



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5977
Facsimile: (202) 418-5407
gbarnett@cftc.gov

Division of Swap Dealer
and Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 12-67
No-Action
December 21, 2012
Division of Swap Dealer and Intermediary Oversight

Re: **No-Action Relief for Investment Pools Investing in Certain Securitization Vehicles Formed Prior to October 12, 2012**

Ladies and Gentlemen:

This letter is provided by the Division of Swap Dealer and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) and provides no-action relief for investment pools that invested in certain securitization vehicles formed prior to October 12, 2012 that have received no-action relief pursuant to CFTC Staff Letter 12-45 (“Letter 12-45”).

In Letter 12-45, the Division stated that it will not recommend that the Commission take an enforcement action against any operator of a securitization vehicle (“legacy securitization vehicle”) for failing to register as a CPO if the following criteria are and remain satisfied:

1. The issuer has issued fixed income securities before October 12, 2012 that are backed by and structured to be paid from payments on or proceeds received in respect of, and whose creditworthiness primarily depends upon, cash or synthetic assets owned by the issuer;
2. The issuer has not and will not issue new securities on or after October 12, 2012; and
3. The issuer shall promptly, **upon request** of the Commission or any division or office thereof, and in any event within 5 business days of such request, provide to such requester an electronic copy of the following: (i) the most recent disclosure document used in connection with the offering of the related securities, (ii) all amendments to the principal documents since issue, (iii) the most recent distribution statement to investors, and (iv) if the issuer’s securities were offered relying on Rule 144A¹ under the Securities Act of 1933,² a copy of the information that would be provided to prospective investors to satisfy Rule 144A(d)(4);³ *Provided, that*, if the issuer does not provide the information required hereunder, it must

¹ 17 CFR 230.144A.

² 15 U.S.C. § 77a, *et seq.*

³ 17 CFR 230.144A(d)(4).

demonstrate that it cannot obtain the required documents through reasonable commercial efforts.

The 12-45 Letter only provided no-action relief to the operators of legacy securitization vehicles that could satisfy the above criteria, but did not address whether investment in such vehicles would result in the operator of the investor fund being required to register as a commodity pool operator. The Division believes that the operator of a fund that invests in a legacy securitization vehicle that satisfies the criteria of the no-action relief provided in the 12-45 Letter should be entitled to relief comparable to that of the underlying legacy securitization vehicle. Accordingly, the Division will not recommend that the Commission take enforcement action against the operator of a fund that invests in a legacy securitization vehicle whose operator is entitled to no-action relief under the terms of the 12-45 Letter, and who otherwise would not be required to register as a commodity pool operator, for failure to register as a commodity pool operator with the Commission.

This letter, and the positions taken herein, represent the view of this 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 Act or in the Commission's regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this letter void.

Should you have any questions, please do not hesitate to contact Amanda Olear, Special Counsel, at 202-418-5283.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer
and Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago