



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Gary Barnett  
Director

CFTC Letter No. 13-85  
No-Action  
December 30, 2013  
Division of Swap Dealer and Intermediary Oversight

**Re: Time-Limited No-Action Relief for Certain Swap Dealers from Compliance with the Requirements of Commission Regulation 3.3 Relating to Annual Reports by Chief Compliance Officers**

Ladies and Gentlemen:

This letter is in response to a letter, dated December 23, 2013, to the Division of Swap Dealer and Intermediary Oversight (“**Division**”) of the Commodity Futures Trading Commission (“**Commission**”) from Davis Polk & Wardwell, LLP (“**DavisPolk**”) requesting no-action relief from Commission Regulation 3.3<sup>1</sup> for swap dealers (“**SDs**”) that: (1) are not required, prior to December 31, 2013, to register with the Commission as SDs; and (2) have a fiscal year-end of December 31, 2013 (“**Covered Firms**”). Specifically, DavisPolk seeks relief from the requirement that the chief compliance officer (“**CCO**”) of a Covered Firm prepare an Annual Report, and furnish such Report to the Commission, for the fiscal year that ends on December 31, 2013.

### **Regulatory Background**

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“**Dodd-Frank Act**”),<sup>2</sup> in relevant part, added section 1a(49) to the Commodity Exchange Act (“**CEA**”), which defined the term “swap dealer” for purposes of the CEA. On April 18, 2012, the Commission, jointly with the Securities and Exchange Commission, issued final rules to further define “swap dealer,” among other terms.<sup>3</sup> Included in the final rule release was Regulation 1.3(ggg)(4)(i), which provides that a person shall not be deemed to be an SD if the aggregate gross notional amount of their swap dealing activity falls below certain thresholds. Further, pursuant to Regulation 1.3(ggg)(4)(iii), a person whose aggregate gross notional amount of swap dealing activity exceeds any applicable threshold must register as an SD no later than “two months after the end of the month in which that person becomes no longer able to take advantage

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<sup>1</sup> 17 CFR 3.3.

<sup>2</sup> Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant,” 77 Fed. Reg. 30,596, 30,744 (May 23, 2012).

of the [de minimis] exception.”<sup>4</sup> Consequently, any person whose aggregate gross notional amount of swap dealing activity exceeded an applicable threshold in October 2013 will be required to register as an SD by December 31, 2013.

Section 731 of the Dodd-Frank Act, in relevant part, added section 4s(k) to the CEA,<sup>5</sup> which requires each SD and major swap participant to designate an individual to serve as its CCO. Section 4s(k) requires that CCOs perform certain duties and responsibilities, including the preparation of an Annual Report “in accordance with rules prescribed by the Commission.”<sup>6</sup>

To implement that statutory provision, the Commission promulgated Commission Regulation 3.3, which, among other things, requires the designation of a CCO meeting certain qualifications and sets forth the duties and responsibilities of a CCO.<sup>7</sup> One of the responsibilities of a CCO is to prepare and sign an Annual Report.<sup>8</sup> The Annual Report must cover the most recently completed fiscal year of the SD, and at a minimum, must contain the information enumerated in Commission Regulation 3.3, including a certification by the CCO or chief executive officer.<sup>9</sup>

An Annual Report submitted by a Covered Firm for fiscal year 2013 will be of limited value to the Commission. The time period that would be covered in the Annual Report would total, at most, a single day (December 31, 2013) for Covered Firms that are required to register by, and become registered on, December 31, 2013. Moreover, each Covered Firm will be required to submit to the National Futures Association, as part of the registration process, the policies and procedures of the Covered Firm establishing its compliance with the CEA and Commission Regulations. The adequacy and content of such policies and procedures, and the Covered Firm’s compliance therewith, represent major components of the Annual Report.

### **Time-Limited No-Action Relief Granted**

Based on the foregoing and the information provided by DavisPolk, the Division will not recommend that the Commission take an enforcement action against a Covered Firm, or a CCO of a Covered Firm, for failing to prepare an Annual Report and furnish such Report to the Commission for the fiscal year that ends on December 31, 2013. This no-action relief is limited to the Annual Report required to be furnished by a Covered Firm to the Commission for the fiscal year that ends on December 31, 2013.

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<sup>4</sup> See 17 CFR 23.21 (Commission regulation requiring the registration of SDs and major swap participants).

<sup>5</sup> 7 U.S.C. § 1 *et seq.*

<sup>6</sup> 7 U.S.C. § 4s(k)(3).

<sup>7</sup> Commission Regulation 3.3 is applicable to futures commission merchants and major swap participants, in addition to SDs. The relief provided in this no-action letter is not applicable to futures commission merchants and major swap participants; thus, such firms are not discussed herein.

<sup>8</sup> 17 CFR 3.3(d)(6).

<sup>9</sup> 17 CFR 3.3(f)(3).

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This letter, and the positions taken herein, represent the view of the Division only, and do not necessarily represent the position or view 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 Act or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact Frank Fisanich, Chief Counsel, at 202-418-5949, Ward Griffin, Associate Chief Counsel, at 202-418-5425, or Marcia Blase, Special Counsel, at 202-418-5138.

Very truly yours,

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cc: Regina Thoele, Compliance  
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