



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Division of Clearing and Risk

CFTC Letter No. 13-73  
No-Action  
December 19, 2013  
Division of Clearing and Risk

Mr. Yasuo Tobiyama  
President and CEO  
Japan Securities Clearing Corporation  
2-1 Nihombashi-Kabuto-cho  
Chuo-Ku  
Tokyo 103-0026  
Japan

Re: Extension of Time-Limited No-Action Relief with Regard to Section 5b(a) of the Commodity Exchange Act and Section 2(h)(1)(A) of the Commodity Exchange Act and Implementing Regulations Thereunder

Dear Mr. Tobiyama:

This is in response to your letter dated November 12, 2013 (the “Letter”) requesting that the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) extend to June 30, 2014 the no-action relief that the Division granted to Japan Securities Clearing Corporation (“JSCC”) in CFTC Letter 12-56 and that will expire on December 31, 2013 (the “No-Action Relief”).<sup>1</sup> In CFTC Letter 12-56, the Division stated that it would not recommend that the Commission take enforcement action against (i) JSCC for failure to register as a derivatives clearing organization (“DCO”) pursuant to the requirements of section 5b(a) of the Commodity Exchange Act (“CEA”),<sup>2</sup> or (ii) a JSCC qualified clearing participant, or a parent or affiliate of such clearing participant, for failure to clear certain yen-denominated interest rate swaps that are required to be cleared under section 2(h)(1)(A) of the CEA and Commission regulations,<sup>3</sup> through a registered DCO.

On November 29, 2012, JSCC submitted a draft application for registration as a DCO. On January 29, 2013, JSCC submitted supplementary draft documents. On November 12, 2013, together with the Letter, JSCC submitted a revised draft application.

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<sup>1</sup> CFTC Letter No. 12-56 (Dec. 17, 2012), available at:  
<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-56.pdf>

<sup>2</sup> 7 U.S.C. 7a-1(a).

<sup>3</sup> Commission regulations referred to herein are found at 17 CFR Ch. I (2013).

According to the Letter, JSCC is not yet ready to file a complete application for two reasons. First, JSCC has been finalizing rules pertaining to clearing for U.S. customers. Second, JSCC has not yet completed procedures for segregating U.S. customer funds in accordance with section 4d(f) of the CEA and Parts 22 and 39 of the Commission's regulations. JSCC states that the Division should extend the No-Action Relief because JSCC qualified clearing participants, and parents or affiliates of such clearing participants, must comply with both the Commission's clearing requirement, "the CEA Clearing Requirement,"<sup>4</sup> and the clearing requirement issued by the Japanese government, the "FIEA Clearing Requirement."<sup>5</sup> Unless such clearing participants and their parents or affiliates are permitted to continue clearing certain swaps, which are covered by both clearing requirements, through JSCC, then it will not be possible for these entities to satisfy both clearing requirements. In addition, JSCC states that it currently has open interest resulting from the No-Action Relief and that if the No-Action Relief were not extended, then there would be significant disruption and market dislocation.

In view of the foregoing, the Division has decided to extend the No-Action Relief, pursuant to the conditions described below, until the earlier of the date on which JSCC registers as a DCO with respect to its IRS Clearing Business or December 31, 2014, provided that JSCC submits a materially complete application for DCO registration no later than February 28, 2014.

#### Extension of Grant of No-Action Relief

Based on the facts presented and the representations JSCC has made,<sup>6</sup> the Division will not recommend that the Commission take enforcement action against (i) JSCC for failure to register as a DCO pursuant to the requirements of section 5b(a) of the CEA, or (ii) a qualified clearing participant of JSCC, or a parent or affiliate of a JSCC qualified clearing participant, subject to the FIEA Clearing Requirement, for failure to clear a yen-denominated interest rate swap that is required to be cleared under the CEA Clearing Requirement, through a registered DCO, subject to the following conditions:

(1) Product Scope. This relief is limited to the swaps designated in this paragraph. JSCC may clear (i) any swaps covered by the FIEA Clearing Requirement, including covered iTraxx Japan CDS and covered yen-denominated interest rate swaps referencing LIBOR, and (ii) yen-denominated interest rate swaps referencing TIBOR; provided that JSCC will not accept, and no JSCC qualified clearing participant will offer for clearing in JSCC, the swaps referenced in (i) and (ii) of this paragraph on behalf of a U.S. customer.

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<sup>4</sup> Clearing Requirement Determination under Section 2(h) of the CEA, 77 Fed. Reg. 74,284 (Dec. 13, 2012).

<sup>5</sup> In 2010, the Japanese government amended the Financial Instruments and Exchange Act ("FIEA") to require the phased implementation of mandatory clearing of certain derivative transactions.

<sup>6</sup> According to JSCC, the material facts on which the Division premised the No-Action Relief in CFTC Letter 12-56 have not changed.

(2) Participant Scope. The no-action relief applies to swaps in which one or more counterparties to the swap is a JSCC qualified clearing participant or a parent or affiliate of a JSCC qualified clearing participant subject to the FIEA Clearing Requirement.<sup>7</sup> For purposes of complying with its obligations under the CEA Clearing Requirement, a JSCC qualified clearing participant or a parent or affiliate of a JSCC qualified clearing participant, subject to the FIEA Clearing Requirement, may clear its proprietary, yen-denominated interest rate swaps that reference LIBOR through JSCC.

(3) Limited Duration. The no-action relief shall expire on the earlier of the date upon which JSCC registers as a DCO with respect to its IRS Clearing Business or December 31, 2014, provided that JSCC submits a materially complete application for DCO registration no later than February 28, 2014.

(4) Reporting. Beginning April 1, 2014, if a JSCC qualified clearing participant clears through JSCC a swap that has been reported to a Commission-registered swap data repository (“SDR”) pursuant to Part 45 of the Commission’s regulations (Swap Data Recordkeeping and Reporting Requirements), then JSCC must report to an SDR, pursuant to Part 45, the two swaps resulting from the novation of the swap that had been submitted to JSCC for clearing.<sup>8</sup>

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 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

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<sup>7</sup> Such a clearing participant, or parent or affiliate of such clearing participant, may include a non-U.S. person that is a guaranteed affiliate or affiliate conduit of a U.S. person. *See* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292, 45,355-45,357 and 45,358-45,359 (discussing the applicability of the Commission’s Category A Transaction-Level Requirements, including the CEA Clearing Requirement, to a non-U.S. person that is guaranteed by a U.S. person and to a non-U.S. person that is an affiliate conduit of a U.S. person).

<sup>8</sup> Pursuant to Commission regulation 39.12(b)(6), during the clearing process, a swap submitted for clearing to a DCO (the “alpha” swap) is extinguished or terminated, and two new swaps (the “beta” and “gamma” swaps) are created. A DCO must then report the beta and gamma swaps to an SDR under Part 45.

*See* Statement of the Commission concerning CME Rule 1001 (March 6, 2013), page 6, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>

*See also* Commission regulation 45.4(a) (“[R]eporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap.”); *see* 77 Fed. Reg. at 2153 (“[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.”); *see also* Commission regulation 49.11 (confirmation of data accuracy).

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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 me at (202) 418-5188 or Brian O'Keefe, Deputy Director, at (202) 418-5658.

Sincerely,

Ananda Radhakrishnan  
Director