



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-48
No-Action
December 11, 2012
Division of Market Oversight

Staff No-Action Relief: Preservation of the Regulatory Status Quo Established with Respect to Certain Transactions by the Commission's Second Amendment to July 14, 2011 Order for Swap Regulation

On July 13, 2012, the Commodity Futures Trading Commission (the "Commission") published a Final Order (the "Second Amendment to July 14, 2011 Order") that, among other things, granted temporary exemptive relief from certain provisions of the Commodity Exchange Act ("CEA") and Commission regulations applicable to certain agreements, contracts, and transactions as a result of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which, as of July 16, 2011, repealed various previously applicable CEA exemptions and exclusions.¹

In pertinent part for the purposes of this current no-action relief, paragraphs (2), (3), and (4) of the Second Amendment to July 14, 2011 Order exempted, subject to certain specified conditions, all agreements, contracts, and transactions in agricultural, exempt and excluded commodities, and any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, from the provisions of the CEA and the Commission's regulations. The Commission's Second Amendment to July 14, 2011 Order, and prior iterations of the July 14, 2011 Order, were adopted to address concerns raised about the applicability of various regulatory requirements to agreements, contracts and transactions after July 16, 2011, and to ensure that industry practices would not be unduly disrupted during the transition to the new Dodd-Frank Act regulatory regime. Those orders were generally structured to permit transactions and relevant persons and entities to continue to rely on various CEA exemptive and excluding provisions in place prior to July 16, 2011 subject to, among other conditions, various anti-fraud and anti-manipulation prohibitions and the expiration of the order's exemptive relief as various Dodd-Frank Act-implementing regulations became effective.

¹ The Second Amendment to July 14, 2011 Order was the Commission's second amendment to an original July 14, 2011 order (the "July 14, 2011 Order") issued by the Commission pursuant to its exemptive authority under CEA section 4(c) and its authority under section 712(f) of the Dodd-Frank Act. 77 FR 41260; 76 FR 42508 (July 19, 2011). The Commission's First Amendment to the July 14, 2011 Order was issued on December 19, 2011. 76 FR 80233 (December 23, 2011).

The Second Amendment to July 14, 2011 Order expires, subject to certain limited exceptions not expected to be triggered at this time, on December 31, 2012.

Given the above-described circumstances and the continued need to ensure that industry practices are not unduly disrupted during the transition to the Dodd-Frank Act regulatory regime, the Division will not recommend that the Commission commence an enforcement action regarding any agreement, contract, or transaction, or any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any such agreement, contract, or transaction, that conforms with the requirements, as set forth in the Commission's Second Amendment to July 14, 2011 Order, located in paragraphs (2) and (4), in connection with agricultural commodities, and, separately, in paragraphs (3) and (4), in connection with exempt and excluded commodities, except as this relief specifically provides herein.

This no-action relief shall expire upon the earlier of: (i) June 30, 2013; or (ii) the effective date of the swap execution facility ("SEF") final rulemaking,² unless a facility relying on this relief³ has filed a designated contract market ("DCM") or SEF registration application on or before the effective date of the SEF final rules, in which case the relief shall remain in place during the pendency of the application.⁴ For these purposes, an application will be considered no longer pending when the application has been approved, granted temporary registration, withdrawn, or denied.

Among other things, this no-action relief is provided to facilities who operate CEA Section 2(d), 2(e), 2(g), 2(h), or 5d-compliant platforms (as those sections were in effect prior to July 16, 2011), as well as any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any agreement, contract, or transaction on such facility.⁵

The no-action relief provided by this letter is consistent with the intent to preserve the regulatory status quo with respect to transactions and persons described in paragraphs (2), (3) and (4) of the Commission's Second Amendment to July 14, 2011 Order and the conditions thereto. The relief

² For these purposes, the phrase "SEF final rulemaking" refers to the expected upcoming final rulemaking to be entitled "Core Principles and Other Requirements for Swap Execution Facilities." That rulemaking would follow from the NPRM "Core Principles and Other Requirements for Swap Execution Facilities." 76 FR 1214 (January 7, 2011).

³ For these purposes, the term "facility" means any person or entity which provides a trading platform which conforms with the requirements of CEA sections 2(d), 2(e), 2(g), 2(h) or 5d, as in effect prior to July 16, 2011.

⁴ Consistent with the extension of this relief provided to a facility that has filed a DCM or SEF application operating during the pendency of the application, the relief provided herein would continue to apply after it otherwise expires due to passage of time (on the earlier of: (i) June 30, 2013; or (ii) the effective date of the SEF final rules), to any person or entity offering, entering into, or rendering advice or rendering other services with respect to, any agreement, contract, or transaction on such facility.

⁵ DMO notes that platforms operating in compliance with CEA Sections 2(d), 2(e), 2(g), 2(h), or 5d (as those sections were in effect prior to July 16, 2011) include, among others, markets operating as exempt commercial markets ("ECMS") and exempt boards of trade ("EBOTs").

provided by this no-action letter does not otherwise affect any Dodd-Frank Act implementing regulations, including any effective and implementation dates therein.

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 excuse affected persons from compliance with any other applicable requirements of the Commodity Exchange Act or the Commission's regulations thereunder, including, as noted above, various anti-fraud and anti-manipulation prohibitions and the expiration of the order's exemptive relief as various Dodd-Frank Act-implementing regulations became effective. 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 regarding the operation of this no-action, please contact David Van Wagner, Chief Counsel, at 202-418-5481, or Riva Spear Adriance, Senior Special Counsel, at 202-418-5494.

Sincerely,

Richard A. Shilts
Acting Director