at 68,535 (recognizing the unique role of the Federal Reserve Bank as a depository).

⁴ *Id.* at 68,536.

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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 Commodity Exchange Act 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 contained in the Letter, it should be noted that any different, changed, or omitted material 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.

Should you have any questions, please do not hesitate to contact Parisa Abadi, Attorney-Advisor, at (202) 418-6620.

Sincerely,

Ananda Radhakrishnan
Director