

# CLIENT UPDATE

## NOTICE REGARDING THE EFFECTIVE DATE OF THE CFTC CLEARING EXEMPTION FOR SWAPS BETWEEN CERTAIN AFFILIATED ENTITIES

### NEW YORK

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Unless an exemption applies, commencing from June 10, 2013, all commodity pools, private funds and persons predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature under section 4(k) of the Bank Holding Company Act, other than third-party subaccounts (collectively, “Category 2 Entities”), must start clearing all of their interest rate swaps and index credit default swaps, entered into with other Category 2 Entities, or with swap dealers, major swap participants or active funds, that are subject to the mandatory clearing requirement.<sup>1</sup>

Today, the Division of Clearing and Risk of the Commodity Futures Trading Commission (the “CFTC”) issued a notice<sup>2</sup> advising swap market-participants that the effective date of the final rule adopting the “Clearing Exemption for Swaps Between Certain Affiliated Entities”<sup>3</sup> has been automatically extended by operation of law from June 10, 2013, to June 18, 2013, due to certain requirements provided by the Congressional Review Act.

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<sup>1</sup> See Appendix A for section 50.4 of the CFTC regulations for a list of the classes of swaps currently required to be cleared.

<sup>2</sup> For the text of the notice, see: <http://cftc.gov/PressRoom/PressReleases/pr6603-13>

<sup>3</sup> For more information about this clearing exemption, please refer to this client update memorandum:

<http://www.debevoise.com/newseventspubs/publications/detail.aspx?id=94387fcb-c231-465f-a8ad-3a47d89e1a44>

Accordingly, to ensure that the parties wishing to benefit from the exemption set forth in the “Clearing Exemption for Swaps Between Certain Affiliated Entities” will not be subject to the clearing requirement from June 10 to June 18, the notice specifies that the effective date of the clearing requirement is also extended until June 18, 2013, with respect to a swap executed between affiliated counterparties that have the status of eligible affiliated counterparties as defined in section 50.52(a) of the CFTC regulations, and elect not to clear such swap.

Please note that this extension of the clearing requirement is only limited to the specific situation described in this advisory notice and does not apply with respect to any other swap activities otherwise subject to clearing (e.g., swaps with unaffiliated parties).

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Please do not hesitate to contact us with any questions.

June 7, 2013

Appendix A

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(2) Is included in a class of swaps identified in § 50.4 of this part, shall submit such swap to any eligible derivatives clearing organization that accepts such swap for clearing as soon as technologically practicable after execution, but in any event by the end of the day of execution.

(b) Each person subject to the requirements of paragraph (a) of this section shall undertake reasonable efforts to verify whether a swap is required to be cleared.

(c) For purposes of paragraph (a) of this section, persons that are not clearing members of an eligible derivatives clearing organization shall be deemed to have complied with

paragraph (a) of this section upon submission of such swap to a futures commission merchant or clearing member of a derivatives clearing organization, provided that submission occurs as soon as technologically practicable after execution, but in any event by the end of the day of execution.

**§ 50.3 Notice to the public.**

(a) In addition to its obligations under § 39.21(c)(1), each derivatives clearing organization shall make publicly available on its Web site a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the Act and this part.

(b) The Commission shall maintain a current list of all swaps that are required to be cleared and all derivatives clearing organizations that are eligible to clear such swaps on its Web site.

**§ 50.4 Classes of swaps required to be cleared.**

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Specification	Fixed-to-floating swap class				
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).	
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.	
Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.	
Optionality	No	No	No	No.	
Dual Currencies	No	No	No	No.	
Conditional Notional Amounts	No	No	No	No.	
Specification	Basis swap class				
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).	
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.	
Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.	
Optionality	No	No	No	No.	
Dual Currencies	No	No	No	No.	
Conditional Notional Amounts	No	No	No	No.	
Specification	Forward rate agreement class				
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).	
Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.	
Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.	
Optionality	No	No	No	No.	
Dual Currencies	No	No	No	No.	
6. Conditional Notional Amounts	No	No	No	No.	
Specification	Overnight index swap class				
Currency	U.S. dollar (USD)	Euro (EUR)	Sterling (GBP).		
Floating Rate Indexes	FedFunds	EOZIA	SONIA.		
Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 2 years.		
Optionality	No	No	No.		
Dual Currencies	No	No	No.		
Conditional Notional Amounts	No	No	No.		

