

CFTC Letter No. 13-28  
No-Action  
June 17, 2013  
Division of Market Oversight

**Staff No-Action Relief: Extension of the Regulatory Status Quo  
Established with Respect to Certain Transactions by the Commission’s  
Second Amendment to the July 14, 2011 Order for Swap Regulation**

On July 13, 2012, the Commodity Futures Trading Commission (the “Commission”) published a Final Order (the “Second Amendment to July 14, 2011 Order”) that, among other things, granted temporary exemptive relief from certain provisions of the Commodity Exchange Act (“CEA”) and Commission regulations applicable to certain agreements, contracts, and transactions as a result of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), which, as of July 16, 2011, repealed various previously applicable CEA exemptions and exclusions.<sup>1</sup>

In pertinent part, for the purposes of this current no-action relief, paragraphs (2), (3), and (4) of the Second Amendment to the July 14, 2011 Order exempted, subject to certain specified conditions, all agreements, contracts, and transactions in agricultural, exempt and excluded commodities, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA and the Commission’s regulations. The Commission’s Second Amendment to the July 14, 2011 Order, and prior iterations of the July 14, 2011 Order, were adopted to address concerns raised about the applicability of various regulatory requirements to agreements, contracts and transactions after July 16, 2011, and to ensure that industry practices would not be unduly disrupted during the transition to the new Dodd-Frank Act regulatory regime. Those orders were generally structured to permit transactions and relevant persons and entities to continue to rely on various CEA exemptive and excluding provisions in place prior to July 16, 2011 subject to, among other conditions, various anti-fraud and anti-manipulation prohibitions and the expiration of the order’s exemptive relief as various Dodd-Frank Act-implementing regulations became effective.

Recognizing that the Second Amendment to the July 14, 2011 Order would expire on December 31, 2012, prior to the Swap Execution Facility (“SEF”) final rulemaking becoming effective, the Division of Market Oversight (“Division”) issued a staff no-action letter preserving the regulatory status quo established with respect to certain transactions by the Commission’s Second Amendment to the July 14, 2011 Order (“December 2012 Letter”).<sup>2</sup> The Division issued

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<sup>1</sup> The Second Amendment to the July 14, 2011 Order was the Commission’s second amendment to an original July 14, 2011 order (the “July 14, 2011 Order”) issued by the Commission pursuant to its exemptive authority under CEA section 4(c) and its authority under section 712(f) of the Dodd-Frank Act. 77 FR 41260; 76 FR 42508 (July 19, 2011). The Commission’s First Amendment to the July 14, 2011 Order was issued on December 19, 2011. 76 FR 80233 (December 23, 2011).

<sup>2</sup> See CFTC No-Action Letter No. 12-48 (December 11, 2012), *available at* <http://www.cftc.gov/ucm/groups/public/@llettergeneral/documents/letter/12-48.pdf>.

the December 2012 Letter to, among other things, prevent facilities that have been operating CEA Section 2(d), 2(e), 2(g), 2(h), or 5d-compliant platforms (as those sections were in effect prior to July 16, 2011) from being unduly disrupted, as well as any person or entity offering, entering into, or rendering advice or other services with respect to, any agreement, contract, or transaction on such facilities from being unduly disrupted.<sup>3</sup>

The December 2012 Letter will expire on June 30, 2013, prior to the August 5, 2013, effective date of the SEF final rulemaking.<sup>4</sup> Therefore, absent further relief, facilities currently relying on the December 2012 Letter that have submitted or plan to submit an application to become a SEF or designated contract market (“DCM”) would not be able to continue operating for a period of time during the pendency of their application’s review.<sup>5</sup> In order to ensure that industry practices continue not to be unduly disrupted during the transition to the Dodd-Frank Act’s regulatory regime,<sup>6</sup> the Division believes it is appropriate to extend the relief provided by the December 2012 Letter.

Accordingly, the Division will not recommend that the Commission commence an enforcement action regarding any agreement, contract or transaction, or against any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, that conforms with the requirements, as set forth in the

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<sup>3</sup> The Division notes that platforms that have been operating in compliance with CEA Sections 2(d), 2(e), 2(g), 2(h), or 5d (as those sections were in effect prior to July 16, 2011) include, among others, markets operating as exempt commercial markets (“ECMs”) and exempt boards of trade (“EBOTs”).

