



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 13-68
No-Action
November 1, 2013
Division of Market Oversight

Extension of Certain Time-Limited No-Action Relief Regarding Swap Execution Facilities Provided by CFTC No-Action Letter Nos. 13-55 (amended), 13-56 and 13-58 for Swaps in the Foreign Exchange Asset Class

Background

The Division of Market Oversight (“Division”) is issuing this extension of no-action relief to products in the foreign exchange (“FX”) asset class¹, including, but not limited to, FX forwards, options and Non-deliverable forwards (“NDFs”)² and only to the extent further described below. From September 27, 2013 to September 30, 2013 the Division issued no-action letters providing temporarily registered swap execution facilities (SEFs) and counterparties executing transactions on or pursuant to the rules of such SEFs with time-limited relief from certain requirements of Parts 37, 43 and 45 of the Commission’s regulations. The Division is issuing this letter to address the concerns of FX market participants³ and provide limited extensions, as further specified below of certain no-action relief provided in CFTC Letter Nos. 13-55 (amended),⁴ 13-56 and 13-58.

Extended relief is justified in the FX asset class as FX transactions involve certain additional templates and agreements that are not included in the swap contract formation for products in the other asset classes. As such, additional time is necessary for SEFs to collect, analyze and determine what elements of these industry-accepted contracts, templates and definitions that will

¹ The Division reminds market participants that with respect to the FX asset class, foreign exchange options, foreign exchange rate options, foreign exchange forwards, foreign exchange swaps, and non-deliverable forwards are reportable under part 45. Any FX swaps or forwards exempted by the United States Department of the Treasury are to be reported consistent with the requirements of Part 43. All other transactions in the FX asset class, including those for foreign exchange options, foreign exchange rate options, and non-deliverable forwards, are subject to Part 43 reporting and public dissemination requirements. See CFTC Fact Sheet “Reporting of Swap Transaction and Pricing Data to SDRs” available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/reportingswap_factsheet_final.pdf.

² In its October 29, 2013 letter, GFMA noted that over 40 percent of FX NDFs and 24 percent of FX options are traded on or through multiple-to-multiple electronic broking systems. See GFMA Letter (October 29, 2013).

³ This Division letter is in part responsive to a letter requesting extensions of CFTC Letter Nos. 13-55 (amended), 13-56 and 13-58. See Letter from Global FX Division of the Global Financial Markets Association (“GFMA”) “Request for Relief Relating to Commission Regulation Part 37 for Foreign Exchange Asset Class” (“GFMA Letter”) (October 29, 2013).

⁴ CFTC Letter No. 13-55 was amended on September 30, 2013 to change three references to primary economic terms or “PET” data in the original letter to “creation” data.

be incorporate into the SEF's platform. Once this process is completed, programming, testing and implementing the necessary modifications is necessary.

Discussion

I. CFTC Letter No. 13-55 (amended) (Time-Limited No-Action Relief for Temporarily Registered Swap Execution Facilities from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations).

The Division issued CFTC Letter No. 13-55 in response to requests from a number of SEFs for a transitional period to allow time to complete programming and architectural changes necessary for reporting of certain classes of swap transactions to the appropriate swap data repository or repositories ("SDR" or "SDRs") in order to comply with obligations under Parts 43 and 45 of the Commission's regulations. The Division understands that implementation efforts are ongoing and that SEFs continue to have concerns regarding their ability to comply fully with Parts 43 and 45. Relief provided under CFTC Letter No. 13-55 (amended) for swap transactions in the FX asset class transacted on or pursuant to the rules of a SEF expired at 12:01 a.m. on October 30, 2013. Accordingly, the Division believes that a tailored and time-limited extension of relief is appropriate.

The Division is extending the relief provided in CFTC Letter No. 13-55 (amended), under the terms and conditions⁵ contained in that letter. The period of relief for FX swaps is extended until the earlier of: 1) such time as the SEF can report the required swap transaction data to an SDR in the manner and timing as set forth in Parts 43 and 45; or 2) **12:01 a.m. eastern time on November 29, 2013.**⁶

The no action relief provided in this letter applies only to entities that have achieved temporary registration status as SEFs as of the date of issuance of this Division letter.

As indicated above, in order to rely on the relief provided in this letter, a SEF must continue to comply with all conditions for relief included in Letter No. 13-55 (amended), with the exception of two conditions which contained specific deadline dates for the performance of the conditions. By this letter, the Division is adjusting those dates to accommodate the general extension of the relief provided in Letter No. 13-55. Accordingly, a SEF intending to rely on the relief provided in this Division letter must again comply with condition (4) of CFTC Letter No. 13-55 (amended) within 10 days of the issuance of this letter. Likewise, with respect to condition (6) of CFTC Letter No. 13-55 (amended), the SEF must backload and report to the appropriate SDR all required Part 45 creation data and Part 43 data, for the period from October 2, 2013, to

⁵ For ease of reference, the Division is attaching to this letter a copy of CFTC Letter No. 13-55 (amended).

⁶ This Division letter in no way modifies the relief provided in CFTC Letter No. 13-55 (amended) with respect to swaps in the other commodity and equity asset classes.

November 28, 2013, that it would have been required to report pursuant to Parts 43 and 45 in the absence of no-action relief, no later than **December 27, 2013**.