(b) *Credit default swaps.* Swaps that have the following specifications are required to be cleared under section

2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear

such swaps under § 39.5(a) of this chapter.

Specification	North American untranchcd CDS indices class
Reference Entities	Corporate.
Region	North America.
Indices	CDX.NA.IG; CDX.NA.HY.
Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y; CDX.NA.HY: 5Y.
Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
Tranchcd	No.

Specification	European untranchcd CDS indices class
Reference Entities .....	Corporate.
Region .....	Europe.
Indices .....	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.
Tenor .....	iTraxx Europe: 5Y, 10Y. iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
Applicable Series .....	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
Tranchcd .....	No.

**§ 50.5 Swaps exempt from a clearing requirement.**

(a) Swaps entered into before July 21, 2010 shall be exempt from the clearing requirement under § 50.2 of this part if reported to a swap data repository pursuant to section 2(h)(5)(A) of the Act and § 46.3(a) of this chapter.

(b) Swaps entered into before the application of the clearing requirement for a particular class of swaps under §§ 50.2 and 50.4 of this part shall be exempt from the clearing requirement if reported to a swap data repository pursuant to section 2(h)(5)(B) of the Act and either § 46.3(a) or §§ 45.3 and 45.4 of this chapter, as appropriate.

**§ 50.6 Delegation of Authority.**

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, with the consultation of the General Counsel or such other employee or employees as the General Counsel may designate from time to time, the authority:

(1) After prior notice to the Commission, to determine whether one or more swaps submitted by a derivatives clearing organization under § 39.5 falls within a class of swaps as described in § 50.4, provided that inclusion of such swaps is consistent with the Commission's clearing requirement determination for that class of swaps; and

(2) To notify all relevant derivatives clearing organizations of that determination.

(b) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

**§ 50.7–50.9 [Reserved].**

**§ 50.10 Prevention of evasion of the clearing requirement and abuse of an exception or exemption to the clearing requirement.**

(a) It shall be unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the Act or any Commission rule or regulation promulgated thereunder.

(b) It shall be unlawful for any person to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the Act or an exemption or exemption under this chapter.

(c) It shall be unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the Act, including any exemption or exception as the Commission may provide by rule, regulation, or order.

■ 5. Designate § 50.25 under new subpart B under the following heading and add reserved §§ 50.26 through 50.49.

**Subpart B—Compliance Schedule**

Sec. 50.25 Clearing requirement compliance schedule.

50.26–50.49 [Reserved]

■ 6. Add subpart C, consisting of § 50.50, to read as follows:

**Subpart C—Exceptions and Exemptions to Clearing Requirement**

**§ 50.50 Exceptions to the clearing requirement.**

(a) *Non-financial entities.* (1) A counterparty to a swap may elect the exception to the clearing requirement under section 2(h)(7)(A) of the Act if the counterparty:

(i) Is not a “financial entity” as defined in section 2(h)(7)(C)(i) of the Act;

(ii) Is using the swap to hedge or mitigate commercial risk as provided in paragraph (c) of this section; and

(iii) Provides, or causes to be provided, the information specified in paragraph (b) of this section to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission. A counterparty that satisfies the criteria in this paragraph (a)(1) and elects the exception is an “electing counterparty.”

(2) If there is more than one electing counterparty to a swap, the information specified in paragraph (b) of this section shall be provided with respect to each of the electing counterparties.

(b) *Reporting.* (1) When a counterparty elects the exception to the clearing requirement under section 2(h)(7)(A) of the Act, one of the counterparties to the swap (the “reporting counterparty,” as determined in accordance with § 45.8 of this part) shall provide, or cause to be provided, the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(i) Notice of the election of the exception;

(ii) The identity of the electing counterparty to the swap; and

(iii) The following information, unless such information has previously been provided by the electing counterparty in a current annual filing pursuant to paragraph (b)(2) of this section:

(A) Whether the electing counterparty is a “financial entity” as defined in section 2(h)(7)(C)(i) of the Act, and if the electing counterparty is a financial entity, whether it is:

(1) Electing the exception in accordance with section 2(h)(7)(C)(iii) or section 2(h)(7)(D) of the Act; or

(2) Exempt from the definition of “financial entity” as described in paragraph (d) of this section;