



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

### Division of Clearing and Risk

CFTC Letter No. 13-49  
No-Action  
August 13, 2013  
Division of Clearing and Risk

#### **RE: Time-Limited No-Action Relief from the Clearing Requirement for Swaps Entered into by Certain Cooperatives**

Today, the Commodity Futures Trading Commission (“Commission” or “CFTC”) issued a final rule providing qualifying cooperatives with an exemption from required clearing for swaps that otherwise would be subject to section 2(h)(1) of the Commodity Exchange Act (“CEA”) and part 50 of the Commission’s regulations, subject to certain conditions (“Cooperative Exemption”).<sup>1</sup> The Cooperative Exemption becomes effective 30 days from publication in the Federal Register.

Under section 2(h)(1)(A) of the CEA, “it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization [“DCO”] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.” On December 13, 2013, the Commission issued its first clearing requirement determination for two classes of credit default swaps (“CDS”) and four classes of interest rate swaps.<sup>2</sup> On June 10, 2013, all Category 2 Entities, as defined in the Swap Transaction Compliance and Implementation Schedule, that were not able to claim an exception or exemption from clearing pursuant to section 2(h)(7) of the CEA or part 50 of the Commission’s regulations, began clearing swaps subject to the clearing requirement in § 50.4 of the Commission’s regulations.<sup>3</sup>

<sup>1</sup> The final rule will be published in the Federal Register and is available on the Commission’s website at [www.cftc.gov](http://www.cftc.gov). This rule finalizes the proposal that the Commission published for public comment on July 17, 2012. *See* Clearing Exemption for Certain Swaps Entered Into by Cooperatives, 77 FR 41940 (July 17, 2012).

<sup>2</sup> Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (hereinafter “Clearing Requirement Determination”). The Clearing Requirement Determination and attendant rules became effective on February 11, 2013, subject to phased-in compliance deadlines, described below.

<sup>3</sup> *See* Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012). Pursuant to the compliance schedule, swap dealers, major swap participants, and private funds active in the swaps market were required to comply with the clearing requirement starting on March 11, 2013 (“Category 1 Entities”). Accounts managed by third-party investment managers, as well as ERISA pension plans, have until September 9, 2013, to begin clearing swaps entered into on or after that date (“Category 3 Entities”). All other financial entities were required to clear swaps beginning on June 10, 2013, for swaps entered into on or after that date (“Category 2 Entities”). *See* Clearing Requirement Determination, 77 FR at 74319-21. With regard to the CDS indices on European corporate names, iTraxx, the Clearing Requirement Determination provided that, if no DCO offered iTraxx for client clearing by February 11, 2013, the Commission would delay compliance for those swaps until 60 days after an eligible DCO offers iTraxx indices for client clearing. On February 25, 2013, the Commission

On November 28, 2012, in CFTC Letter No. 12-36, the Division of Clearing and Risk (“Division”) granted time-limited no-action relief (“November 28 No-Action Relief”) for swaps where one of the counterparties is an “exempt cooperative,” as defined in the November 28 No-Action Relief, subject to certain conditions, in order to alleviate the uncertainty for market participants during the period between when the clearing requirement became effective and when the Commission finalized the Cooperative Exemption.<sup>4</sup> The November 28 No-Action Relief provided that the Division would not recommend that the Commission commence an enforcement action against a person for failure to comply with the requirements of section 2(h)(1)(A) of the CEA and part 50 of the Commission’s regulations to clear a CDS or interest rate swap subject to required clearing in § 50.4 of the Commission’s regulations, provided that certain conditions were met.

The November 28 No-Action Relief expired on April 1, 2013. Most recently,<sup>5</sup> on July 19, 2013, the Division granted time-limited no-action relief (“July 19 No-Action Relief”) that was substantially similar to the November 28 No-Action Relief.<sup>6</sup> The July 19 No-Action Relief will expire on August 16, 2013.

Because the effective date of the Cooperative Exemption will be sometime after August 16, 2013, the Division is providing this time-limited no-action relief from required clearing to qualifying cooperatives for swaps meeting the conditions contained in the Cooperative Exemption.<sup>7</sup> Without this no-action relief, qualifying cooperatives that are Category 2 Entities would otherwise be required to clear their swaps that are subject to required clearing until the effective date of the Cooperative Exemption. This no-action relief will provide market participants with an orderly transition to the effective date of the Cooperative Exemption.

Accordingly, the Division will not recommend that the Commission commence an enforcement action against a person for failure to comply with the requirement under section

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received notice from ICE Clear Credit LLC, a Commission-registered DCO, that it had begun offering customer clearing of the iTraxx CDS indices that are subject to the clearing requirement in § 50.4(b) of the Commission’s regulations. In accordance with the timeframe previously set forth by the Commission, the following compliance dates apply to the clearing of iTraxx indices: Category 1 Entities: Friday, April 26, 2013; Category 2 Entities: Thursday, July 25, 2013; and Category 3 Entities: Wednesday, October 23, 2013. See Press Release, CFTC’s Division of Clearing and Risk Announces Revised Compliance Schedule for Required Clearing of iTraxx CDS Indices (Feb. 25, 2013), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6521-13>.

<sup>4</sup> See Staff No-Action Letter 12-36, available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-36>.

<sup>5</sup> The Division also granted time-limited no-action relief that was substantially similar to the November 28 No-Action Relief on June 7, 2013, which expired on June 21, 2013, and June 21, 2013, which expired July 19, 2013. See Staff No-Action Letter 13-24, available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/13-24>; Staff No-Action Letter 13-30, available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/13-30>.

<sup>6</sup> See Staff No-Action Letter 13-47, available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-47.pdf>.

<sup>7</sup> The Division notes that the conditions in the Cooperative Exemption are substantially similar to those conditions provided by the Division in the November 28 No-Action Relief.

2(h)(1)(A) of the CEA and part 50 of the Commission's regulation to clear a CDS or interest rate swap subject to required clearing in § 50.4 of the Commission's regulations, provided that:

- (1) One of the counterparties to the swap is an exempt cooperative, as defined in § 50.51(a) of the Cooperative Exemption; and
- (2) The swap meets the conditions of § 50.51(b) of the Cooperative Exemption.<sup>8</sup>

The relief provided in this no-action letter will remain in effect until the effective date of the Cooperative Exemption. This no-action letter supersedes the no-action letter issued by the Division on July 19, 2013.<sup>9</sup>

This no-action letter, and the positions taken herein, represent the view of the 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 the affected persons from compliance with any other applicable requirements contained in the CEA or in the Commission's regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the information available to the Division. Any different or changed material facts or circumstances might render this letter void. As with all no-action letters, the Division retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions, please do not hesitate to contact Brian O'Keefe, Deputy Director, at (202) 418-5658.

Sincerely,

Ananda Radhakrishnan  
Director

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<sup>8</sup> As described above, the Cooperative Exemption, including the rule text, is posted on the Commission's website.

<sup>9</sup> See Staff No-Action Letter 13-47, available at <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/13-47>.