

CLIENT UPDATE

TEMPORARY NO-ACTION RELIEF FROM REPORTING DEADLINE FOR SWAPS SUBJECT TO POST-TRADE ALLOCATIONS

NEW YORK

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On December 13, 2012, the Commodity Futures Trading Commission (the “CFTC”) granted temporary no-action relief to agents from the timing requirements for reporting post-allocation swaps under Regulation 45.3(e). The no-action relief was granted in response to a letter (the “Request Letter”) from the International Swaps and Derivatives Association (“ISDA”) requesting such relief on behalf of its members that intend to register as swap dealers (“SDs”), major swap participants (“MSPs”) and other similarly situated persons.

BACKGROUND

Regulation 45.3(e) sets forth swap data reporting requirements for swaps involving post-execution allocations, which typically are post-trade events whereby an agent (usually an asset manager) allocates a portion of an executed swap to clients who are the actual counterparties to the original transaction.¹

¹ “Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps” (October 10, 2012), issued by Division of Market Oversight staff.
http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswapreporting_faq_final.pdf

For swaps involving allocation, Regulation 45.3(e)(ii)(A) requires agents to inform the reporting counterparty² of the identities of the reporting party's actual counterparties resulting from allocation (the "allocated entities") as soon as technologically practicable after execution, but no later than eight business hours (measured in the location of the reporting counterparty) after execution. The no-action letter defines "business hours" as "consecutive hours during one or more consecutive business days," and notes that the term "business day" includes all calendar days except Saturdays, Sundays and legal holidays, in the location of the reporting counterparty or registered entity reporting data for the swap.

Under Regulation 45.3(e)(ii)(B), the reporting party must, in turn, report all required swap creation data for each swap resulting from allocation to the same swap data repository ("SDR") to which the initial swap transaction is reported, as soon as technologically practicable after it is informed by the agent of the identities of its counterparties.

ISDA REQUEST LETTER

In the Request Letter, ISDA noted that swaps may be transacted across multiple jurisdictions (with different business day/holiday calendars) and time zones, and that an agent allocating such a swap may therefore be unable to inform the reporting counterparty of the identities of the allocated entities within the required timeframe.

ISDA therefore requested that the Division of Market Oversight (the "DMO") not recommend an enforcement action against any agent or reporting counterparty that fails to adhere to the reporting timeframes set forth in Regulation 45.3(e)(ii) if the agent is located in a jurisdiction or time zone different from that of the reporting counterparty and as long as the agent satisfy certain reporting timeframes.

ISDA requested that the DMO maintain such no-action position until at least June 30, 2013, or such earlier time as the CFTC, in consultation with affected market participants, develops means to resolve the timing issues noted in the Request Letter.

NO-ACTION RELIEF

Agent Reporting Obligations under Regulation 45.3(e)(ii)(A)

The no-action letter provides temporary relief from the timing requirements of Regulation 45.3(ii)(A) for agents with reporting duties for a "Cross-Jurisdiction Allocation

² Regulation 45.1 defines "reporting counterparty" as the counterparty required to report swap data under Part 45, selected as provided in Regulation 45.8.

Swap,” which is defined as any swap that involves allocation under Regulation 45.3(e)(ii) and for which (1) the agent is located in a jurisdiction other than the one in which the reporting counterparty is located and (2) the difference between Greenwich Mean Time (GMT) in the location of the agent and the GMT in the location of the reporting counterparty is greater than four hours. The agent’s location for this purpose is the location where the systems and/or personnel of the agent required to consummate the allocation of the swap reside.

The no-action letter provides that, for any Cross-Jurisdiction Allocation Swap, the DMO will not recommend that the CFTC commence an enforcement action against the agent for failure to comply with the timing requirements of Regulation 45.3(e)(ii)(A) if the agent informs the reporting counterparty of the identities of such allocated entities as soon as technologically practicable, but no later than 48 business hours following execution of the Cross-Jurisdiction Allocation Swap, plus an additional 24 business hours for each day of legal holiday³ in the agent’s jurisdiction occurring during such period.

The no-action relief is subject to the requirement that the agent retain a record of (1) the time that it was notified of the need to inform the reporting counterparty of the identities of the allocated entities and (2) the time that it provided such information to the reporting counterparty.

The no-action relief expires no later than 12:01 a.m. eastern time on June 30, 2013 and applies to all agents, regardless of whether they are members of ISDA or intend to register with the CFTC as SDs or MSPs.

Reporting Counterparty’s Reporting Obligations Remain Unchanged

The no-action letter provides that the reporting obligations of a reporting counterparty under Regulation 45.3(e)(ii)(B) remain unchanged by the no-action relief for agents described above. The CFTC explains that, because the timing relief for agents described above provides a deadline for informing the reporting counterparty of the identities of the allocated entities that is measured in the business hours in the location of the reporting counterparty, it permits the reporting counterparty to fulfill its reporting obligations during business hours, measured in the reporting counterparty’s own location.

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³ The no-action letter provides that a “legal holiday” is a public holiday recognized by the national government in the jurisdiction in which the agent is located and for which the agent’s offices are closed.

Please do not hesitate to contact us with any questions.

December 21, 2012