

**MEMO# 27807**

December 23, 2013

# **CFTC Issues Cross-Border Substituted Compliance Determinations for Six Jurisdictions and Provides Time-Limited No-Action Relief from Certain Swap Requirements**

[27807]

December 23, 2013

TO: CLOSED-END INVESTMENT COMPANY MEMBERS No. 102-13  
DERIVATIVES MARKETS ADVISORY COMMITTEE No. 89-13  
ICI GLOBAL MEMBERS  
INTERNATIONAL MEMBERS No. 56-13  
INVESTMENT ADVISER MEMBERS No. 77-13  
SEC RULES MEMBERS No. 116-13 RE: CFTC ISSUES CROSS-BORDER SUBSTITUTED COMPLIANCE DETERMINATIONS FOR SIX JURISDICTIONS AND PROVIDES TIME-LIMITED NO-ACTION RELIEF FROM CERTAIN SWAP REQUIREMENTS

On December 20, the Commodity Futures Trading Commission (“CFTC” or “Commission”) approved a series of comparability determinations that would permit substituted compliance with non-U.S. regulatory regimes in lieu of certain swap requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) and CFTC regulations. Under “substituted compliance,” non-U.S. swap dealers (“SDs”) and non-U.S. major swap participants (“MSPs”) would be permitted to comply with their home country regulations if the CFTC finds that a foreign jurisdiction’s requirements are comparable to, and as comprehensive as, the relevant CFTC regulations.

The CFTC issued comparability determinations with respect to certain entity-level requirements (which apply to an SD or MSP firm as a whole) for Australia, Canada, the European Union (“EU”), Hong Kong, Japan, and Switzerland. For the EU and Japan, the Commission also approved substituted compliance for some transaction-level requirements (which apply on a transaction-by-transaction basis). [\[1\]](#) The CFTC published a chart summarizing the entity-level comparability determinations. [\[2\]](#)

On the same day, the CFTC staff also issued two no-action letters providing certain SDs and MSPs established under the laws of Australia, Canada, the EU, Japan and Switzerland with

time-limited relief from some requirements. The first letter provides CFTC-registered SDs and MSPs that are not U.S. persons and that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company with relief from certain requirements of the swap data reporting rules set forth in part 45 and part 46 of the CFTC regulations while the CFTC continues to review the requests for comparability determinations with respect to those jurisdictions. [3] The second letter provides CFTC-registered SDs and MSPs that are non-U.S. persons with time-limited no-action relief from certain internal business conduct requirements that have been excepted from a substituted compliance comparability determination or for which a substituted compliance comparability determination has not been made. [4]

Jennifer S. Choi  
Senior Associate Counsel  
Securities Regulation

#### **endnotes**

[1] For the EU, the CFTC issued comparability determinations for transaction-level requirements under Commission regulations 23.501 (Swap Confirmation), 23.502 (Portfolio Reconciliation), 23.503 (Portfolio Compression), and certain provisions of 23.202 (Daily Trading Records) and 23.504 (Swap Trading Relationship Documentation). For Japan, the CFTC issued comparability determinations for transaction-level requirements under certain provisions of 23.202 (Daily Trading Records) and 23.504 (Swap Trading Relationship Documentation).

[2] The chart is available at <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cptable122013.pdf>. The text of the comparability determinations has not yet been published.

[3] CFTC Letter No. 13-75 (Dec. 20, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-75.pdf>.

[4] CFTC Letter No. 13-78 (Dec. 20, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-78.pdf>.