



Division of
Market Oversight

U.S. COMMODITY FUTURES TRADING COMMISSION

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No-Action
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Division of Market Oversight

Time-Limited No-Action Relief: Further Time Delay for Public Dissemination of Long-dated Brent and WTI Crude Oil Swap and Swaption Contracts Executed by or with Southwest Airlines.

This letter is issued by the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”) to provide further time delay for real-time public reporting of long-dated Brent and WTI swap and swaption contracts not subject to the mandatory clearing requirement executed by or with Southwest Airlines (“Southwest”).

Applicable Regulatory Requirements

The Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (the “Dodd-Frank Act”) added to the Commodity Exchange Act (the “CEA”) provisions requiring the retention and reporting of data related to swap transactions. Under new CEA section 2(a)(13)(C), the Commission “is authorized and required to provide by rule for the public availability of swap transaction and pricing data.”

In exercising its statutory mandate, the Commission is authorized under section 2(a)(13)(C)(iii) to prescribe real-time public reporting of swaps not subject to the mandatory clearing requirement “in a manner that does not disclose the business transactions and market positions of any person.”

The Commission published final rules under part 43² of the Commission’s regulations on January 9, 2012.³ The rules implement a framework for the real-time public dissemination of swap transactions and pricing data for all swaps. Section 43.3(a)⁴ provides that a reporting party

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 17 C.F.R. § 43.

³ Real-Time Public Reporting of Swap Transaction Data, 77 Fed .Reg. 1182 (Jan. 9, 2012).

⁴ 17 C.F.R. § 43.5(g).

shall report any publicly reportable swap transaction to a registered swap data repository as soon as technologically practicable after such publicly reportable swap transaction is executed.

The rules contemplated phase-in compliance with the reporting requirements based on market participants, place of execution and underlying asset -- which was the result of feedback from commenters, including commercial end-users. In recognizing these comments, section 43.5(g)⁵ sets forth a time delay for the real-time public dissemination of large notional off-facility swaps in the other commodity asset class not subject to the mandatory clearing requirement with at least one swap dealer or major swap participant counterparty. For Year 1, the time delay for public dissemination is 4 hours⁶ and for Year 2, the time delay is 2 hours following the execution of the swap transaction.⁷

Similarly, Section 43.5(h) sets forth a time delay for the public dissemination of large notional off-facility swaps in all asset classes not subject to the mandatory clearing requirement in which neither counterparty is a swap dealer or a major swap participant. In general, for Year 1, the time delay for public dissemination of such swap transactions is 48 business hours after the execution of the swap⁸; the time delay for such swaps is reduced to 36 business hours for Year 2,⁹ and after Year 2, the public dissemination time delay for such swaps is 24 business hours.¹⁰

In addition, in the preamble to the rules, the Commission acknowledged that swaps transactions in the less liquid markets may be subject to a longer reporting time. In this regard, the Commission explained that “there are bespoke, off-facility transactions in which the underlying asset is a physical commodity; these transactions carry a significantly increased likelihood that the public dissemination of the underlying asset may disclose the identity, business transactions or market positions of a counterparty.”¹¹

Time Delay for Real-time Public Reporting of Brent and WTI Crude Oil Swap and Swaption Contracts

On October 29, 2014, Southwest notified the Division that additional time is necessary to comply with the reporting requirement in §43.3(a) for long-dated Brent and WTI crude oil swap and swaption contracts not subject to the mandatory clearing requirement.

The Division understands that Brent and WTI crude oil swap and swaption market with trading tenors 2 years or longer has few transactions and/or few market participants.

⁵ 17 C.F.R. § 43.5(g).

⁶ 17 C.F.R. § 43.5(g)(1).

⁷ 17 C.F.R. § 43.5(g)(2).

⁸ 17 C.F.R. § 43.5 (h)(1).

⁹ 17 C.F.R. § 43.5(h)(2).

¹⁰ 17 C.F.R. §43.5(h)(3).

¹¹ Id. at 1210.

Accordingly, a shorter reporting timeline may increase the risk that the parties' identities and their business transactions will be released, which may hinder the liquidity providers' ability to lay off risk. The liquidity providers, in turn, are likely to build that risk into their transactions by imposing additional costs on their counterparties. The Division understands that these contracts are traded by or with Southwest.

The Division further understands that if two commercial end-users trade these contracts with each other, one or both sides to the transaction might be left with residual trades to execute in order to match their desired risk profile with their position. Once information on the original trade is released to the public, it is likely to be difficult for the end-user to execute the remainder of its desired trades. This may increase the costs of hedging to Southwest.

Time Limited No-Action Relief

Based on the foregoing, the Division will grant time-limited no-action relief to Southwest and its counterparties to allow additional time to comply with the reporting obligation in §43.3(a), in the context of transactions in long-dated Brent and WTI crude oil swaps and swaptions subject to the following conditions:

- 1) Brent and WTI crude oil swap and swaption contracts executed by or with Southwest are not part of an asset class that is subject to the mandatory clearing requirement;
- 2) The expiration dates of such Brent and WTI crude oil swap and swaption contracts executed by or with Southwest are at least two years out; and
- 3) Such Brent and WTI crude oil swap and swaption contracts executed by or with Southwest must be reported to a Swap Data Repository no later than 15 calendar days after these trades have been executed by Southwest or its counterparties.

During the period of relief, the Division will not recommend that the Commission take any enforcement action against Southwest and/or its counterparties for failure to comply with the real time reporting requirements prescribed in §43.3(a) provided that Southwest and its counterparties are in compliance with the terms and conditions of this no-action letter.

This relief expires upon the Commission's determination that Brent and WTI crude oil swap and swaption contracts are subject to the mandatory clearing requirement and/or upon the Division's determination that there is sufficient liquidity in such contracts and thus a shorter time period for the real-time reporting of such contracts executed by or with Southwest under § 43.3(a) is warranted. Should the Division determine that there is sufficient liquidity in such contracts, the Division will issue a notice of an impending withdrawal of the relief.

This letter, and the no-action positions taken herein, represent the views of the Division only, and do not necessarily represent the positions or views of the Commission or of any other division or office of the Commission's staff. The no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the Commission's regulations thereunder. As with all no-action letters, the Division retains the authority to further condition, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning this letter, please contact Nora Flood, Attorney Advisor, at 202-418-5354.

Sincerely,

Vincent McGonagle
Director
Division of Market Oversight