



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and
Intermediary Oversight

Gary Barnett
Director

CFTC Letter No. 13-32
No-Action
June 26, 2013
Division of Clearing and Intermediary Oversight

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2001 Pennsylvania Avenue NW
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Washington, DC 20006-1823

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

Dear Ms. Wierzynski:

This letter is in response to your letter, dated June 24, 2013, to the Division of Swap Dealer and Intermediary Oversight (“Division”) of the U.S. Commodity Futures Trading Commission (“Commission”), submitted on behalf of certain member firms of the Futures Industry Association (“FIA”) that are provisionally registered swap dealers (“SDs”).¹ In that letter, you requested no-action relief with respect to compliance with certain requirements in Commission Regulation 3.3 relating to the Chief Compliance Officer (“CCO”) Annual Report (defined below). Your request for no-action relief was limited to SDs that: (1) are not registrants of the Securities and Exchange Commission (“SEC”) or regulated by a U.S. prudential regulator; and (2) ended their fiscal year on March 31, 2013 (“Covered Firms”).

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 SD to designate an individual to serve as its CCO. Section 4s(k) requires that CCOs

¹ The relief provided in this no-action letter is extended to all similarly-situated SDs, subject to the conditions and limitations set forth herein.

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

³ 7 U.S.C. § 1 *et seq.*

perform certain duties and responsibilities, including the preparation of an Annual Report “in accordance with rules prescribed by the Commission.”⁴

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 SD, and at a minimum, must address the issues enumerated in Commission Regulation 3.3, including:

- Contain a description of the written policies and procedures, including the code of ethics and conflicts of interest policies, of the SD;
- Review each applicable requirement under the Act and Commission Regulations, and with respect to each:
 - Identify the policies and procedures that are reasonably designed to ensure compliance with the requirement under the Act and Commission Regulations;
 - Provide an assessment as to the effectiveness of these policies and procedures; and
 - Discuss areas for improvement, and recommend potential or prospective changes or improvements to its compliance program and resources devoted to compliance;
- List any material changes to compliance policies and procedures during the coverage period for the report;
- Describe the financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission Regulations, including any material deficiencies in such resources; and
- Describe any material non-compliance issues identified, and the corresponding action taken.⁷

The Annual Report must also include a certification by the CCO or chief executive officer (“CEO”) of the SD that states that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the Annual Report is accurate and complete.⁸

⁴ 7 U.S.C. § 4s(k)(3).

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(e).

⁸ 17 CFR 3.3(f)(3).

Prior to furnishing the Annual Report to the Commission, the CCO must provide the Annual Report to the board of directors or the senior officer of the SD for its review, and record such action in the board minutes or otherwise, as evidence of compliance with the requirement.⁹

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 SD, 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.¹⁰

However, the actual date on which the first Annual Report must be filed by an SD may vary, depending upon whether the firm is regulated by a U.S. prudential regulator or is a registrant of the SEC. For instance, an SD that is not regulated by a U.S. prudential regulator and is not a registrant of the SEC was required to comply with Commission Regulation 3.3 by the later of March 29, 2013, or the date on which the SD was required to apply for registration.¹¹ Thus, pursuant to Commission Regulation 3.3, a CCO of an SD that was required to apply for registration by December 31, 2012, and which had a fiscal year-end of March 31, 2013, is required to prepare an Annual Report, and furnish such Report to the Commission, by July 1, 2013.¹²

Requested No-Action Relief

On behalf of the Covered Firms, you have requested no-action relief for each Covered Firm that fails to be fully compliant with Commission Regulation 3.3, if the Annual Report prepared by such Covered Firm’s CCO for the fiscal year ending on March 31, 2013, does not satisfy the requirements of Commission Regulation 3.3(e) in its entirety, provided that it satisfies certain requirements. Specifically, you have requested that, with respect to the Section 4s Implementing Regulations to be covered in the Annual Report, Covered Firms need only address those regulations that satisfy all of the following criteria:

- The regulation has an effective compliance date on or before March 31, 2013; and
- No-action relief allowing Covered Firms to delay compliance with the regulation until March 31, 2013, or thereafter has not been issued.

⁹ 17 CFR 3.3(f)(1).

¹⁰ 17 CFR 3.3(f)(2).

¹¹ 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).

¹² The 90-day period ends on a Saturday (June 29, 2013). Accordingly, the deadline for electronically furnishing the Annual Report to the Commission is Monday, July 1, 2013.

