



## U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 15-64  
No-Action  
November 20, 2015  
Division of Swap Dealer and Intermediary Oversight  
Division of Clearing and Risk  
Division of Market Oversight

**Re: No-Action Relief for Swap Transactions between the Foreign Branch of a U.S. Swap Dealer and non-U.S. Persons in a Foreign Jurisdiction other than Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland**

Ladies and Gentlemen:

This letter responds to a request received by the Division of Swap Dealer and Intermediary Oversight, the Division of Clearing and Risk, and the Division of Market Oversight (collectively, the “**Divisions**”) of the Commodity Futures Trading Commission (the “**Commission**”) from Wells Fargo Bank, N.A. (“**Wells Fargo**”) requesting confirmation that the Divisions will not recommend that the Commission take enforcement action against Wells Fargo or its counterparties if Wells Fargo’s London branch (the “**London Branch**”) complies with the relevant requirements applicable to entities domiciled or doing business in certain emerging markets jurisdictions in lieu of complying with the Commission’s Transaction-Level Requirements.<sup>1</sup> Wells Fargo requests such confirmation for swaps entered into with non-U.S. person<sup>2</sup> clients of the London Branch that are neither guaranteed affiliates nor conduit affiliates

<sup>1</sup> For purposes of this letter, the term “Transaction-Level Requirements” refers to the requirements set forth in Commission regulations 23.202, 23.205, 23.500-23.506, 23.610, 23.700-23.704, 37.12, 38.11 and parts 43 and 50. The Divisions note that the Commission has not yet finalized regulations regarding margin for uncleared swaps, and accordingly, this letter does not address margin regulations for uncleared swaps. *See* Exemptive Order Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 43785, 43794 (July 22, 2013).

<sup>2</sup> As used in this letter, the term “U.S. person” has the same meaning as used in the Commission’s Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (the “**Cross-Border Guidance**”), 78 Fed. Reg. 45292, 45316-17 (July 26, 2013), and a person that is not a U.S. person is a “non-U.S. person.”

(as defined in the Cross-Border Guidance) and that are located outside of the jurisdictions<sup>3</sup> for which the Commission has made substituted compliance determinations (“**Foreign Clients**”).

### **Background**

When entering into a swap transaction, a swap dealer (“**SD**”) is required to comply with the Transaction-Level Requirements with respect to the transaction. Transaction-Level Requirements cover a range of requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>4</sup> and the regulations promulgated thereunder. The Transaction-Level Requirements are designed to address risk mitigation, market transparency and counterparty protection.<sup>5</sup>

### **Requested No-Action Relief**

In its letter, Wells Fargo requests that the Divisions confirm that it will not recommend that the Commission initiate an enforcement action against Wells Fargo or its counterparties if the London Branch complies with the relevant requirements applicable to its Foreign Clients in lieu of complying with the Commission’s Transaction-Level Requirements. Wells Fargo represents that the no-action relief is essential to prevent disruption of its international operations and client relationships.

Wells Fargo states that, unlike many other U.S. SDs, its swap dealing business is predominately domestic, and it only conducts swap activity outside the U.S. through one foreign branch, the London Branch. Wells Fargo represents that it operates limited foreign branch activity in several other jurisdictions, but such branches do not have the infrastructure and/or regulatory authority required for engaging in swap dealing activity because the amount of swap dealing activity in each jurisdiction is limited. Wells Fargo represents that its Foreign Clients are foreign banks located in Latin America, the Middle East, Africa and Asia where swap regulatory requirements are not as developed, if at all, in comparison to the Commission’s, and its Foreign Clients are unprepared to comply with the Commission’s Transaction-Level Requirements. According to Wells Fargo, the London Branch, with respect to its Foreign Clients, acts in a capacity similar to that of a foreign branch of other U.S. SDs that is organized in the Foreign Client’s local jurisdiction and that would be eligible for the “5% exemption” described in the Commission’s Cross-Border Guidance.<sup>6</sup>

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<sup>3</sup> Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland.

<sup>4</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 11-203, 124 Stat. 1376 (July 21, 2010).

<sup>5</sup> Cross Border Guidance, 78 Fed. Reg. at 45333-35.

<sup>6</sup> *Id.* at 45,351.

In light of the foregoing reasons, Wells Fargo requests no-action relief permitting the London Branch and its counterparties to comply with the relevant requirements applicable to its Foreign Clients in lieu of the Commission's Transaction-Level Requirements. Wells Fargo requests the no-action relief only with respect to swaps between the London Branch and its Foreign Clients.

### **No-Action Relief**

Based on the foregoing and the representations made by Wells Fargo, the Divisions believe that granting no-action relief is warranted. Accordingly, the Divisions will not recommend that the Commission take an enforcement action against Wells Fargo or the Foreign Client swap counterparties of the London Branch, if Wells Fargo, acting through the London Branch, and its counterparties choose to comply with the relevant transaction-level requirements in the applicable foreign jurisdictions rather than the Transaction-Level Requirements. Such relief is conditioned on the following:

1. The aggregate notional value (expressed in U.S. dollars and measured on a quarterly basis) of the swaps entered into by Wells Fargo with Foreign Clients does not exceed five percent of the aggregate notional value of all of Wells Fargo's swaps; and
2. Wells Fargo maintains records with supporting information to verify that the preceding condition is satisfied and to address any significant risk that may arise from not applying the Transaction-Level Requirements.

In addition, an important basis for this relief is Wells Fargo's representation that it operates limited branch activity outside of London and those other branches do not have the infrastructure and/or regulatory authority to engage in swap dealing activity. Accordingly, the relief provided in this letter will not apply to any swaps executed from and after the date Wells Fargo develops and implements the infrastructure and has the regulatory authority to engage in swap dealing in any of its branches located outside of the jurisdictions where substituted compliance determinations apply.

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 Commodity Exchange Act ("CEA") or the Commission's regulations. In addition, this letter, and the positions taken herein, represent the views of the Divisions only, and do not necessarily represent the positions or views of the Commission or of any other office or division of the Commission. The relief provided by this letter does not excuse persons relying on it from compliance with any other applicable requirements contained in: a) the CEA or in the regulations issued thereunder and b) any other laws and regulatory requirements that apply to the London Branch. Further, this letter, and the relief contained herein, is based upon the representations made to the Divisions. Any different, changed or omitted material facts or circumstances might render this no-action relief void. Finally, as with all no-action letters, the Divisions retain the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

Wells Fargo Bank, N.A.

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Should you have any questions, please contact Erik Remmler, Deputy Director, at (202) 418-7630; or Carmen Moncada-Terry, Special Counsel, at (202) 418-5795.

Very truly yours,

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