



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 17-64
No-Action
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Division of Market Oversight

Extension of 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 responds to requests received by the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"), pursuant to Commission Regulation 140.99, to extend certain staff no-action relief provided in CFTC Letter No. 13-75 and extended under CFTC Letter Nos. 14-141, 15-61 and 16-79.¹

I. Background

On December 20, 2013 the Division issued CFTC Letter No. 13-75 to provide Commission-registered swap dealers ("SDs") and major swap participants ("MSPs") that are non-U.S. persons² established under the laws of Australia, Canada, the European Union, Japan or Switzerland (collectively, the "Enumerated Jurisdictions"), 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 requirements of the swap data reporting rules set forth in Part 45³ and Part 46⁴ of the Commission's regulations (collectively, the "SDR Reporting Rules"). On November 24, 2014,

¹ Letter from the Institute of International Banking, International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, Commodity Futures Trading Commission Request for Public Input on Simplifying Rules (Project KISS); Extension of Certain Time-Limited No-Action Relief (July 24, 2017); Letter from The Bank of Tokyo-Mitsubishi-UFJ, Ltd., Request for Extension of No-Action Relief from Certain Requirements of Part 45 and Part 46 of the Commission's Regulations for Swaps with Non-U.S. Persons Pursuant to CFTC Regulation 140.99 (September 22, 2017) (the "Request Letters").

² 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".

³ Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (January 13, 2012).

⁴ Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012).

in CFTC Letter No. 14-141, the Division extended certain of the relief provided in CFTC Letter No. 13-75 with respect to swaps with non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates, of a U.S. person, and the Division further extended the relief on November 9, 2015 in CFTC Letter No. 15-61 and again on November 21, 2016 in CFTC Letter No. 16-79. CFTC Letter No. 16-79 is set to expire no later than December 1, 2017.

As noted in the Request Letters, the Commission has not yet issued comparability determinations with respect to the SDR Reporting Rules.⁵ The Division understands that the Commission and regulators from the Enumerated Jurisdictions have not been able to reach an arrangement regarding swap data sharing because of certain outstanding issues, including lack of direct access by the Commission to foreign trade repository data and by regulators from the Enumerated Jurisdictions to U.S. swap data repository (“SDR”) data. The Division remains steadfast in assisting the Commission in fully implementing the standards for OTC derivatives markets agreed at the 2009 Pittsburgh G-20 summit, including post-trade transparency for regulators into the swaps market, and has been actively working to address the outstanding issues, including through helping draft proposed amendments to existing rules governing certain foreign and domestic authorities’ access to swap data maintained by SDRs⁶ and through the review of the swap data reporting regulations and the accompanying Roadmap to Achieve High Quality Swaps Data announced on July 10, 2017 in CFTC Letter No. 17-33. The Division expects substantial progress will be made on these efforts next year and expects them to be completed before the expiration of this no-action letter.

Likewise, the Division urges regulators from the Enumerated Jurisdictions to actively work to successfully address the outstanding issues, including by granting the Commission direct access to foreign trade repository data, resolving any remaining data privacy issues, and recognizing the Commission’s data reporting requirements as comparable to their own. The Division is committed to working cooperatively with the Enumerated Jurisdictions in this regard, including in evaluating requests for substituted compliance. If these outstanding issues are unable to be resolved before the expiration of this no-action letter, the Division will expect non-U.S. SDs and non-U.S. MSPs established under the laws of the Enumerated Jurisdictions to comply with the SDR Reporting Rules in order for the Commission to comply with its 2009 Pittsburgh G-20 commitments.

To provide adequate time to allow for a successful resolution to the outstanding issues listed above, and, in the event these issues are unable to be resolved, to allow for non-U.S. SDs and non-U.S. MSPs established under the laws of the Enumerated Jurisdictions to make the arrangements necessary for compliance with the SDR Reporting Rules, the Division believes that it is appropriate to provide a final three-year extension of the time-limited no-action relief provided in CFTC Letter No. 16-79, but has no current intention to provide any further extensions after the expiration of the no-action relief provided herein.

⁵ The process for comparability determinations is discussed in the Cross-Border Guidance. See 78 Fed. Reg. at 45344-45.

⁶ Proposed Amendments To Swap Data Access Provisions and Certain Other Matters, 82 Fed. Reg. 8369 (January 25, 2017).

II. Extension of No-Action Relief

- (i) Based on the foregoing, and subject to clause (iii) below, 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 the requirements of the SDR Reporting Rules with respect to its swaps with non-U.S. counterparties that are not guaranteed affiliates, or conduit affiliates,⁷ 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, 2020.
- (ii) The Division does not currently intend to extend the no-action relief provided in this letter beyond December 1, 2020, notwithstanding the potential that regulators from the Enumerated Jurisdictions may not have provided the Commission with direct access to foreign trade repository data or recognized the Commission's swap data reporting requirements to be comparable by that time.
- (iii) The no-action relief provided in this letter does not extend to the recordkeeping requirements of Commission Regulations 45.2,⁸ 45.6, 46.2 and 46.4.⁹

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.¹⁰

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

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

⁸ The requirement in Commission Regulation 45.2(a)(4) that the records required to be kept by an SD or MSP 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.

⁹ 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, in the records that the non-U.S. SD or non-U.S. MSP is required to maintain pursuant to Commission Regulations 45.2, 45.6, 46.2 and 46.4, to identify 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 pursuant to Commission Regulations 45.2, 45.6, 46.2 and 46.4.

¹⁰ For example, the Part 45 reporting obligations of a swap execution facility ("SEF") or designated contract market ("DCM"), with respect to swaps executed on or pursuant to the rules of such SEF or DCM, are not affected by the no-action relief provided herein.

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 Daniel Bucsa, Deputy Director, Division of Market Oversight, at (202) 418-5435 or dbucsa@cftc.gov, or Richard Mo, Special Counsel, Division of Market Oversight, at (202) 418-7637 or rmo@cftc.gov.

Sincerely,

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Director
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