

# CLIENT UPDATE

## CFTC GRANTS REGISTRATION RELIEF FOR CERTAIN PERSONS AND OTHER RELIEF FOR CERTAIN ASSOCIATED PERSONS

### NEW YORK

Byungkwon Lim  
blim@debevoise.com

Emilie T. Hsu  
ehsu@debevoise.com

Aaron J. Levy  
ajlevy@debevoise.com

On October 11, 2012, the Commodity Futures Trading Commission (the "CFTC") issued a no-action letter<sup>1</sup>, which, subject to certain conditions discussed below, granted temporary no-action relief from the registration requirements of the Commodity Exchange Act ("CEA") and the regulations of the CFTC issued thereunder to certain persons where the requirement to register arises solely from the swaps activity of such a person or from the person being involved with the transition of certain contracts by the Intercontinental Exchange, Inc. ("ICE") and the New York Mercantile Exchange ("NYMEX") to clearing as commodity futures and options transactions. This temporary no-action relief from registration applies to (1) persons coming within the definition of introducing broker ("IB"), commodity pool operator ("CPO"), commodity trading advisor ("CTA"), floor broker ("FB") or floor trader ("FT") and to (2) any "associated person" ("AP") of a futures commission merchant ("FCM"), IB, CPO or CTA.<sup>2</sup> This no-action relief terminates upon actual registration of such person or within five days after such person is notified that its registration application is denied.

---

<sup>1</sup> CFTC Letter No. 12-15.

<sup>2</sup> Absent this no-action relief, any person who solely because of its swaps activity comes within the definition of (1) an IB, CPO, CTA, FB or FT, or (2) an AP of an FCM, IB, CPO or CTA, would be required to register on or before October 12, 2012, or cease engaging in the activities that bring it within the applicable definition until it is registered as such. Additionally, absent such relief, any person involved with ICE or NYMEX contracts would be required to register in order to do business as such.

Additionally, in the same no-action letter, the CFTC granted no-action relief to swap dealers (“SDs”) and major swap participants (“MSPs”) from Section 4s(b)(6) of the CEA that makes it unlawful for an SD or MSP to permit any person associated with it who is subject to statutory disqualification to effect or be involved in effecting swaps on behalf of the SD or MSP if such SD or MSP knew, or in the exercise of reasonable care should have known, of such disqualification. This no-action relief does not have a termination date but is subject to the SD and MSP complying with the conditions described below.

### TEMPORARY REGISTRATION NO-ACTION RELIEF FOR CERTAIN SWAP PERSONS

The no-action letter states that the Division of Swap Dealer and Intermediary Oversight (the “Division”) will not recommend that the CFTC commence an enforcement action against a person for failure to be registered as (1) an IB, CPO, CTA, FB or FT, or (2) an AP of an FCM, IB, CPO, or CTA, where the requirement to be registered arises solely from the swaps activity of such person or from such person being involved with ICE/NYMEX Contracts,<sup>3</sup> subject to the following conditions:

- the person files with the National Futures Association (the “NFA”) a registration application (including, as appropriate, Forms 7-R and 8-R, as well as fingerprint cards for each of its principals and APs) on or before December 31, 2012 (the “No-Action Relief Filing Date”);
- in the case of a person who has filed an Application for Registration as an IB by the No-Action Relief Filing Date, on or before March 31, 2013, such person files with the NFA a Form 1-FR-IB or Guarantee Agreement, in accordance with the requirements of Section 1.10(a)(2)(ii) of the regulations of the CFTC;<sup>4</sup>
- in the case of a person who has filed an Application for Registration as an FB or FT by the No-Action Relief Filing Date, on or before March 31, 2013, such person provides to the NFA documentation of its trading privileges on a designated contract market or swap execution facility, in accordance with the requirements of Section 3.11 of the regulations of the CFTC; and

---

<sup>3</sup> The term “ICE/NYMEX Contracts” refers to: (1) in the case of ICE, the transition of its cleared ICE OTC energy swap products to energy futures and options contracts traded on ICE Futures US and ICE Futures Europe; and (2) in the case of NYMEX, the transition of certain energy transactions submitted for clearing through CME ClearPort via Exchanges of Futures for Risk transactions to energy transactions executed off the centralized market but subject to NYMEX’s rules and submitted for clearing as futures and options transactions.

<sup>4</sup> This temporary no-action relief applies to the requirement in Section 1.10(a)(2)(ii) of the regulations of the CFTC generally applicable to IBs to file a Form 1-FR-IB or Guarantee Agreement concurrently with the filing of their registration application.

- on and after the No-Action Relief Filing Date, the person is subject to and makes a good faith effort to comply with the CEA and the regulations of the CFTC applicable to its activities as (1) an IB, CPO, CTA, FB or FT or (2) an AP of an FCM, IB, CPO or CTA.

This registration no-action relief will terminate either (1) on the date on which the NFA provides notice that the person is registered as an IB, CPO, CTA, AP, FB or FT, as applicable, or (2) five days after service by the NFA of a notice on such person pursuant to NFA Registration Rule 504 that the person may be disqualified from registration under Section 8a(2) or 8a(3) of the CEA.

### **NO-ACTION RELIEF FROM STATUTORY DISQUALIFICATION PROHIBITION**

The no-action letter also provides that the Division will not recommend that the CFTC commence an enforcement action against an SD or an MSP for permitting a person associated with it who is subject to a statutory disqualification under Section 8a(2) or 8a(3) of the CEA to effect or be involved in effecting swaps on its behalf, subject to the following conditions:

- the SD or MSP notifies the NFA that it has determined that a person associated with it is subject to such a disqualification and submits to the NFA information identifying the person and the matter underlying such disqualification;
- based solely on the information that the SD or MSP submits, the NFA will notify such SD or MSP whether or not the NFA would have granted the person registration as an AP (if such registration were required);<sup>5</sup>
- where the person associated with the SD or MSP does not effect or is not involved in effecting swaps on behalf of the SD or MSP at the time the SD or MSP files the Form 7-R, the SD or MSP may not permit the person to effect or be involved in effecting swaps on behalf of the SD or MSP prior to receiving notice from the NFA that the NFA would have granted the person registration as an AP; and
- where the person associated with the SD or MSP is effecting or is involved in effecting swaps on behalf of the SD or MSP at the time the SD or MSP files its Form 7-R with the NFA, the SD or MSP must provide the notification and information to the NFA no later than 90 days following the date on which it files the Form 7-R. That person associated

---

<sup>5</sup> Unlike APs of FCMs, IBs, CPOs and CTAs, who are required to register with the CFTC, APs of SDs and MSPs are not required to be registered under the CEA. The NFA may use the discretion delegated to it by the CFTC to allow persons who are otherwise statutorily disqualified under Section 8a(2) or 8a(3) of the CEA to nonetheless register as APs of FCMs, IBs, CPOs and CTAs. However, since APs of SDs and MSPs are not required to register, the NFA is not able to exercise similar discretion with respect to statutory disqualifications of their APs. The CFTC has granted this no-action relief with respect to APs of SDs and MSPs in order to provide the same discretion to the NFA in this context.

with the SD or MSP may continue to effect or be involved in effecting swaps on behalf of the SD or MSP until such SD or MSP is notified by the NFA regarding whether such person can be registered as an AP. However, following notification from the NFA that it would not have registered the person as an AP, the SD or MSP may no longer permit that person to effect or be involved in effecting swaps on its behalf.

\* \* \*

Please do not hesitate to contact us with any questions.

October 17, 2012