



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 17-36

No-Action

July 25, 2017

Division of Swap Dealer and Intermediary Oversight

Division of Clearing and Risk

Division of Market Oversight

Re: Extension of No-Action Relief: Transaction-Level Requirements for Non-U.S. Swap Dealers

Ladies and Gentlemen:

This letter extends the no-action relief provided in CFTC Staff Letter No. 16-64, which extended the no-action relief provided in CFTC Staff Letters Nos. 13-71, 14-01, 14-74, 14-140, and 15-48.¹ Those letters responded to requests received by the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”), the Division of Clearing and Risk, and the Division of Market Oversight (collectively, the “**Divisions**”) of the Commodity Futures Trading Commission (“**Commission**”) from swap dealers (“**SDs**”) registered with the Commission that are established under the laws of jurisdictions other than the United States (“**Non-U.S. SDs**”),² seeking time-limited relief from certain transaction-level requirements (as described below) under the Commodity Exchange Act (“**CEA**”) and the Commission’s regulations promulgated thereunder. The Non-U.S. SDs sought relief from such requirements when entering into swaps with a counterparty that is not a U.S. person.³

¹ CFTC Staff Letters are available on the Commission’s website:

<http://www.cftc.gov/LawRegulation/CFTCStaffLetters/No-ActionLetters/index.htm>.

² Although the relief was requested by certain Non-U.S. SDs, such relief is available to all Non-U.S. SDs.

³ As used in this letter, the term “U.S. person” has the same meaning as in the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (the “**Guidance**”), 78 FR 45292 at 45316-17 (July 26, 2013).

I. Background

A. Transaction-Level Requirements

When entering into a swap, an SD is required to comply with certain “Transaction-Level Requirements”⁴ with respect to the transaction. The Transaction-Level Requirements cover a range of requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act⁵ and Commission regulations promulgated thereunder. Some of the requirements more directly address financial protection of SDs and their counterparties, while others address more directly market efficiency and/or price discovery. In 2013, the Commission believed that the Transaction-Level Requirements may be applied on a transaction-by-transaction basis.⁶

B. The DSIO Advisory

On November 14, 2013, DSIO issued an advisory⁷ in response to inquiries from swap market participants regarding the applicability of the Commission’s Transaction-Level Requirements with respect to swaps between a Non-U.S. SD (whether an affiliate or not of a U.S. person) and a non-U.S. person if the swap is arranged, negotiated, or executed by personnel or agents of the Non-U.S. SD located in the United States.

In the advisory, DSIO stated its belief that persons regularly arranging, negotiating, or executing swaps for or on behalf of an SD are performing core, front-office activities of that SD’s dealing business, and thus, “a non-U.S. SD (whether an affiliate or not of a U.S. person) regularly using personnel or agents located in the U.S. to arrange, negotiate, or execute a swap with a non-U.S. person generally would be required to comply with the Transaction-Level Requirements.”

⁴ For purposes of this letter, the term “Transaction-Level Requirements” refers to the requirements set forth in Commission regulations 23.202, 23.205, 23.400 to 23.451, 23.501, 23.502, 23.503, 23.504, 23.505, 23.506, 23.610, 23.701 to 23.704, and parts 37, 38, 43, and 50. See Exemptive Order Regarding Compliance with Certain Swap Regulations (the “**Exemptive Order**”), 78 FR 43785 at 43794 (July 22, 2013). The Divisions note that the term “Transaction-Level Requirements,” as used herein, does not include the Commission regulations on margin requirements for uncleared swaps, Commission regulations 23.150 to 23.161.

⁵ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

⁶ See Guidance, 78 FR at 45366.

⁷ The DSIO Advisory is available on the Commission’s website:
<http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>.

II. Previous Relief Requested and Granted

Subsequent to issuance of the DSIO advisory, the Divisions received multiple requests from Non-U.S. SDs for time-limited relief from compliance with the Transaction-Level Requirements when entering into swaps with non-U.S. persons that are not guaranteed affiliates⁸ or conduit affiliates⁹ of a U.S. person using personnel or agents located in the United States to arrange, negotiate, or execute such swaps (such swaps, the “**Covered Transactions**”).

