



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5521
www.cftc.gov

Division of Market Oversight

CFTC Letter No. 13-75
No-Action
December 20, 2013
Division of Market Oversight

Time-Limited No-Action Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations, for Certain Swap Dealers and Major Swap Participants Established under the Laws of Australia, Canada, the European Union, Japan or Switzerland

This letter is issued by the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") to provide Commission-registered swap dealers ("SDs") and major swap participants ("MSPs") that are non-U.S. persons¹ established under the laws of Australia, Canada, the European Union, Japan or Switzerland, and that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company or U.S. bank holding company, with time-limited no-action relief from certain requirements of the swap data reporting rules set forth at Part 45² and Part 46³ of the Commission's regulations (collectively, the "SDR Reporting Rules").

I. Background

On July 22, 2013, the Commission published in the Federal Register an order (the "Exemptive Order")⁴ which, among other things, permits non-U.S. SDs and non-U.S. MSPs established in specified non-U.S. jurisdictions to delay, under certain circumstances and subject to certain conditions, compliance with the SDR Reporting Rules with respect to their swaps with counterparties that are non-U.S. persons ("non-U.S. counterparties").⁵ That exemptive relief expires on December 21, 2013.⁶

To date, the Commission has received requests for comparability determinations with respect to finalized swap data reporting rules or requests for relief in the following jurisdictions in which there

¹ For purposes of this letter, the term "U.S. person" has the meaning used in the Commission's Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45292 (July 26, 2013) (hereinafter "Cross-Border Guidance"), and a person that is not a U.S. person is a "non-U.S. person". For purposes of this letter, an SD that is a non-U.S. person is a "non-U.S. SD" and an MSP that is a non-U.S. person is a "non-U.S. MSP".

² Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (January 13, 2012).

³ Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012.)

⁴ Exemptive Order Regarding Compliance With Certain Swap Regulations, 78 Fed. Reg. 43785 (July 22, 2013).

⁵ 78 Fed. Reg. 43785, 43794 (July 22, 2013).

⁶ Id.

are established non-U.S. SDs or non-U.S. MSPs that are currently registered with the Commission: Australia, Canada, the European Union, Japan and Switzerland.

In light of the expiration of the Exemptive Order, the Division believes that it would be appropriate to provide non-U.S. SDs and non-U.S. MSPs established in such jurisdictions, that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company, with certain time-limited no-action relief from the requirements of the SDR Reporting Rules, while review of the requests for comparability determinations with respect to such jurisdictions continues.

It should be noted that the Division is not extending this relief to such non-U.S. SDs and non-U.S. MSPs for swaps with non-U.S. counterparties that are guaranteed affiliates, or conduit affiliates,⁷ of U.S. persons. Due to the Commission's strong supervisory and oversight interest in such swap transactions, the Division believes that extending this relief to such swaps would not be appropriate.⁸ However, to account for operational and procedural measures that may need to be taken in order to report such swaps in accordance with the SDR Reporting Rules, the Division believes that a limited period of transitional relief would be appropriate.

II. No-Action Relief

Based on the foregoing, the Division will not recommend that the Commission take an enforcement action against a non-U.S. SD or a non-U.S. MSP established in Australia, Canada, the European Union, Japan or Switzerland, that is not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company, for failure to comply with:

- (i) the requirements of Part 45 and Part 46 of the Commission's regulations with respect to its swaps with non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates, of a U.S. person, until the earlier of: (a) 30 days following the issuance of a comparability determination by the Commission with respect to the SDR Reporting Rules for the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established, and (b) December 1, 2014;
- (ii) the requirements of Part 45 of the Commission's regulations with respect to its swaps with non-U.S. counterparties that are guaranteed affiliates, or conduit affiliates, of a U.S. person, until March 3, 2014; and
- (iii) the requirements of Part 46 of the Commission's regulations with respect to its swaps with non-U.S. counterparties that are guaranteed affiliates, or conduit affiliates, of a U.S. person, until April 2, 2014.

⁷ For purposes of this letter, the terms "guaranteed affiliate" and "conduit affiliate" have the respective meanings used in the Cross-Border Guidance.

⁸ See 7 U.S.C. § 2(i).

This no-action relief provided in each of clause (i), (ii) and (iii) above does not extend to the recordkeeping requirements of Commission Regulations 45.2,⁹ 45.6, 46.2 and 46.4.¹⁰

The no-action relief provided herein is provided to certain non-U.S. SDs and non-U.S. MSPs, as specified herein, and does not extend to any other entities with reporting obligations under the SDR Reporting Rules.¹¹

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 regulations thereunder. 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 concerning this correspondence, please contact David Van Wagner, Chief Counsel, Division of Market Oversight, at (202) 418-5481, Stuart Armstrong, Special Counsel, Division of Market Oversight, at (202) 418-5095, or Nora Flood, Attorney Advisor, Division of Market Oversight at (202) 418-5354.

Sincerely,

Vincent A. McGonagle
Director
Division of Market Oversight

⁹ The requirement of Commission Regulation 45.2(a)(4)—that an SD or MSP keep records that include, without limitation, all records required by Part 23 of the Commission's regulations—is independently governed by the applicability of such underlying Part 23 requirements.

¹⁰ However, during the period of this relief, the Division will not recommend an enforcement action based on the failure by a non-U.S. SD or non-U.S. MSP to maintain records identifying a non-U.S. counterparty to a swap by means of a legal entity identifier, or "LEI", issued pursuant to Part 45 of the Commission's regulations, if: (i) the counterparty's LEI is not publicly available, (ii) the counterparty has not already provided its LEI to the non-U.S. SD or non-U.S. MSP, and (iii) the counterparty does not provide its LEI to the non-U.S. SD or non-U.S. MSP in connection with the swap transaction, provided that the non-U.S. SD or non-U.S. MSP generates a substitute counterparty identifier for such counterparty and utilizes such identifier in the records that the non-U.S. SD or non-U.S. MSP is required to maintain as a condition of relying on such relief. For purposes of this letter, the term legal entity identifier, or "LEI", includes a CFTC Interim Compliant Identifier ("CICI").

¹¹ For example, the Part 45 reporting obligations of a swap execution facility or designated contract market, with respect to swaps executed on or pursuant to the rules of such swap execution facility or designated contract market, are not affected by the no-action relief provided herein.