



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5495

Division of Swap Dealer and
Intermediary Oversight

Eileen T. Flaherty
Director

CFTC Staff Letter No. 16-87
Interpretation
December 23, 2016
Division of Swap Dealer and Intermediary Oversight

Re: Staff Interpretation Regarding Political Contributions by Swap Dealers Under Regulation 23.451

Introduction

The Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) is issuing an interpretation of Regulation 23.451, which imposes certain limitations relating to political contributions made by swap dealers. This interpretation clarifies the Division’s view that a swap dealer’s contributions for transition or inaugural expenses incurred by a successful candidate are only covered by the rule to the extent that such expenses are incurred by a successful candidate for a position as an official of a governmental Special Entity.

Regulatory Background and Policy Objectives

On February 17, 2012, the Commission adopted final rules regarding business conduct standards for swap dealers, including restrictions on political contributions.¹ Specifically, under Regulation 23.451(b), swap dealers are prohibited from offering to enter or entering into a swap with a “governmental Special Entity,” as defined under the rule,² for a two-year period after the swap dealer or any of its covered associates makes a contribution to an official of such governmental Special Entity.³ For purposes of this

¹ See Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 77 Fed. Reg. 9734 (Feb. 17, 2012).

² The term “governmental Special Entity” is not to be confused with the broader term “Special Entity.” In particular, while the term Special Entity (defined in § 23.401) includes several categories of counterparties, including Federal agencies, the term “governmental Special Entity” is limited to those Special Entities defined in § 23.401(c)(2) or (4), which are only state and local entities, and employee benefit plans as defined in Section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002), respectively. Thus, while a Federal agency would be considered a Special Entity for purposes of the business conduct standards generally, it is not a governmental Special Entity for the purpose of Regulation 23.451. See 17 CFR § 23.451(b).

³ See 17 CFR § 23.451(b).

regulation, an “official” of a governmental Special Entity means a person (including any election committee for such person) who is directly or indirectly responsible for selecting a swap dealer to conduct business with a governmental Special Entity.⁴ Further, the rule defines “contribution” to include any gift, subscription, loan, advance, or deposit of money or anything of value made for transition or inaugural expenses incurred by the successful candidate for federal, state, or local office.⁵

When adopting Regulation 23.451, the Commission stated that the pay-to-play prohibition is integral to the business conduct standards framework because it protects governmental Special Entities and the public by ensuring that swap dealers solicit and compete for governmental Special Entity business on the merits of their proposals rather than on the basis of their ability and willingness to make political contributions.⁶

Clarification of the Term “Contribution”

The Commission’s political contribution rules are designed to prevent fraud relating to the selection of a swap dealer by an official of a governmental Special Entity. Accordingly, any gift, subscription, loan, advance, or deposit of money or anything of value made for transition or inaugural expenses incurred by the successful candidate for federal, state, or local office would only be a “contribution” for purposes of Regulation 23.451 to the extent that the transition or inauguration is for a federal, state, or local office that would make such person an official of a governmental Special Entity. Such gift, subscription, loan, advance, or deposit of money or anything of value would not be considered a “contribution” under the rule where: 1) the person is an incumbent official of a governmental Special Entity, and 2) the transitional or inaugural expenses relate to such person’s successful candidacy for federal office in which the person will not be an official of a Special Entity. As a result, Regulation 23.451 would not apply where a swap dealer makes any gift, subscription, loan, advance, or deposit of money or anything of value for transition or inaugural expenses incurred by such person.

This interpretation represents the position of the Division only and does not necessarily represent the views of the Commission or those of any other division or office of the Commission.

Sincerely,

Eileen T. Flaherty
Director
Division of Swap Dealer and Intermediary Oversight

⁴ See 17 CFR § 23.451(a)(4).

⁵ See 17 CFR § 23.451(a)(1)(iii).

⁶ See 77 FR 9734, 9801.