



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 13-06  
No-Action  
March 30, 2013  
Division of Swap Dealer and Intermediary Oversight

Melissa MacGregor  
Managing Director and Associate General Counsel  
SIFMA  
1101 New York Avenue, 8<sup>th</sup> Floor  
Washington, D.C. 20005-4269

**Re: Request for No-Action Relief for Swap Dealers and Major Swap Participants from Compliance with Certain Internal Business Conduct Requirements Found in Subpart F to Part 23 of the CFTC's Regulations**

Dear Ms. MacGregor:

This letter is in response to your request dated February 28, 2013, to the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") on behalf of the Securities Industry and Financial Markets Association's ("SIFMA") member firms and other swap dealers ("SDs") and major swap participants ("MSPs") (collectively, the "Firms"), in which you request no-action relief from certain recordkeeping requirements of subpart F to part 23 of the Commission's Regulations and Regulation 1.31 (the "Recordkeeping Regulations").<sup>1</sup> In the letter, you provide rationales similar to those in your letter to the Division dated August 10, 2012 for why the Division should grant such relief from the Recordkeeping Regulations. In response to your August 2012 letter, the Division issued CFTC Letter No. 12-29, which granted no-action relief to SDs and MSPs from

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<sup>1</sup> For the relevant text of the Recordkeeping Regulations in part 23 of Title 17, *see* Swap Dealer and Major Swap Participant Recordkeeping, Reporting and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20128 (Apr. 3, 2012). *See also* Regulation 1.31, 17 C.F.R. § 1.31.

SIFMA's August 2012 letter did not request relief from Regulation 1.31, which is the Commission's general recordkeeping rule, or CFTC Regulation 23.202(a)(3)(ii), which requires each Firm to keep a record of the date and time, to the nearest minute, using Coordinated Universal Time ("UTC"), by timestamp or other timing device, of all swap confirmations.

CFTC Regulations 23.201(a)(1), 23.202(a), (a)(1) and (b), 23.202(a)(1)(ii) and (a)(2)(iv), and 23.202(b)(3) and (b)(4), until March 31, 2013.<sup>2</sup>

The Commission promulgated subpart F to part 23 pursuant to sections 4s(f), 4s(g) and 4s(h) of the Commodity Exchange Act (the “Act”), 7 U.S.C. § 1 *et seq.*, as amended by section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), Pub. L. 111–203, 124 Stat. 1376 (2010). Subpart F to part 23 imposes several requirements on SDs and MSPs, including the following:

- Regulation 23.201 sets forth the records of swaps activities that SDs and MSPs must maintain. Such records include full and complete swap transaction information. Moreover, Regulation 23.201(a) requires daily trading records for each swap to be kept in a manner that is readily accessible, identifiable and searchable by transaction and by counterparty;<sup>3</sup>
- Regulation 23.202 sets forth daily trading record requirements for swaps and related cash and forward transactions. Such records include trade information related to pre-execution, execution, and post-execution swap data and any related cash or forward transactions. Specifically, Regulations 23.202(a)(1) and (b)(1) require each SD and MSP to make and keep pre-execution trade information, including records of all oral and written communications provided or received concerning quotes, solicitations, bids, instructions, trading and prices, that lead to the execution of a swap (or lead to the conclusion of a related cash or forward transaction), whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media. Furthermore, Regulations 23.202(a) and (b) require SDs and MSPs to use Coordinated Universal Time (“UTC”) to timestamp a swap’s pre-execution, execution, and post-execution trade information, and any related cash and forward transactions;<sup>4</sup>
- Regulation 23.203 sets forth record retention and inspection requirements for SDs and MSPs. Pursuant to Regulation 23.203(a)(1), SDs and MSPs must keep all records required by the Act and Regulations at the principal place of business (or other designated principal office) of the SD or MSP.<sup>5</sup>

Regulation 1.31 is the Commission’s general recordkeeping rule and pertains to “all books and records required to be kept by the Act or by [CFTC] regulations.”

On behalf of the Firms, you have requested the following relief –

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<sup>2</sup> See Division No-Action Letter No. 12-29, “Request for No-Action Relief for Swap Dealers and Major Swap Participants from Compliance with Certain Internal Business Conduct Requirements Found in Subpart F to Part 23 of the CFTC’s Regulations” dated October 26, 2012, available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/12-29.pdf>.

<sup>3</sup> Regulation 23.201, 17 C.F.R. § 23.201; 77 Fed. Reg. at 20202-03.

<sup>4</sup> Regulation 23.202, 17 C.F.R. § 23.202; 77 Fed. Reg. at 20203-04.

<sup>5</sup> Regulation 23.203, 17 C.F.R. § 23.203; 77 Fed. Reg. at 20204.

**a. Required Telephonic Recording of Pre-Execution Trade Information**

From Regulation 23.202(a), you are seeking relief until December 21, 2013 from the requirement that Firms record:

- Landline telephone conversations of substantially all relevant personnel involved in swaps and/or related cash or forward transactions located outside the United States involved in swaps activity; and
- Mobile telephone conversations of substantially all relevant personnel involved in swaps and/or related cash or forward transactions, whether located within or outside of the United States.

In addition, you have represented, in subsequent meetings with Division staff, that for landline telephone conversations in offices located in the following jurisdictions outside the United States, the Firms are able to comply with the recording requirements set forth in Regulation 23.202(a): United Kingdom, Japan, Singapore, Hong Kong, and Australia.

