

Commodity Futures Trading Commission "CFTC" Issues No-Action Letters

Article By:

James M. Brady

Staff of the Commodity Futures Trading Commission released a series of letters relating to a variety of regulatory changes, including the extraterritorial application of certain CFTC requirements, registration relief, swap reporting requirements and calculation of the *de minimis* threshold.

- **Extraterritoriality.** In CFTC Letters Nos. 12-61 and 12-71, the CFTC's Division of Swap Dealer and Intermediary Oversight (DSIO) granted no-action relief to certain US banks that are wholly owned by foreign entities. Pursuant to the letters, certain foreign-owned US banks are not required to consider the swap dealing activities of their foreign affiliates or the US branches of such affiliates in determining whether the foreign-owned US bank meets the SD *de minimis* exemption requirements, subject to certain conditions. Because the relief is not self-executing, the foreign-owned US bank must file a claim with the CFTC. CFTC Letter No. 12-61 is available [here](#); CFTC Letter No. 12-71 is available [here](#).

Pursuant to CFTC Letter No. 12-63, the CFTC's Division of Clearing and Risk (DCR) granted no-action relief to the Singapore Exchange Derivatives Clearing Limited (SGX-DC) from the requirement to register as a derivatives clearing organization (DCO). SGX-DC's clearing members were also granted relief from futures commission merchant (FCM) registration, subject to certain conditions. Such relief is available until the earlier of December 31, 2013, or the date on which SGX-DC registers as a DCO. CFTC Letter No. 12-63 is available [here](#).

- **IB, CTA, AP and CPO Registration.** Through various letters, DSIO granted relief from registration as introducing brokers (IBs), commodity trading advisors (CTAs), associated persons (APs) or commodity pool operators (CPOs). In CFTC Letter No. 12-70, the DSIO granted relief from IB and CTA registration to SDs and SD employees that engage in support activities on behalf of an affiliated SD or an affiliate that satisfies the *de minimis* exemption, subject to certain conditions. Similarly, unregistered SD affiliates, including employees, are not required to register as IBs or CTAs for engaging in certain affiliate support activities on behalf of an affiliate SD counterparty. The DSIO also confirmed that employees of a dealer that satisfies the *de minimis* exemption are not required to register as IBs. CFTC Letter No. 12-70 is available [here](#).

Pursuant to CFTC Letter No. 12-69, DSIO extended temporary relief previously granted in CFTC

Letter No. 12-15. Persons that would otherwise be required to register as an AP of an FCM, IB, CPO or CTA solely by virtue of swaps activity or involvement with certain IntercontinentalExchange or New York Mercantile Exchange products that are in the process of transitioning from swaps to futures and options contracts are granted temporary registration relief, so long as the FCM, IB, CPO or CTA files the required registration application with National Futures Association (NFA) by March 31, 2013, and the person makes a good-faith effort to comply with the Commodity Exchange Act (CEA) and CFTC regulations relating to AP activities. Such no-action relief will terminate once NFA provides notice that the registration application has been accepted or denied. CFTC Letter No. 12-69 is available [here](#).

In CFTC Letter No. 12-68, DSIO granted no-action relief to entities that are required to register as CPOs or CTAs as a result of the rescission of CFTC Regulation 4.13(a)(4) or the amendment to CFTC Regulation 4.5. DSIO has taken a no-action position with respect to such entities so long as the appropriate registration application was filed with NFA prior to December 31, 2012, and the entity makes a good-faith effort to comply with the CEA and CFTC regulations relating to CPO and CTA activities. Such no-action relief will terminate once NFA provides notice that the registration application has been accepted or denied. CFTC Letter No. 12-68 is available [here](#).

CFTC Letter No. 12-67 provides no-action relief from CPO registration to the operators of funds that invest in any securitization vehicle previously described in CFTC Letter No. 12-45. CFTC Letter No. 12-67 is available [here](#).

- **Certain Swap Reporting Requirements.** Pursuant to CFTC Letter No. 12-66, the CFTC's Division of Market Oversight (DMO) issued a no-action letter providing that CFTC staff will not recommend an enforcement action against an SD with respect to the following: (i) a delay in reporting swaps executed by branches in certain emerging markets; (ii) a delay in reporting aggregate pricing data for exotic/multi-leg swap transactions; (iii) a delay in linking the report made for post-trade allocations, compressions or novations to the unique swap identifier of the previously reported initial swap; and (iv) withholding or incorrect reporting of certain life cycle events. To avail itself of the no-action relief, an SD must meet specific criteria and comply with certain conditions set forth in the no-action letter. DMO will extend this relief until the earlier of April 30, 2013, or the resolution of the technological issues preventing timely compliance. CFTC Letter No. 12-66 is available [here](#).

In two other no-action letters, DMO provided temporary no-action relief from certain reporting requirements under Parts 45 and 46 of the CFTC regulations. In CFTC Letter No. 12-65, DMO granted relief to members of International Swaps and Derivatives Association, Inc. and similarly situated persons from reporting certain non-reporting counterparty information pursuant to Parts 45 and 46, so long as such information is not provided by the non-reporting counterparty and not otherwise available. Such no-action relief is available until April 10, 2013. CFTC Letter No. 12-59 grants no-action relief to reporting counterparties from swap data reporting requirements pursuant to Part 45 for certain off-facility, cleared credit default swaps, subject to certain conditions. Such relief is available until June 30, 2013. CFTC Letter No. 12-65 is available [here](#); CFTC Letter No. 12-59 is available [here](#).

- **Certain Swaps Not Considered in *De Minimis* Calculation.** DSIO also provided relief regarding the inclusion of certain swaps for purposes of determining whether an entity meets the *de minimis* threshold. In CFTC Letter No. 12-62, the DSIO granted relief to any person that fails to include certain compression exercise swaps in its *de minimis* calculation. CFTC Letter No. 12-62 is available [here](#).

DSIO separately provided temporary no-action relief in CFTC Letter No. 12-60 to floor traders from the inclusion of cleared swaps in the *de minimis* calculation. Such relief is available if, among other things, the floor trader enters into the swap using proprietary funds for its own account. The entity seeking relief must have filed a claim with the CFTC by December 31, 2012. Such no-action relief is available until July 1, 2013. CFTC Letter No. 12-60 is available [here](#).

©2025 Katten Muchin Rosenman LLP

National Law Review, Volume III, Number 5

Source URL: <https://natlawreview.com/article/commodity-futures-trading-commission-cftc-issues-no-action-letters>