

## **CFTC Issues No-Action Relief to SEFs and DCMs in Connection with Swaps with Operational or Clerical Errors**

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On April 22, the Commodity Futures Trading Commission's Division of Market Oversight and Division of Clearing and Risk (Divisions) issued CFTC Letter No. 15-24 to provide no-action relief to enable swap execution facilities (SEFs) and designated contract markets (DCMs) to correct operational or clerical errors for swaps that have been submitted for clearing.

The Divisions' straight-through processing guidance of September 2013, formerly required that a swap that was not timely accepted for clearing be declared void *ab initio*. CFTC Letter 13-66, issued in October 2013, modified this requirement to permit the resubmission of trades to a derivatives clearing organization (DCO) where a swap executed on a SEF was rejected by the DCO because of a clerical or operational error, and permitted any such "new" trade to be resubmitted for clearing without execution on a SEF. CFTC Letter No. 14-50, issued in April 2014, provided similar relief to DCMs. CFTC Letter No. 14-62, issued in May 2014, extended this "new trade, old terms" relief to package transactions where the combined trade would have been accepted for clearing, but the processing of one leg of the transaction before the other caused the trader to exceed its credit risk limits and the trade to be rejected for clearing. CFTC Letters Nos. 13-66 and 14-50 expired on June 30, 2014; CFTC Letter No. 14-62 initially was scheduled to expire on September 20, 2014, but was subsequently extended through February 16, 2015.

CFTC Letter No. 15-24 effectively continues the relief that has previously been granted, subject to certain additional conditions, and extends it to permit the correction of errors involving trades that have previously been cleared. Specifically, after a trade has been rejected for clearing for non-credit reasons, a SEF or a DCM may permit a new trade to be executed noncompetitively with terms and conditions that match the original trade's terms and conditions (not including any errors in the original trade). Additionally, this relief applies to a situation where an error has not been discovered until after a swap has been cleared. In such a case, the SEF or DCM may permit prearranged trades between the original parties that (1) offset the swaps carried on the DCO's books and (2) reflect the terms to which the parties originally assented. In both cases, under this relief, the CFTC will not bring an enforcement action as a result of these new trades under CFTC Regulations 37.9(a)(2), 38.500, 37.203 or 38.152 regarding methods of execution or pre-arranged trading.

This relief is subject to the following conditions: (1) the pre-arranged transactions must be only for (a) the correction of an operational or clerical error or omission made by the SEF, DCM, one of the counterparties or an agent of one of the counterparties that caused a trade to be rejected from clearing, or (b) the purpose of offsetting swaps carried on a DCO's books where a clerical or operational error or omission made by the SEF, DCM, a counterparty or its agent is not identified until after the trade has been cleared; (2) the SEF or DCM must have error trade rules that are consistent with CFTC regulations; (3) the new trade must be executed on the SEF or DCM (but may be pre-arranged) and must be submitted for clearing (a) no later than one hour from the issuance of the notice, in the case of swaps rejected for non-credit reasons (CFTC Letter No. 13-66 required this to be accomplished within 30 minutes), or (b) no later than three days after the swap was executed, in the case of "erroneous cleared swaps"; (4) the SEF or DCM must have rules setting forth the conditions under which it will determine that an error has occurred, and the procedures it will follow to execute a new trade subject to this relief; (5) in the case of swaps rejected from clearing for non-credit reasons, if the new transaction is also rejected for clearing, it will be void *ab initio* and the parties will not be provided a second opportunity to submit a new trade; (6) the SEF or DCM must make an affirmative finding that the trade or some term therein resulted from an error; and (7) the SEF or DCM must report the swap transaction data to the relevant swap data repository as soon as technologically practicable after the original trade is rejected by the DCO.

The no-action relief under CFTC Letter No. 15-24 is set to expire on June 15, 2016.

CFTC Letter No. 15-24 is available [here](#).

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