**b. Requirement to Maintain All Transaction Records in a Manner “Identifiable and Searchable” by Transaction and Counterparty**

From Regulations 23.201(a)(1), 23.202(a) and 23.202(b), you seek no-action relief regarding compliance with the requirement that SDs and MSPs create and maintain transaction records (including daily trading records) in a manner identifiable and searchable by transaction and counterparty. Alternatively, you request that the Division clarify through interpretive guidance that Firms may satisfy this requirement by relying upon existing search capabilities in the relevant systems as well as an element of manual searching after the record has been created to achieve compliance with the relevant regulations.

**c. Required Use of UTC Timestamp when Recording Quotations Prior To and At the Time of Execution of a Swap**

From Regulations 23.202(a)(1)(ii) and (a)(2)(iv) (applicable to swaps), 23.202(b)(3) and (b)(4) (applicable to related cash or forward transactions), and 23.202(a)(3)(ii), you seek relief for Firms to convert all legacy systems that record quotation, execution or confirmation times in local time into UTC. You request relief until such time as such Firm is reasonably able to modify such systems to provide the capability to record time data in UTC. Moreover, you represent that during the interim time, each Firm would enable any time data recorded in local time by a Legacy System to be convertible to UTC within a reasonable time after a regulatory request for such time data. Furthermore, you represent that the Firms are committed to using UTC as the time recording standards in newly installed or upgraded systems.

**d. Mandatory Retention of Required Records at a Principal Place of Business**

From Regulation 23.203(a)(1), you request no-action relief from (a) the requirement of the Firms to maintain all records required pursuant to CFTC Regulation 23.203 at the principal place of business of the Firm or such other principal office as shall be designated by the Firm, until a reasonable time after further interpretive guidance has been provided by the CFTC and/or (b) CFTC Regulation 1.31, until the later of (i) December 21, 2013 and (ii) the applicable compliance date of any forthcoming rulemaking amending CFTC Regulation 1.31.<sup>6</sup>

### Conclusion

Based upon the representations made in your correspondence, the Division believes that granting SDs and MSPs relief from some of the requirements specified above for a limited period of time is warranted to address the issues presented. Accordingly, the Division will not recommend that the Commission take an enforcement action against any Firm for failure to be fully compliant with the following requirements, prior to **June 30, 2013**, subject to the conditions and parameters set forth below:

(i) For landline telephones that are **not** located in one of the following geographic jurisdictions: United States, United Kingdom, Singapore, Hong Kong, Japan, Australia, Switzerland, and Canada, the requirement that SDs and MSPs make and keep records of all oral communications related to pre-execution swap trade information (and communications that lead to the conclusion of a related cash or forward transaction) pursuant to Regulations 23.202(a) and (b);

(ii) the requirement that SDs and MSPs maintain all transaction records and daily trading records in a manner “identifiable and searchable” by transaction and counterparty pursuant to Regulations 23.201(a)(1), 23.202(a) and 23.202(b), *subject to the condition* that the Firms continue to maintain such records using existing search capabilities in their relevant systems;

(iii) the requirement that SDs and MSPs use a UTC timestamp when recording quotations prior to and at the time of execution of a swap pursuant to Regulations 23.202(a)(1)(ii), (a)(2)(iv), (a)(3)(ii), (b)(3), and (b)(4), *subject to the condition* that the data recorded in local time is convertible to UTC within a reasonable time frame after a regulatory request for such time data; and, *subject to the condition* that the Firms will continue to commit to using a UTC time standard in newly installed or upgraded systems; and

(iv) the requirement that SDs and MSPs retain swap records at their principal places of business or such other principal offices as designated by the SD or MSP, *subject to the*

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<sup>6</sup> In footnote 7 of No-Action Letter No. 12-29, the Division stated that it anticipates presenting the Commission with a proposed rule amendment that will clarify the principal place of business requirement found in Regulation 23.203(a)(1). You have cited that footnote in your letter dated February 28, 2013. To be clear, the Division is not committed to presenting such a proposal and may choose not to do so. Whether or not the Division presents such a proposal has no bearing on the enforceability of, and covered persons’ obligations to comply with, this and related regulatory requirements.

*condition* that records otherwise subject to 23.203(a)(1) be promptly available at the designated principal place of business or other such principal office located in the United States, its territories, or possessions within 72 hours upon request of a Commission representative.<sup>7</sup>

In granting SDs and MSPs additional time to comply with the aforementioned requirements of Regulations 23.201, 23.202, and 23.203, the Division seeks to strike the appropriate balance between the statutory directives of section 731 of the Dodd-Frank Act and the need to provide market participants with sufficient time to adjust to regulatory changes.

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 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 me at (202) 418-5977; Frank Fisanich, Chief Counsel, at (202) 418-5949; Ward Griffin, Associate Chief Counsel, at (202) 418-5425; or Jason Shafer, Attorney-Advisor, at (202) 418-5097.

Very truly yours,

Gary Barnett

cc: Regina Thoele, Compliance  
National Futures Association, Chicago

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<sup>7</sup> As stated in No-Action Letter No. 12-29, in developing further guidance on what is required to comply, DSIO staff will continue to consult with the Commission's Division of Enforcement.