The Non-U.S. SDs represented that, in order to avoid market disruption for their non-U.S. counterparties, such time-limited relief was necessary to allow them to organize their internal policies and procedures to come into compliance with the Transaction-Level Requirements when entering into Covered Transactions.

On November 26, 2013, the Divisions granted time-limited no-action relief until January 14, 2014, with CFTC Staff Letter No. 13-71.

Subsequent to the issuance of CFTC Letter 13-71, the Commission requested public comment regarding compliance issues implicated by Covered Transactions,¹⁰ and thus the Divisions extended the time-limited no-action relief to September 15, 2014, with CFTC Staff Letter No. 14-01, to December 31, 2014, with CFTC Staff Letter No. 14-74, to September 30, 2015, with CFTC Staff Letter No. 14-140, to September 30, 2016 with CFTC Staff Letter No. 15-48, and to September 30, 2017, with CFTC Staff Letter No. 16-64.

III. Staff Position

As was the case in CFTC Staff Letter Nos. 13-71, 14-01, 14-74, 14-140, 15-48, and 16-64, the Divisions note that, as of the date of this letter, the Divisions have not recommended that the Commission take an enforcement action against a Non-U.S. SD (whether or not an affiliate of a U.S. person) for failure to comply with any applicable Transaction-Level Requirement when entering into any Covered Transaction.

The Divisions understand that the Commission continues to diligently assess the many issues that must be addressed to ensure an appropriate balance between domestic and

⁸ For purposes of this letter, the terms “guarantee” and “guaranteed affiliate” have the same meaning as in the Exemptive Order. *See* 78 FR at 43794.

⁹ For purposes of this letter, the term “conduit affiliate” has the same meaning as in the Guidance. *See* 78 FR at 45358-59.

¹⁰ *See* Request for Comment on Application of Commission Regulations to Swaps Between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 FR 1347 (Jan. 8, 2014).

foreign regulatory interests with respect to the domestic activity of non-U.S. SDs. Therefore, the Divisions believe that an extension of the staff no-action relief provided in CFTC Staff Letter No. 16-64 is warranted until the effective date of any Commission action addressing whether a particular Transaction-Level Requirement is or is not applicable to a Covered Transaction (each, an “**Addressed Transaction-Level Requirement**”). Accordingly, the Divisions will not recommend that the Commission take an enforcement action against a Non-U.S. SD (whether or not an affiliate of a U.S. person) when entering into a Covered Transaction for failure to comply with:

- (a) Any applicable Transaction-Level Requirement other than an Addressed Transaction Level-Requirement if the Covered Transaction is not with a Non-U.S. SD; and
- (b) If the Covered Transaction is with a Non-U.S. SD, any applicable Transaction-Level Requirement other than (i) an Addressed Transaction Level-Requirement; (ii) the multilateral portfolio compression requirements under Commission regulation 23.503; or (iii) the swap trading relationship requirements under Commission regulation 23.504.

For the avoidance of doubt, Commission action addressing whether a particular Transaction-Level Requirement is or is not applicable to a Covered Transaction may include, without limitation, a rulemaking, an order, or a published determination not to take action with respect to such requirements.

This letter, and the positions taken herein, represent the views of the Division of Swap Dealer and Intermediary Oversight, the Division of Clearing and Risk, and the Division of Market Oversight only, and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission.

The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the CEA or in the Regulations issued thereunder, nor may any person other than Non-U.S. SDs rely on it to excuse compliance with any applicable requirement contained in the CEA or in the Regulations issued thereunder.

Further, this letter, and the relief contained herein, is based upon the representations made to the Divisions. Any different, changed or omitted material facts or circumstances might render this no-action relief void. This letter does not create or confer any rights for or obligations on any person or persons subject to compliance with the CEA that bind the Commission or any of its other offices or divisions. As with all no-action letters, the Divisions retain 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, please contact Frank Fisanich, Chief Counsel, DSIO, at (202) 418-5949, or Katherine Driscoll, Associate Chief Counsel, DSIO, at (202) 418-5544.

Very truly yours,

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