



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

CFTC Letter No. 14-155
No-Action
December 22, 2014
Division of Clearing and Risk

Mr. Hironaga Miyama
President and Chief Executive Officer
Japan Securities Clearing Corporation
2-1 Nihombashi-Kabuto-cho, Chuo-Ku
Tokyo 103-0026
Japan

Re: Extension of Time-Limited No-Action Relief with regard to Sections 2(h)(1)(A) and 5b(a) of the Commodity Exchange Act and Implementing Regulations Thereunder

Dear Mr. Miyama:

This is in response to your letter dated December 12, 2014 (“Letter”) requesting that the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) extend to December 31, 2015 the no-action relief that the Division granted to Japan Securities Clearing Corporation (“JSCC”) in CFTC Letter 12-56, extended in CFTC Letter 13-73, and that will expire on December 31, 2014 (“No-Action Relief”).¹ In CFTC Letter 13-73, the Division stated that it would not recommend that the Commission take enforcement action against (i) JSCC for failure to register as a derivatives clearing organization (“DCO”) pursuant to the requirements of Section 5b(a) of the Commodity Exchange Act (“CEA”),² or (ii) any JSCC qualified clearing participant, or a parent or affiliate of such clearing participant, for failure to clear certain Japanese yen (“JPY”)-denominated interest rate swaps that are required to be cleared under Section 2(h)(1)(A) of the CEA and Commission regulations, through a registered DCO (“CEA Clearing Requirement”).³

On February 25, 2014, JSCC filed a materially complete application for registration as a DCO with respect to its interest rate swap clearing business (“IRS Clearing Business”). Subsequently, JSCC submitted supplemental information in response to the Division’s questions

¹ CFTC Letter No. 12-56 (Dec. 17, 2012), available at:
<http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-56.pdf>

CFTC Letter No. 13-73 (Dec. 19, 2013), available at:
<http://www.cftc.gov/ucm/groups/public/@newsroom/documents/letter/13-73.pdf>

² 7 U.S.C. 7a-1(a).

³ Commission regulations referred to herein are found at 17 CFR Ch. I (2014).

concerning the application. JSCC has requested that the Division extend its review of the application in order to allow JSCC additional time to address certain differences between U.S. and Japanese law.

The product scope described in the Letter is partially different from the product scope described in CFTC Letter 13-73. First, unlike CFTC Letter 13-73, the Letter does not cover credit default swaps referencing the iTraxx Japan index because JSCC is not currently clearing such swaps for any U.S. person that is a qualified clearing participant of JSCC, or any U.S. person that is a parent or affiliate of such clearing participant. In addition, JSCC has only applied for DCO registration with respect to its IRS Clearing Business. Second, the Letter covers overnight index swaps, which exchange JPY unsecured (overnight) call money rates for JPY fixed rates, and certain JPY-denominated interest rate swaps referencing TIBOR. These overnight index swaps and interest rate swaps referencing TIBOR may be covered by an expanded clearing requirement under the Japanese Financial Instruments and Exchange Act (“FIEA Clearing Requirement”).⁴

The Division has decided to extend the No-Action Relief, pursuant to the conditions described below, until the earlier of the date on which JSCC registers as a DCO with respect to its IRS Clearing Business or December 31, 2015.

Extension of Grant of No-Action Relief

Based on the facts presented and the representations JSCC has made in the Letter, the Division will not recommend that the Commission take enforcement action against (i) JSCC for failure to register as a DCO pursuant to the requirements of Section 5b(a) of the CEA or (ii) any qualified clearing participant of JSCC, or a parent or affiliate of a JSCC qualified clearing participant, for failure to clear a JPY-denominated interest rate swap that is required to be cleared under the CEA Clearing Requirement, through a registered or exempt DCO, subject to the following conditions:

(1) Product Scope. This relief is limited to the swaps designated in this paragraph. JSCC may clear (i) any interest rate swaps covered by the FIEA Clearing Requirement, (ii) overnight index swaps, and (iii) JPY-denominated interest rate swaps referencing TIBOR, provided that JSCC will not accept, and no JSCC qualified clearing participant will offer for clearing through JSCC, the swaps referenced in (i), (ii), and (iii) of this paragraph on behalf of a U.S. customer.

(2) Participant Scope. The no-action relief applies to swaps in which one or more counterparties to the swap is a JSCC qualified clearing participant or a parent or affiliate of a JSCC qualified clearing participant. For purposes of complying with its obligations under the

⁴ CFTC Letter 13-73 included within its product scope JPY-denominated interest rate swaps referencing TIBOR. At the time of the issuance of CFTC Letter 13-73, the FIEA Clearing Requirement did not cover those swaps. Since then, the FIEA Clearing Requirement has been expanded to cover certain JPY-denominated interest rate swaps referencing TIBOR. According to the Letter, on or after January 1, 2015, the FIEA Clearing Requirement may be expanded to cover other JPY-denominated interest rate swaps referencing TIBOR, as well as overnight index swaps.

CEA Clearing Requirement, any JSCC qualified clearing participant, or a parent or affiliate of a JSCC qualified clearing participant, may clear its proprietary, JPY-denominated interest rate swaps that reference LIBOR through JSCC.

(3) Limited Duration. The no-action relief shall expire on the earlier of the date upon which JSCC registers as a DCO with respect to its IRS Clearing Business or December 31, 2015.

(4) Reporting. If a JSCC qualified clearing participant clears through JSCC a swap that has been reported to a Commission-registered swap data repository (“SDR”) pursuant to part 45 of the Commission’s regulations (Swap Data Recordkeeping and Reporting Requirements), then JSCC must report to an SDR, pursuant to part 45, the two swaps resulting from the novation of the swap that had been submitted to JSCC for clearing.⁵

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission’s regulations. In addition, the Division’s position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, 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 its discretion.

Should you have any questions, please do not hesitate to contact Peter A. Kals, Special Counsel, at (202) 418-5466 or pkals@cftc.gov.

Sincerely,

Phyllis P. Dietz
Acting Director

⁵ Pursuant to Commission Regulation 39.12(b)(6), during the clearing process, a swap submitted for clearing to a DCO (the “alpha” swap) is extinguished or terminated, and two new swaps (the “beta” and “gamma” swaps) are created. A DCO must then report the beta and gamma swaps to an SDR under part 45 and associate the unique swap identifier (“USI”) of the alpha swap with the beta and gamma swaps in order for the Commission to confirm that such alpha swap was cleared.

See Statement of the Commission concerning CME Rule 1001 (March 6, 2013), page 6, available at: <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf>

See also Commission Regulation 45.4(a) (“[R]eporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap.”); *see* 77 Fed. Reg. at 2153 (“[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.”); *see also* Commission Regulation 49.11 (Confirmation of data accuracy).