Published on *The National Law Review* https://natlawreview.com

Commodity Futures Trading Commission (CFTC) Staff Issues New and Extends Current No-Action Relief

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The Commodity Futures Trading Commission recently released two no-action letters (i) extending relief provided to futures commission merchants (FCMs) relating to risk-based limits for bunched orders and (ii) providing relief to eligible treasury affiliates from certain swap clearing requirements.

- **Risk-Based Limits for Bunched Orders**: In CFTC Letter No. 13-21, the Division of Clearing and Risk (DCR) issued a three-month extension of the no-action relief granted by DCR on September 26, 2012, which expired on June 1. This extension allows FCMs an additional three months to comply with the provisions of CFTC Rule 1.73(a)(2)(v)(B) (Bunched Order Rule), requiring ultimate clearing FCMs that clear bunched orders on behalf of an account manager to establish risk-based limits for each customer of the account manager and enter into an agreement in advance with the account manager to screen orders for compliance with such limits. This no-action relief is available to the ultimate clearing FCM and is not available to an FCM that initially clears the bunched order. The initial clearing FCM is required to establish risk-based limits for an applicable bunched order and screen such order to ensure it complies with the established risk-based limits.

CFTC Letter No. 13-21 is available here.

- **Clearing Requirement for Swaps Entered Into by Eligible Treasury Affiliates**: In CFTC Letter No. 13-22, the DCR granted no-action relief to eligible treasury affiliates from certain swap clearing requirements. To qualify as an eligible treasury affiliate under the no-action letter, an entity must, among other requirements, (i) be wholly owned by a non-financial parent company, (ii) be unaffiliated with a swap (and security-based swap) dealer, major swap (and security-based swap) participant or a non-bank financial company that has been designated as systemically important by the Financial Stability Oversight Counsel, and (iii) not be classified as one of several types of financial entities. If an entity meets these criteria, it must also satisfy several conditions in order to receive the no-action relief, including entering into the swap for the sole purpose of hedging or mitigating commercial risk. Additionally, for each swap that an eligible treasury affiliate elects not to clear in reliance on this no-action relief, the reporting counterparty to the transaction must provide certain swap data to a registered swap repository.

CFTC Letter No. 13-22 is available here.

National Law Review, Volume III, Number 161