



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

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Director

CFTC Letter No. 12-30
No-Action
October 31, 2012
Division of Clearing and Risk

Staff No-Action Relief Temporary Delay of Compliance Date for Part 22 Rules Due to Effects of Hurricane Sandy

On October 12, 2012,¹ the Division of Clearing and Risk (the “Division”) took a no-action position with respect to the statutory collateral segregation requirements of Section 4d(f)(2), and accordingly, 4d(f) (3), (4), and (6), of the CEA, during the period from October 11, 2012 through the compliance date for the Part 22 regulations,² November 8, 2012. As explained in that no-action letter, in approving the Part 22 regulations, 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, the Commodity Futures Trading Commission (the “Commission”) set a compliance date of November 8, 2012.⁴

In light of the damage caused by Hurricane Sandy, and the necessity for Futures Commission Merchants, many of whose operational personnel are focused on business continuity/disaster recovery efforts, to finalize testing for compliance with the Part 22 regulations, the Division is taking a no-action position with respect to the statutory collateral segregation requirements of Section 4d(f)(2), and accordingly, 4d(f) (3), (4), and (6), of the CEA (the “Statutory Segregation Requirements”), during the period from November 8, 2012 to November 13, 2012 (the “No-Action Period”). The Division is also taking a no-action position with respect to Part 22 and will not require the segregation of Cleared Swaps or Cleared Swaps Customer Collateral pursuant to Part 22 during the No-Action Period. Moreover, because November 12, 2012 is a bank holiday, the reporting requirements set forth in regulation 22.11 for Depositing Futures Commission Merchants and Collecting Futures Commission Merchants

¹ See Staff No-Action Relief: Preservation of the Regulatory Status Quo With Respect to Swaps Cleared by a DCO (and Related) Collateral, Division of Clearing & Risk (Oct. 12, 2012).

² 17 CFR Part 22.

³ 7 U.S.C. §6d.

⁴ See Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336, 6362 (Feb. 7, 2012).

should begin on November 14, 2012, using information from the November 13, 2012 settlement cycle.

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 By a parity of reasoning, because of the no-action position taken by the Division with respect to Part 22 and the Statutory Segregation Requirements, during the No-Action Period the definition of 190.01(pp) (“Cleared Swap”) will continue to be limited 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.

Other Matters

The no-action relief provided by this letter is intended to provide a brief extension with respect to the Part 22 requirements, 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

⁵ April 9, 2012 (*See id.*).

⁶ 17 CFR Part 190.

⁷ *See id.*