

CFTC Issues Time-Limited No-Action Relief for SEFs and Reporting Counterparties

SEF (Amended No-Action Letter 13-55)

Relief

The CFTC grants relief to SEFs who fail to:

- (1) Transmit swap transaction and pricing data to an SDR as soon as technologically practicable after a publicly reportable swap transaction has been executed on, or pursuant to, the rules of a SEF;
- (2) Report swap creation data, including primary economic term data and confirmation data, to an SDR as soon as technologically practicable; or
- (3) Generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, and prior to the reporting of required swap creation data, and thereafter, transmit the unique swap identifier electronically, at, or as soon as technologically practicable following, the time of execution of the swap, to an SDR, to each counterparty to the swap, and to a Derivatives Clearing Organization, if applicable.

Extension

The relief extends the deadline for SEFs until October 30, 2013 for swaps executed in the FX asset class, and until December 2, 2013 for swaps executed in the equities and other commodity asset classes.

Conditions

In order to obtain relief, the SEF must:

- (1) Report all Part 43 and Part 45 creation data within the Relevant Asset Classes as required by Parts 43 and Parts 45, in the time and manner as set forth in the regulations, either:
 - a. By the Reporting Counterparty, reporting the data to the SDR to which the SEF is required to report, in the time and manner as the SEF is required to report by Parts 43 and 45; or
 - b. For transactions that cannot be reported using (a) above, the SEF may “backload” (report the required data to the appropriate SDR after such time that it would otherwise be required to report) as soon as the SEF is able to report the complete Part 45 creation data set, provided that the SEF reports such transactions as provided in Condition 6 and/or 7 below;
- (2) Retain records with respect to all transactions covered by the relief (i.e., all transactions for which the SEF relied upon any reporting relief provided herein) in this response and make such records available to the Commission for inspection and production;
- (3) Comply with the applicable recordkeeping requirements of § 45.2 and § 37.901 for all swap transactions and make such records available to the Commission for inspection and production immediately upon request;
- (4) Within 10 days of the issuance of this Division letter, submit to the Division via an email to SEFReporting@cftc.gov providing notice of its intent to rely on the time-limited no-action relief provided herein. The notice must specify, in detail, the SEF’s reporting capabilities as it relates to the reporting of Part 43 and Part 45 creation data within the Relevant Asset Classes. The notice must also identify and describe any agreement regarding assistance in reporting of such data (i.e., use of third-party service providers, etc.). The notice must also describe categories of swaps that the SEF is unable to report, as well as the swaps that are included in each category. Categories should be asset class specific and be comprised of groups of swaps with similar characteristics. For each category, the SEF should include the information requested below. The description should include identification of all of the relevant system architecture, software, and connectivity involved in the inability to report.
 - a. A description of the category, asset class and swaps in the category;
 - b. A detailed description of the circumstances creating the inability to report the swaps in the category to a registered SDR, including any relevant unique characteristics of swaps in the category that result in difficulties reporting the swap to an SDR. If circumstances vary by swaps in a category, the SEF should so state;
 - c. A detailed description system architecture and software issues that preclude the SEF from reporting swaps in the category including difficulties:
 - i. Obtaining data from Reporting Counterparties as applicable;
 - ii. Transmitting data elements between internal or external systems (including but not limited to matching or execution systems, middle ware, post-trade services, reporting engines);
 - iii. Reporting the required Part 43 and Part 45 creation data fields to the SDR; and
 - iv. Providing data fields to Reporting Counterparties in an acknowledgment message;
 - d. A detailed technical description of the necessary system architecture and/or programming changes, testing, and other operational workflows necessary to report the swaps in the category to a registered SDR; and
 - e. An approximate timeframe for completion of the changes necessary for the SEF to report all swaps within the category in full compliance with Parts 43 and 45 creation data reporting.

If any information provided in the notice changes subsequent to submission, the SEF must submit an amended notice reflecting such changes as soon as technologically practicable after such changes;

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- (5) Possess a valid CFTC Interim Compliant Identifier (“CICI”) for the SEF, and utilize the CICI for all reporting and recordkeeping requirements;
- (6) With respect to swaps within the FX asset class that are not reported to an SDR, as a result of the SEF’s reliance upon the relief provided herein, the SEF must backload and report to an SDR all required Part 45 creation data, for the period from October 2, 2013, to October 29, 2013, that the SEF would have been required to report pursuant to Parts 43 and 45 in the absence of this no-action relief no later than December 2, 2013; and
- (7) With respect to swaps within the equity and other commodity asset classes that are not reported to an SDR, as a result of the SEF’s reliance upon the relief provided herein, the SEF must backload and report to an SDR all required Part 45 creation data, for the period from October 2, 2013, to December 1, 2013, that the SEF would have been required to report pursuant to Parts 43 and 45 in the absence of this no-action relief no later than January 2, 2014.

Reporting Counterparty (No-Action Letter 13-56)

Relief

The CFTC grants relief to Reporting Counterparties who fail to report the required swap continuation data to an SDR or for errors and omissions in swap continuation data reported to an SDR for uncleared swaps, in the equity, FX and other commodity asset classes that are executed on, or pursuant to, the rules of a SEF and for which the Reporting Counterparty:

- (1) Fails to report required swap continuation data due to the failure of a temporarily registered SEF to provide the Reporting Counterparty with:
 - a. The identity of the SDR to which required creation data for the swaps was reported;
 - b. The unique swap identifier (USI) for the swap; or
 - c. Any other creation data that the Reporting Counterparty requires to enable it to fulfill its obligations to report continuation data for the swap;
- (2) Fails to report required swap continuation data for the swap as a result of a temporarily registered SEF’s reliance on CFTC No-Action Letter No. 13-55;
- (3) Reports required swap continuation data to the SDR which includes errors or omissions that are the result of the circumstances described in (1) above, or that result from errors or omissions in the swap creation data reported to the SDR.

Extension

The relief extends the deadline for Reporting Counterparties until the earlier of: 1) such time as the Reporting Counterparty can fulfill its continuation data reporting obligations; or 2) October 29, 2013 for affected swaps within the FX asset class and December 1, 2013 for affected swaps within the equity and other commodity asset classes.

Conditions

The relief only applies if the Reporting Counterparty:

- (1) Informs the temporarily registered SEF in a timely manner of the circumstances enumerated in (1) through (3) above that preclude the Reporting Counterparty from reporting all required swap continuation data to the SDR, including a description of any related error messages received from the aforementioned SDR.
- (2) Retain records with respect to all transactions covered by the relief.

SEF (No-Action Letter 13-57)

Relief

The CFTC grants relief to SEFs who provide temporary access to Reporting Counterparties who have not signed onboarding documentation, including user agreements and consent to jurisdiction agreements.

Extension

The relief extends the deadline for SEFs until November 1, 2013.

Conditions

The relief only applies to SEFs that are provisionally registered by the previous October 2, 2013 deadline.