

CLIENT UPDATE

SWAP DATA REPORTING BY END-USERS

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April 10, 2013 is the current date on which “end-users” – swap counterparties that are not swap dealers or major swap participants – are required to start reporting certain new and historical swap transactions¹ under Parts 43, 45 and 46 of the Regulations of the Commodity Futures Trading Commission (the “CFTC”). Subject to certain exceptions,² this compliance date applies to all categories of swap transactions in all asset classes. Part 43 relates to real-time reporting of swap data, while Part 45 relates to reporting of future swap data to a swap data repository and Part 46 relates to reporting of data for historical swaps.

Typically, swap dealers or major swap participants that are parties to swaps with end-users bear the reporting obligations. However, in limited circumstances, end-users will have the primary reporting obligation. For example, a US person that is a financial entity and that transacts a swap with a non-US bank not registered as a swap dealer with the CFTC will have the reporting obligation under Parts

¹ The April 10, 2013 deadline applies not only to real-time reporting and swap data repository reporting under Parts 43 and 45, but also to historical swaps under Part 46. This includes (1) swaps in existence on July 21, 2010 (“pre-enactment swaps”) and (2) swaps entered into on or after July 21, 2010, but before April 10, 2013 (“transition swaps”).

² The real-time reporting requirements under Part 43 do not apply to internal swaps between one-hundred-percent-owned subsidiaries of the same parent entity and portfolio compression exercises, since these swaps are not at arms’ length and thus are not publicly reportable swap transactions under Section 43.2 of the CFTC Regulations.

45 and 46. As another example, a US person that has a swap with an affiliate will have the reporting obligation (although such an inter-affiliate swap is exempt from Part 43 reporting if certain conditions are met). End-users that fall into this category should have a system in place to fulfill their swap data reporting obligations.

A number of no-action request letters have been submitted by various industry end-users requesting that this compliance date be extended. The CFTC has not issued a response to these no-action requests and it is unclear at this time whether the CFTC will grant any of these requests. We will keep you posted on any developments.

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Please do not hesitate to contact us if you have any questions.

March 28, 2013