



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 12-52
No-Action
December 14, 2012
Division of Swap Dealer and Intermediary Oversight

Re: Request for Time-Limited No-Action Relief for Certain Swap Dealers from Compliance with Requirements of Commission Regulation 3.3 Relating to Annual Reports by Chief Compliance Officers

Ladies and Gentlemen:

This letter responds to submissions to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) requesting limited no-action relief from Commission Regulation 3.3¹ for swap dealers that: (1) are required to register by December 31, 2012; (2) are currently regulated by a U.S. prudential regulator or are registrants of the Securities and Exchange Commission (“SEC”); and (3) have a fiscal year-end of December 31, 2012 (“Covered Firms”). Specifically, the requesters seek relief from the requirement that the chief compliance officer (“CCO”) of a Covered Firm prepare an Annual Report, and furnish such Report to the Commission, for the fiscal year that ends on December 31, 2012.

Regulatory Background

Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,² in relevant part, added Section 4s(k) of the Commodity Exchange Act (“Act”),³ which requires each swap dealer and major swap participant to designate an individual to serve as its CCO. Section 4s(k) requires that CCOs perform certain duties and responsibilities, including the preparation of an Annual Report “in accordance with rules prescribed by the Commission.”⁴

¹ 17 CFR 3.3.

² Pub. L. 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. § 1 *et seq.*

⁴ 7 U.S.C. § 4s(k)(3).

To implement that statutory provision, the Commission promulgated Commission Regulation 3.3, which, among other things, requires the designation of a CCO meeting certain qualifications and sets forth the duties and responsibilities of a CCO.⁵ One of the responsibilities of a CCO is to prepare and sign an Annual Report.⁶ The Annual Report must cover the most recently completed fiscal year of the swap dealer, and at a minimum, must contain the information enumerated in Commission Regulation 3.3, including a certification by the CCO or chief executive officer.⁷

The Annual Report generally must be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the swap dealer, simultaneously with the submission of Form 1-FR-FCM, the Financial and Operational Combined Uniform Single Report (“FOCUS Report”), or the financial condition report, as applicable.⁸

However, the actual date on which the first Annual Report must be filed by a swap dealer may vary, depending upon whether the firm is currently regulated by a U.S. prudential regulator or is a registrant of the SEC. For instance, a swap dealer that currently is regulated by a U.S. prudential regulator or is a registrant of the SEC must comply with Commission Regulation 3.3 by the later of October 1, 2012, or the date on which the swap dealer is required to apply for registration.⁹ Thus, pursuant to Commission Regulation 3.3, a CCO of a swap dealer that is required to apply for registration by December 31, 2012, and which has a fiscal year-end of December 31, 2012, will be required to prepare an Annual Report, and furnish such Report to the Commission, by March 31, 2013, or earlier, simultaneously with the submission of Form 1-FR-FCM, the FOCUS Report, or the financial condition report, as applicable.

As noted in communications to the Division by multiple parties, an Annual Report submitted by a Covered Firm will be of limited value to the Commission. The time period that would be addressed in the Annual Report would total, at most, a single day (December 31, 2012). Moreover, each Covered Firm will be required to submit to the National Futures Association (“NFA”), as part of the registration process, the policies and procedures of the Covered Firm establishing its compliance with the CEA and Commission Regulations. The

⁵ Commission Regulation 3.3 is applicable to futures commission merchants, swap dealers, and major swap participants. The relief provided in this no-action letter is not applicable to futures commission merchants and major swap participants, and thus, such firms are not discussed herein.

⁶ 17 CFR 3.3(d)(6).

⁷ 17 CFR 3.3(f)(3).

⁸ 17 CFR 3.3(f)(2).

⁹ See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 Fed. Reg. 20128, 20166 (Apr. 3, 2012).

A swap dealer that is not currently regulated by a U.S. prudential regulator and is not a registrant of the SEC must comply with Commission Regulation 3.3 by the later of March 29, 2013, or the date on which the swap dealer is required to apply for registration. Because the compliance date for such swap dealers occurs after December 31, 2012, the relief provided in this no-action letter does not extend to such firms. *Id.*

adequacy and content of such policies and procedures, and the Covered Firm's compliance therewith, represent major components of the Annual Report.

Time-Limited No-Action Relief Granted

Based on the foregoing and the information provided by multiple parties, the Division will not recommend that the Commission take an enforcement action against a Covered Firm, or a CCO of a Covered Firm, for failing to prepare an Annual Report and furnish such Report to the Commission for the fiscal year that ends on December 31, 2012. This no-action relief is limited only to the Annual Report required to be furnished by a Covered Firm to the Commission for the fiscal year that ends on December 31, 2012.

This letter, and the positions taken herein, represent the view of this Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The relief issued by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in the Act or in the Regulations issued thereunder. Further, this letter, and the relief contained herein, is based upon the representations made to the Division. Any different, changed or omitted material facts or circumstances might render this no-action relief void.

Should you have any questions, please do not hesitate to contact Frank Fisanich, Chief Counsel, at 202-418-5949, or Ward Griffin, Associate Chief Counsel, at 202-418-5425.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
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cc: Regina Thoele, Compliance
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