



Commodity Futures Trading Commission

Office of Public Affairs

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Exemptive Order Regarding Compliance with Certain Swap Regulations

The Exemptive Order (“Exemptive Order”) provides temporary conditional relief to market participants from certain provisions of the CEA, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and Commission regulations thereunder, in the context of cross-border swaps activities. The Exemptive Order is effective July 13, 2013 and expires on December 31, 2013 or such earlier date specified in the Exemptive Order. The Commission is soliciting comments for 30 days.

The Exemptive Order was approved concurrently with the Commission’s cross-border Interpretive Guidance and Policy Statement (“Guidance”).

U.S. Person Definition

Under the Exemptive Order, all market participants may continue to apply the definition of the term “U.S. person” contained in the Commission’s exemptive order issued on January 7, 2013 (“January Order”) until 75 days after the Guidance is published in the Federal Register.

Swap Dealer and Major Swap Participant (MSP) Calculations

Under the Exemptive Order, market participants may continue to apply the swap dealer and MSP calculation provisions contained in the January Order from July 13, 2013 until 75 days after the Guidance is published in the Federal Register. Accordingly, during this time period, a non-U.S. person may exclude (from its swap dealer de minimis and its MSP threshold calculations):

- (i) Any swap where the counterparty is not a U.S. person, or
- (ii) Any swap where the counterparty is a foreign branch of a U.S. person that is registered as a swap dealer.

Also during this time period, with respect to aggregation of affiliate positions under Commission regulation 1.3(ggg)(4) for purposes of the swap dealer de minimis calculations:

- (i) A non-U.S. person that was engaged in swap dealing activities with U.S. persons as of December 21, 2012 may exclude the aggregate gross notional amount of swaps connected with the swap dealing activity of its U.S. affiliates under common control;
- (ii) A non-U.S. person that was engaged in swap dealing activities with U.S. persons as of December 21, 2012 and is an affiliate under common control with a person that is registered as a swap dealer may also exclude the aggregate gross notional amount of swaps connected with the swap dealing activity of any non-U.S. affiliate under common control that is either (i) engaged in swap dealing activities with U.S. persons as of December 21, 2012 or (ii) registered as a swap dealer.

- (iii) A non-U.S. person may exclude the aggregate gross notional amount of swaps connected with the swap dealing activity of its non-U.S. affiliates under common control with other non-U.S. persons as counterparties.

Swap Dealer Registration

A non-U.S. person that was previously exempt from registration as a swap dealer but must now register as a swap dealer because of changes to the scope of the term “U.S. person” or changes to the swap dealer de minimis calculation or aggregation requirements is not required to register as a swap dealer until two months after the end of the month in which such person exceeds the de minimis threshold for swap dealer registration.

Relief from Entity-Level Requirements

Entity-Level Requirements for purposes of the Exemptive Order include those related to (1) capital adequacy; (2) chief compliance officer; (3) risk management; (4) swap data recordkeeping; and (5) swap data repository (“SDR”) reporting.

Non-U.S. swap dealers and non-U.S. MSPs established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may delay compliance with most Entity-Level Requirements for which substituted compliance is possible under the Commission’s Guidance until the earlier of December 21, 2013 or 30 days following the issuance of a substituted compliance determination for the relevant Entity-Level Requirement of the jurisdiction in which the non-U.S. swap dealer or MSP is established. With respect to SDR Reporting requirements, however, non-U.S. swap dealers and non-U.S. MSPs established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland 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 may delay compliance for swaps with non-U.S. counterparties until the earlier of December 21, 2013 or 30 days following the issuance of a relevant substituted compliance determination, on the condition that, during the relief period, (1) such non-U.S. SDs and non-U.S. MSPs are in compliance with the swap data recordkeeping and reporting requirements of their home jurisdictions; or (2) where no swap data reporting requirements have been implemented in their home jurisdictions, such non-U.S. SDs and non-U.S. MSPs comply with the recordkeeping requirements of Regulations 45.2, 45.6, 46.2 and 46.4.

Relief from Transaction-Level Requirements

Transaction-Level Requirements for purposes of this exemptive order consist of: (1) clearing and swap processing; (2) margin and segregation requirements for uncleared swaps; (3) trade execution; (4) swap trading relationship documentation; (5) portfolio reconciliation and compression; (6) real-time public reporting; (7) trade confirmation; (8) daily trading records; and (9) external business conduct standards.

A non-U.S. swap dealer or non-U.S. MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may (with some exceptions related to clearing, trade execution, and real-time reporting) generally comply with any law and regulations of the jurisdiction in which it is established (and only to the extent required by such jurisdiction) in lieu of complying with any Transaction-Level Requirement for which substituted compliance is possible under the Commission’s Guidance until the earlier of December 21, 2013 or 30 days following the issuance of a substituted compliance determination for the relevant regulatory requirement of the jurisdiction in which the non-U.S. swap dealer or non-U.S. MSP is established, with some exc.

Similarly, a foreign branch of a U.S. swap dealer or MSP located in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may (with some exceptions related to clearing, trade execution, and real-time reporting) generally comply with any law and regulations of the jurisdiction in which it is located (and only to the extent required by such jurisdiction) in lieu of complying with any Transaction-Level Requirement for which substituted

compliance is possible under the Commission's Guidance until the earlier of December 21, 2013 or 30 days following the issuance of a substituted compliance determination for the relevant regulatory requirement.

Phase-In of Guaranteed Affiliates and "Affiliate Conduits": Guaranteed affiliates and affiliate conduits do not need to comply with Transaction-Level Requirements relating to swaps with non-U.S. persons and foreign branches of U.S. swap dealers and MSPs until 75 days after the Final Guidance is published in the Federal Register.

The Exemptive Order also provides transitional relief from Transactional-Level Requirements until 75 days after the publication of the Guidance in the Federal Register for swap transactions between a non-U.S. SD or MSP with a guaranteed affiliate of a U.S. person in jurisdiction other than Australia, Canada, the European Union, Hong Kong, Japan or Switzerland.