



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

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Director

CFTC Letter No. 12-10
No-Action
October 10, 2012
Division of Clearing and Risk

Staff No-Action Relief: Preservation of the Regulatory Status Quo With Respect to Swaps Cleared by a DCO (and Related) Collateral

On February 7, 2012 the Commodity Futures Trading Commission (the “Commission”) published final rules implementing Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) statutory provisions on futures commission merchants (“FCMs”) and derivatives clearing organizations (“DCOs”) regarding the treatment of cleared swaps customer contracts (and related collateral), and making conforming amendments to bankruptcy provisions applicable to commodity brokers under the Commodity Exchange Act (the “Final Rules”).¹ In approving those Final Rules, the Commission set the compliance date for the Part 22² rules, which implement the statutory segregation requirements of Section 4d(f) of the Commodity Exchange Act (“CEA”)³ for Cleared Swaps and Cleared Swaps Customer Collateral, as November 8, 2012.⁴

In addition, as the Commission explained in the Final Rules, during the period between the compliance date⁵ for Part 190,⁶ which together with Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code sets forth the insolvency regime applies to the customers of a bankrupt FCM, and the compliance date for Part 22, the Commission limited the definition of 190.01(pp) (“Cleared Swap”) to transactions where the rules or bylaws of a DCO require that such transactions, along with the money, securities, and other property margining, guaranteeing or securing such transactions, be held in a separate account for Cleared Swaps only.⁷

¹ See Protection of Cleared Swaps Customer Contracts and collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336 (Feb. 7, 2012).

² 17 CFR Part 22.

³ 7 U.S.C. §6d.

⁴ See 77 FR at 6362.

⁵ April 9, 2012 (See *id.*)

⁶ 17 CFR Part 190.

⁷ See *id.*

However, certain market participants have asked staff of the Division of Clearing and Risk (the “Division”) whether the statutory segregation requirements for Cleared Swaps and Cleared Swaps Customer Collateral would nonetheless apply between the effective date of the product definitions rule and the November 8, 2012 compliance date for the Part 22 rules.⁸ In light of the Commission’s decision to set the compliance date for the Part 22 rules that implement that statutory collateral segregation requirement as November 8, 2012, and to avoid the possibility of market uncertainty regarding the applicability of statutory requirements concerning collateral margining, guaranteeing or securing cleared swaps as of the effective date of the product definition rules, the Division is taking a no-action position with respect to Section 4d(f)(2), and accordingly, 4d(f) (3), (4), and (6), of the CEA.

This no-action position will be effective on October 11, 2012 (the “Effective Date”). This no-action position will expire on the compliance date for the Part 22 regulations, November 8, 2012 (the “Termination Date”).

Other Matters

The no-action relief provided by this letter is intended to preserve the regulatory status quo with respect to swaps cleared by DCOs, and should be interpreted consistent with that intention. The relief provided by this no-action letter does not otherwise affect any Dodd-Frank Act implementing regulations that the Commission promulgates, including any implementation dates therein. In addition, it does not affect any rule or bylaw of any DCO.

Further, the no-action position taken herein is taken by the Division only and does not bind the Commission or any other Division or Office of the Commission’s staff. 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 their discretion.

If you have any questions regarding this staff no action relief, please contact Robert Wasserman at rwasserman@cftc.gov or (202) 418-5092, or M. Laura Astrada at lastrada@cftc.gov or (202) 418-7622.

Very truly yours,

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Director, DCR

⁸ On August 13, 2012, the Commission and the Securities and Exchange Commission published a joint final rule further defining the products subject to definition under sections 712(d) and 721(c) of the Dodd-Frank Act. This final rule becomes effective on October 12, 2012, at which point market participants will be obligated to comply with certain other of the Commission’s Dodd-Frank Act regulations. See *Second Amendment to July 14, 2011 Order for Swap Regulation*, 77 FR 41260 (July 13, 2012).