



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 13-07
No-Action
March 29, 2013
Division of Swap Dealer and Intermediary Oversight

Re: **Time-Limited No-Action Relief for Securitization Vehicles Regarding Compliance with Part 4 of the Commission's Regulations**

Ladies and Gentlemen:

This letter is provided by the Division of Swap Dealer and Intermediary Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") to provide time-limited no-action relief for securitization vehicles that do not satisfy the conditions and criteria set forth in CFTC Staff Letter No. 12-14 or CFTC Staff Letter No. 12-45 with respect to certain provisions of Part 4 of the Commission's regulations.

In CFTC Staff Letter 12-45, the Division stated that, with respect to securitization vehicles that cannot satisfy the terms and conditions of either CFTC Staff Letter No. 12-14 or CFTC Staff Letter No. 12-45, it would not recommend enforcement action against the commodity pool operator of the securitization vehicle for failure to register as such with respect to such securitization vehicle until March 31, 2013.

The Division is also continuing to discuss issues relating to compliance with Part 4 of the Commission's regulations with the securitization industry. Because the Division has not finalized its policy determinations regarding what relief, if any, should be provided to the commodity pool operators of securitization vehicles, the Division has determined that it will not recommend enforcement action against the commodity pool operator of a securitization vehicle for failure to fully comply with Part 4 of the Commission's regulations with respect to that securitization vehicle until June 30, 2013, subject to the terms and conditions below:

1. The commodity pool operator of a securitization vehicle must initiate registration as such through the filing of Forms 7-R and 8-R, as necessary, as well as any fees required, by March 31, 2013;
2. During this period, the commodity pool operator of a securitization vehicle must comply with all provisions of Part 4 of the Commission's regulations, subject to, in the case of the operated securitization vehicle only, the terms and conditions provided in a-g below:

- a. The commodity pool operator of a securitization vehicle comprised of a static pool of assets that does not have either an equity tranche or debt issuances rated lower than BB will not be required to comply with Commission regulation 4.25 with respect to that securitization vehicle ;
 - b. With respect to the calculation of net asset value with respect to the securitization vehicle, fixed income securities rated BB and higher should be treated as debt and all other fixed income securities and equity tranches should be treated as equity;
 - c. With respect to Commission regulation 4.13(a)(3), the commodity pool operator of a securitization vehicle that did not or does not pay any initial margin with respect to the vehicle's swaps positions must use the alternative net notional test under Commission regulation 4.13(a)(3)(ii)(B) to determine eligibility for exemption from registration under that section;
 - d. In lieu of the financial statement requirements under Commission regulation 4.22 for the operated securitization vehicle, the commodity pool operator of that securitization vehicle provides basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, and any swaps held in that securitization vehicle's portfolio, including a discussion of that vehicle's counterparties;
 - e. The commodity pool operator of a securitization vehicle need not comply with the specific requirements of Commission regulations 4.21(b), 4.24(a) and (s), and the requirement under 4.23 that books and records be maintained at the main business office with respect to the operated securitization vehicle;
 - f. The commodity pool operator of a securitization vehicle with an amortizing pool of assets need not comply with Commission regulation 4.25(a)(1)(F) and (G) with respect to the operated securitization vehicle; and
 - g. With respect to the requirement under Commission regulation 4.24(h) that the commodity pool operator of a securitization vehicle disclose the percentage of that securitization vehicle's assets used to trade commodity interests, the commodity pool operator of that securitization vehicle that holds static swap positions must provide full and complete disclosure regarding the swaps positions and their functions within that securitization vehicle in addition to a percentage;
3. The commodity pool operator files notice with the Division using the email address dsionoaction@cftc.gov with the subject line of such email as "Securitization Compliance No-Action."

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act.¹ Therefore, a control number for the collection must be obtained from the Office of Management and Budget. In accordance with 44 U.S.C. § 3507(d) and 5 C.F.R. §§ 1320.8 and 1320.10, the Division will, by separate action, prepare an information collection request for review and approval by OMB, and will publish in the *Federal Register* a notice and request for public comments on the collection burdens associated with the no-action relief. If approved, a securitization vehicle may not rely on the Division's determination not to recommend an enforcement action to the Commission unless the vehicle provides the information the Division has determined is essential to the provision of no-action relief.

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 the affected persons from compliance with any other applicable requirements contained in the Act or in the Commission's regulations issued thereunder. This letter does not create or confer any rights for or obligations on any person or persons subject to compliance with the Commodity Exchange Act that bind the Commission or any of its other offices or divisions. 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 letter void.

Should you have any questions, please do not hesitate to contact Amanda Olear, Special Counsel, at 202-418-5283.

Very truly yours,

Gary Barnett
Director
Division of Swap Dealer and
Intermediary Oversight

cc: Regina Thoele, Compliance
National Futures Association, Chicago

¹ 44 U.S.C. § § 3501 *et. seq.*