<sup>4</sup> The December 2012 Letter was structured to expire upon the earlier of (i) June 30, 2013, or (ii) the effective date of the SEF final rulemaking. See Core Principles and Other Requirements for Swap Execution Facilities, 78 FR 33476 (June 4, 2013) (“SEF Final Rules”), available at <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf>.

<sup>5</sup> The Division notes that even if a facility operating pursuant to the December 2012 Letter was to receive notice that it had been granted temporary registration status as a SEF on or before June 30, 2013, that facility could not begin operating as a SEF until the effective date of the SEF final rulemaking. See 17 CFR § 37.3(c)(2). The same would be true for any facility that might receive notice of temporary registration status after June 30, 2013, but prior to the effective date. Therefore, absent further relief, facilities currently operating pursuant to the December 2012 Letter would have to cease swap-trading operations altogether from at least July 1, 2013 until the effective date of their temporary registration status, which could be no earlier than August 5, 2013.

<sup>6</sup> If an applicant seeking temporary registration as a SEF wishes to list for trading a swap contract as of the effective date of its temporary registration status, see *supra* note 5, the applicant must submit the terms and conditions of such contract(s) as part of its application for registration. Upon the effectiveness of its temporary registration status, a SEF becomes subject to all of the rules included in its registration application and immediately may list for trading any swap contracts subject to the terms and conditions included in such application. DMO notes that while a grant of temporary registration status will permit a SEF to operate in accordance with the rules and contract terms and conditions included in its registration application, a “grant of temporary registration by the Commission does not affect the right of the Commission to grant or deny registration as provided under [§ 37.3(b)],” and the Commission still could require modifications to such rules or the terms and conditions of the initial product slate during the course of its continued consideration of the temporarily-registered SEF’s application for full registration. See 17 CFR § 37.3(c)(4); SEF Final Rules, 78 FR at 33487. In addition, during the course of its temporary registration, a SEF shall submit to the Commission any new rules, new contracts, or amendments thereto in accordance with the requirements of Part 40 of the Commission’s regulations. See 17 CFR § 37.4; SEF Final Rules, 78 FR at 33489.

Commission's Second Amendment to the July 14, 2011 Order, located in paragraphs (2) and (4), in connection with agricultural commodities, and, separately, in paragraphs (3) and (4), in connection with exempt and excluded commodities, except as this relief specifically provides herein.

This no-action relief shall commence on July 1, 2013, and shall expire on the compliance date of the SEF final rulemaking, which is October 2, 2013,<sup>7</sup> and shall supersede all terms and conditions of the December 2012 Letter.

The no-action relief provided by this letter is consistent with the intent to preserve the regulatory status quo with respect to transactions and persons described in paragraphs (2), (3) and (4) of the Commission's Second Amendment to the July 14, 2011 Order and the conditions thereto. The relief provided by this no-action letter does not otherwise affect any Dodd-Frank Act implementing regulations, including any effective and implementation dates therein.

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 Commission's regulations thereunder, including, as noted above, various anti-fraud and anti-manipulation prohibitions and the expiration of the order's exemptive relief as various Dodd-Frank Act-implementing regulations became effective. As with all no-action letters, the 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 regarding the operation of this no-action, please contact David Van Wagner, Chief Counsel, at 202-418-5481, or David Pepper, Attorney-Advisor, at 202-418-5565.

Sincerely,

Richard A. Shilts  
Acting Director

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<sup>7</sup> If temporary SEF registration status is requested and granted on or before October 2, 2013, the facility must immediately come into full compliance with all applicable SEF rules and regulations upon the effective date of its temporary registration status and can no longer operate pursuant to the no-action relief provided herein. *See* SEF Final Rules, 78 FR at 33487. If a facility submits an application for full registration as a SEF on or before October 2, 2013, but chooses not to request temporary registration status, such facility cannot represent itself as a SEF during the pendency of its application and can no longer rely on the no-action position taken herein after October 2, 2013. Additionally, because the Commission has a 180-day review period for complete DCM applications and no temporary DCM registration status is available under the Commission's regulations, facilities currently relying on the December 2012 Letter that submit a DCM application prior to October 2, 2013 will face an interruption in operations as of that date. *See* 17 CFR § 38.3(a)(1) (citing CEA § 6(a)).