



## 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 Market Oversight

CFTC Letter No. 14-141  
No-Action  
November 24, 2014  
Division of Market Oversight

### **Extension of Time-Limited No-Action Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations, for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan and Switzerland**

This letter responds to requests received by the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), pursuant to Commission Regulation 140.99, to extend certain no-action relief provided in CFTC Staff Letter No. 13-75 (the "Request Letters").<sup>1</sup>

#### **I. Background**

On December 20, 2013 the Division issued CFTC Staff Letter No. 13-75 to provide Commission-registered swap dealers ("SDs") and major swap participants ("MSPs") that are non-U.S. persons<sup>2</sup> established under the laws of Australia, Canada, the European Union, Japan and Switzerland, and that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company or U.S. bank holding company, with time-limited no-action relief from certain requirements of the swap data reporting rules set forth at Part 45<sup>3</sup> and Part 46<sup>4</sup> of the Commission's regulations (collectively, the "SDR Reporting Rules"). The relief in CFTC Staff Letter No. 13-75 that remains effective, set forth in section II(i) of the letter, is set to expire no later than December 1, 2014.

---

<sup>1</sup> Letter from the International Swaps and Derivatives Association, Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: SDR Reporting Requirements for Cross-Border Swaps (October 10, 2014); Letter from the Institute of International Bankers, Request for Extension of No-Action Letter 13-75 (October 24, 2014).

<sup>2</sup> For purposes of this letter, the term "U.S. person" has the meaning used in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013) (hereinafter "Cross-Border Guidance"), and a person that is not a U.S. person is a "non-U.S. person". For purposes of this letter, an SD that is a non-U.S. person is a "non-U.S. SD" and an MSP that is a non-U.S. person is a "non-U.S. MSP".

<sup>3</sup> Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (January 13, 2012).

<sup>4</sup> Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012.)

As noted in the Request Letters, the Commission has not yet issued comparability determinations<sup>5</sup> with respect to the SDR Reporting Rules for any jurisdiction. Accordingly, the Division believes that it would be appropriate to provide an extension of certain of the time-limited no-action relief provided in CFTC Staff Letter No. 13-75.

## **II. Extension of No-Action Relief**

Based on the foregoing, the Division will not recommend that the Commission take an enforcement action against a non-U.S. SD or a non-U.S. MSP established in Australia, Canada, the European Union, Japan or Switzerland, that is not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company, for failure to comply with the requirements of Part 45 and Part 46 of the Commission's regulations with respect to its swaps with non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates,<sup>6</sup> of a U.S. person, until the earlier of: (a) 30 days following the issuance of a comparability determination by the Commission with respect to the SDR Reporting Rules for the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established, and (b) December 1, 2015.

The no-action relief provided in this letter does not extend to the recordkeeping requirements of Commission Regulations 45.2,<sup>7</sup> 45.6, 46.2 and 46.4.<sup>8</sup> The no-action relief provided herein is provided to certain non-U.S. SDs and non-U.S. MSPs, as specified herein, and does not extend to any other entities with reporting obligations under the SDR Reporting Rules.<sup>9</sup>

This letter, and the no-action position taken herein, represent the views of the Division only, and do not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the Commodity Exchange Act or the regulations thereunder. As with all no-action letters, the

---

<sup>5</sup> The process for comparability determinations is discussed in the Cross-Border Guidance. See 78 Fed. Reg. at 45344.

<sup>6</sup> For purposes of this letter, the terms "guaranteed affiliate" and "conduit affiliate" have the respective meanings used for those terms in the Cross-Border Guidance.

<sup>7</sup> The requirement of Commission Regulation 45.2(a)(4)—that an SD or MSP keep records that include, without limitation, all records required by Part 23 of the Commission's regulations—is independently governed by the applicability of such underlying Part 23 requirements.

<sup>8</sup> However, during the period of this relief, the Division will not recommend an enforcement action based on the failure by a non-U.S. SD or non-U.S. MSP to maintain records identifying a non-U.S. counterparty to a swap by means of a legal entity identifier, or "LEI", issued pursuant to Part 45 of the Commission's regulations, if: (i) the counterparty's LEI is not publicly available, (ii) the counterparty has not already provided its LEI to the non-U.S. SD or non-U.S. MSP, and (iii) the counterparty does not provide its LEI to the non-U.S. SD or non-U.S. MSP in connection with the swap transaction, provided that the non-U.S. SD or non-U.S. MSP generates a substitute counterparty identifier for such counterparty and utilizes such identifier in the records that the non-U.S. SD or non-U.S. MSP is required to maintain as a condition of relying on such relief.

<sup>9</sup> For example, the Part 45 reporting obligations of a swap execution facility ("SEF") or designated contract market ("DCM"), with respect to swaps executed on or pursuant to the rules of such SEF or DCM, are not affected by the no-action relief provided herein.

Page 3

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 concerning this correspondence, please contact Daniel Bucsa, Deputy Director, Division of Market Oversight at (202)-418-5435 or Stuart Armstrong, Special Counsel, Division of Market Oversight, at (202) 418-5095.

Sincerely,

---

Vincent A. McGonagle  
Director  
Division of Market Oversight