

**MEMO# 28922**

April 24, 2015

# **CFTC Staff Issues No-Action Letters Providing Relief in Connection with Erroneous Swap Trades and Swap Trade Confirmations**

[28922]

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TO: DERIVATIVES MARKETS ADVISORY COMMITTEE No. 28-15  
ICI GLOBAL TRADING & MARKETS COMMITTEE No. 17-15 RE: CFTC STAFF ISSUES NO-ACTION LETTERS PROVIDING RELIEF IN CONNECTION WITH ERRONEOUS SWAP TRADES AND SWAP TRADE CONFIRMATIONS

On April 22, the staff of the Commodity Futures Trading Commission (“CFTC”) issued two letters intended to support the development of swap execution facilities (“SEFs”) and the trading of swaps on SEFs and designated contract markets (“DCMs”).

## **Erroneous Swap Trades**

The staff issued a no-action letter providing relief for SEFs from certain CFTC regulations to enable SEFs to correct clerical or operational errors of swaps that have been rejected for clearing. [\[1\]](#) Transactions that are rejected from clearing for credit reasons are not covered by this relief. The letter also permits SEFs to correct operational or clerical errors of swaps identified after clearing. The no-action relief, which applies to SEFs and DCMs, expires on June 15, 2016. The CFTC staff expects that SEFs, DCMs, and market participants will use this time to reduce the frequency of errors.

Subject to the conditions described in the no-action letter, after a trade has been rejected for clearing, a SEF or DCM may permit a new trade with terms and conditions that match the terms and conditions of the original trade (other than any such error and time of execution) to be submitted for clearing without having been executed pursuant to methods required in the CFTC regulations. One of the conditions states that the new trade must be submitted for clearing no later than one hour from the issuance of the notice of the rejection by the derivatives clearing organization (“DCO”) to the clearing members. The CFTC staff also provided relief for a situation in which an error is not discovered until after a swap has been cleared. Therefore, after a trade has been cleared and an error is discovered, a SEF or DCM may permit a prearranged trade between the original parties that

offsets the swaps carried on the books of the DCO without that trade having been executed pursuant to the methods required in the CFTC regulations. In addition, the SEF or DCM may permit the original or intended counterparties to enter into a prearranged transaction that reflects the terms to which the parties mutually assented without that trade having been executed pursuant to the methods required in the CFTC regulations. One of the conditions of the no-action letter requires that the new trades occur within three days after the erroneous trade has been accepted for clearing.

## **Swap Trade Confirmations**

The CFTC staff also issued a no-action letter to provide SEFs relief from certain confirmation and recordkeeping requirements until March 31, 2016 for non-cleared swaps. [2] Specifically, subject to the conditions described in the letter, a SEF would be permitted to incorporate by reference terms from previously-negotiated agreements [3] between the counterparties in a confirmation without first having been supplied copies of such agreements. Moreover, the staff will not recommend enforcement action against a SEF for failure to maintain a copy of the agreements incorporated by reference in the SEF's confirmation. Finally, the staff will permit a SEF not to report confirmation data contained solely in the terms of the underlying agreements that are incorporated by reference in the SEF's confirmation. The CFTC staff states, however, that a SEF must continue to report all terms the SEF is currently reporting pursuant to the CFTC rules as of the time of the issuance of the letter even if such terms are contained in the incorporated agreements.

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### **endnotes**

[1] CFTC Letter No. 15-24 (Apr. 22, 2014), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-24.pdf>.

[2] CFTC Letter No. 15-25 (Apr. 22, 2014), available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/15-25.pdf>.

[3] These agreements may include, but are not limited to, the International Swaps and Derivatives Association Master Agreement, the Schedule to the Master Agreement, and the Credit Support Annex to the Master Agreement.