Your request included a list of the Section 4s Implementing Regulations that the first Annual Report would be required to cover.¹³

Additionally, you have requested that the Annual Report need only satisfy the following requirements:

- The Annual Report contains the following information:
 - An introduction and an executive summary that contains:
 - A description of the Covered Firm's business.
 - Identification of the CEO and CCO of the Covered Firm.
 - The time period covered by the Annual Report.
 - A review of policies and procedures reasonably designed to ensure compliance with the Commission regulations, as set forth in Schedule 1 of your June 24, 2013 letter requesting no-action relief,¹⁴ as follows:
 - Identification and description of such policies and procedures required as of March 31, 2013.
 - Assessment of the effectiveness of such policies and procedures as of March 31, 2013.
 - Discussion of areas for improvement of such policies and procedures.
 - A description of any material noncompliance issues identified and the corresponding action taken in relation to the Commission regulations set forth in Schedule 1 of your June 24, 2013 letter.¹⁵
 - CEO and/or CCO Certification(s) that states the following: "To the best of my knowledge and reasonable belief, and under penalty of law, the information contained in the attached annual report pertaining to the period from March 29, 2013, through March 31, 2013 is accurate and complete."
- The Annual Report covers the first three months of 2013, but the certification by the CCO and/or CEO is limited to the period from March 29, 2013, through March 31, 2013.
- The Covered Firm satisfies the requirements of Commission Regulations 3.3(f)(1) and (f)(4).

In requesting no-action relief, you note that the legal and compliance resources of swap dealers are severely constrained at the present time, as such firms continue to devote

¹³ Schedule 1 of your June 24, 2013 letter identified the following regulations to be covered in the first Annual Report:

3.1, 3.3, 23.201 (except 23.201(a)(1) and 23.201(b)(3)(ii)), 23.202 (excluding CFTC Letter No. 12-29), 23.203, 23.204, 23.205, 23.400, 23.401, 23.410(a)-(b), 23.431(d), 23.433, 23.434(a)(1), 23.451, 23.500, 23.501, 23.503, 23.506, 23.600, 23.601, 23.602, 23.603, 23.605 (c)-(d), 23.606, 23.607, 23.608, 23.609, 23.610.

¹⁴ For a list of applicable rules, see *id.*

¹⁵ *Id.*

considerable resources toward developing policies and procedures to ensure compliance with all of the Commission regulations implementing Section 4s of the Commodity Exchange Act. You also note that the CCO of a Covered Firm will have very little time to prepare the Annual Report between the compliance date of Regulation 3.3 (March 29, 2013) and the July 1, 2013 deadline for furnishing the Annual Report to the Commission.

Time-Limited No-Action Relief Granted

Based on the foregoing and the representations made in your letter requesting no-action relief, the Division believes that granting time-limited no-action relief is warranted. Accordingly, the Division will not recommend that the Commission take an enforcement action against a Covered Firm that submits an Annual Report for the fiscal year that ends on March 31, 2013, that fails to satisfy the requirements of Commission Regulation 3.3(e) and (f), if, at a minimum, the following conditions are satisfied with respect to such Annual Report:¹⁶

- The Annual Report contains the following information:
 - An introduction and an executive summary that contains:
 - A description of the Covered Firm's business.
 - Identification of the CEO and CCO of the Covered Firm.
 - The time period covered by the Annual Report (*i.e.*, the time period between the date on which the Covered Firm was required to register as a SD, and March 31, 2013).
 - A review of policies and procedures reasonably designed to ensure compliance with the Commission regulations, as set forth in Schedule 1 of your June 24, 2013 letter requesting no-action relief,¹⁷ as follows:
 - Identification and description of such policies and procedures required as of March 31, 2013.
 - Assessment of the effectiveness of such policies and procedures as of March 31, 2013.
 - Discussion of areas for improvement of such policies and procedures.
 - A description of any material noncompliance issues identified and the corresponding action taken in relation to the Commission regulations set forth in Schedule 1 of your June 24, 2013 letter.¹⁸
 - CEO and/or CCO Certification(s) that states the following: "To the best of my knowledge and reasonable belief, and under penalty of law, the information contained in the attached annual report pertaining to the period from March 29, 2013, through March 31, 2013 is accurate and complete."

¹⁶ Although the no-action relief was requested only with respect to paragraph (e) of Regulation 3.3, the Division is providing no-action relief covering paragraph (f) of Regulation 3.3 as well.

¹⁷ See *supra* note 13. As requested in your letter, Covered Firms need only address those regulations that satisfy the following criteria: (1) The regulation has an effective compliance date on or before March 31, 2013; and (2) no-action relief allowing Covered Firms to delay compliance with the regulation until March 31, 2013, or thereafter has not been issued.

¹⁸ *Id.*

- The Annual Report covers the time period from the date on which the Covered Firm was required to apply for registration as an SD, through the Covered Firm's fiscal year end (March 31, 2013), but the CEO/CCO certification is limited to the period from March 29, 2013, through March 31, 2013.
- The Annual Report is electronically furnished to the Commission no later than 90 days after the Covered Firm's fiscal year end.
- The Covered Firm satisfies the requirements of Commission Regulations 3.3(f)(1) and (f)(4).

This no-action relief is limited only to the first Annual Report required to be furnished by a Covered Firm to the Commission for the fiscal year that ends on March 31, 2013.

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,

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