The Division also is extending the period of relief provided to a SEF that is unable to comply with section 43.3(b)(3) (the “embargo rule” - prohibiting disclosure of swap transaction data prior to transmission of the data by the SEF to the appropriate SDR) in situations where the SEF discloses swap transaction and pricing data to its market participants in contradiction to the embargo rule. This relief is granted for affected swap transactions in the FX asset class only, if no transmittal of such data to an SDR occurs as a result of the SEF’s reliance on Condition 1(a) or 1(b) of CFTC Letter No. 13-55 (amended). Such relief is provided until the earlier of (1) such time as the SEF can report the required swap transaction data to an SDR in the manner and timing as set forth in Parts 43 and 45; or (2) **12:01 a.m. eastern time on November 29, 2013**.

II. CFTC Letter No. 13-56 (Time Limited No-Action Relief for Reporting Counterparties from Certain Continuation Data Reporting Requirements of Section 45.4 of the Commission’s Regulations with respect to Uncleared Swaps Executed on or Pursuant to the Rules of a Temporarily Registered Swap Execution Facility).

The Division issued CFTC Letter No. 13-56 in part to address market participants’ concerns that operational challenges faced by temporarily registered SEFs will impede the ability of reporting counterparties to report full, complete, accurate and timely continuation data as required in Part 45 for uncleared swaps executed on or pursuant to the rules of a registered SEF. The Division understands that while SEF implementation efforts have progressed during the initial period of no-action relief, such efforts are ongoing and market participants continue to have concerns regarding their ability to report swap continuation data for SEF executed uncleared FX swaps. Relief for swap transactions in the FX asset class under CFTC Letter No. 13-56 expired on October 29, 2013. Accordingly, the Division believes that a tailored and time limited extension of relief is appropriate.

The Division is extending the relief provided in CFTC Letter No. 13-56, under the terms and conditions⁷ contained in that letter⁸, with respect to swaps within the FX asset class only, until the earlier of: 1) such time as the Reporting Counterparty⁹ can fulfill its continuation data reporting obligations under Parts 43 and 45; or 2) **12:01 a.m. eastern time on November 29, 2013**.¹⁰

⁷ For ease of reference, the Division is attaching to this letter a copy of CFTC Letter No. 13-56.

⁸ With respect to condition (2) of CFTC Letter No. 13-56, a Reporting Counterparty’s failure to report required swap continuation data must result from a temporarily registered SEF’s reliance on the no-action relief provided in section I of this Division letter.

⁹ As defined in Commission regulation 45.1.

¹⁰ This Division letter in no way modifies the no-action relief provided in CFTC Letter No. 13-56 with respect to swaps in the other commodity and equity asset classes.

III. CFTC Letter No. 13-58 (Time-Limited No-Action Relief to Temporarily Registered Swap Execution Facilities from Commission Regulation 37.6(b) for Non-Cleared Swaps in All Asset Classes).

The Division issued CFTC Letter No. 13-58 in response to requests received from multiple parties, including temporarily registered SEFs, to provide time-limited no-action relief for SEFs from providing confirmations, as required under Commission regulation 37.6(b), for swaps that are not intended to be submitted for clearing. The Division was informed that SEFs were unable to obtain “all the information necessary to capture all of the terms of the transaction...” and that additional time was needed to incorporate confirmation documentation relating to swaps that have certain non-standardized terms. The Division understands that efforts to implement SEF confirmations are still ongoing and that challenges remain with respect to the SEFs’ ability to comply with regulation 37.6(b) for FX swaps. Accordingly, the Division believes that a tailored and time limited extension of relief is appropriate.

The Division is extending the relief provided in CFTC Letter No. 13-58, under the terms and conditions¹¹ contained in that letter, with respect to FX swaps only, until **12:01 a.m. eastern time on November 29, 2013.**¹²

IV. Conclusion

The Division is extending certain relief provided in CFTC Letter Nos. 13-55(amended), 13-56 and 13-58, to the extent and for the durations noted above, with respect to swap transactions in the FX asset class only. No other relief is being provided in this Division letter, nor does this letter otherwise supersede, suspend, alter, amend or extend any relief provided in CFTC Letter Nos. 13-55 (amended), 13-56 and 13-58, including relief for swap transactions not in the FX asset class that has not yet expired.

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act.¹³ No-action relief letters are covered by collection 3038-0049. In addition Part 45 recordkeeping and reporting obligations are covered by collections 3038-0088 and 3038-0096.

The Division’s letter and the no-action positions taken herein reflect the views of the Division only, and not necessarily the position or views of the Commission or of any other division or office of the Commission’s staff. The no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the regulations thereunder. As with all no-action letters, the Division retains the authority to, in its discretion,

¹¹ For ease of reference, the Division is attaching to this letter a copy of CFTC Letter No. 13-58.

¹² This Division letter in no way modifies the relief provided in CFTC Letter No. 13-58 with respect to swaps in the other commodity and equity asset classes.

¹³ 44 U.S.C. §§ 3501 *et. seq.*

further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions concerning this correspondence, please contact the following Division of Market Oversight staff: Nancy Markowitz, Deputy Director at (202) 418-5453 or nmarkowitz@cftc.gov, Laurie Gussow, Special Counsel at (202) 418-7623 or lgussow@cftc.gov or Stuart Armstrong, Special Counsel at (202) 418-5095 or sarmstrong@cftc.gov.

Sincerely,

Vincent A. McGonagle
Director
Division of Market Oversight