

## Making Sense of All the No-action Swaps Action USA (National/Federal) [Related Content](#)

*Recently, US regulators issued numerous no-action letters and other limited or temporary relief relating to Dodd-Frank Act swaps rules. This update organizes and categorizes these releases to help practitioners make sense of all the activity.*

As the first wave of final Dodd-Frank swap rules approached at year end, regulators scrambled to plug holes in the regulatory framework that became apparent as compliance became a reality for many large swaps traders. In other cases, regulators felt that the market needed more time to prepare for the implementation of final rules or regulators needed more time to evaluate the volume of industry comments on proposed rules. The result: Over the past several weeks, US regulators have issued numerous no-action letters and other releases providing market participants with clarification on, as well as both temporary and permanent relief from compliance with, many Dodd-Frank swaps rules. This update organizes and categorizes these releases to help practitioners make sense of all the activity.

For a calendar of important upcoming Dodd-Frank swap dates, including those discussed in this update, see [Dodd-Frank Swaps Calendar](#).

The no-action letters and other recent relief issued by swaps regulators falls primarily into the following categories:

- **Rules for swap dealers (SDs) and major swap participants (MSPs).** These rules cover the following:
  - compliance delays and exemptions (see [Changes to Compliance Dates for SD/MSP Rules](#)); and
  - SD/MSP calculation exemption clarifications (see [CFTC No-action and Other Relief on Threshold Swap Dealer and MSP Calculation Exclusions](#)).
- **Swap data reporting.** The relief issued in this area covers the following:
  - compliance schedule modifications (see [Further Changes to Swap Data Reporting Compliance Dates Issued by CFTC](#)); and
  - exemptions from certain swap data reporting obligations (see [No-action Relief from Certain Swap Data Reporting Obligations](#)).
- **Commodity pool operator (CPO) registration exemptions.** These apply to certain securitization vehicles and fund of funds (see [No-action Relief from CPO Rules](#)).
- **Revised compliance dates for OCC bank swaps rules** (see [Revised Compliance for OCC Bank Swaps Rules](#)).
- **Associated persons.** Rules on registration of certain swaps-related associated persons (APs) (see [Registration of Associated Persons](#)).
- **Collateral matters** (see [Clarification on Dodd-Frank Cleared Swaps Collateral Matters](#)).
- **ECP rules** (see [Practice Note, The Dodd-Frank Act's Swap Guarantor Rule: Implications for Secured Bank Financings](#)).

Certain letters and certain matters addressed in certain letters which have been superseded or for which relief has expired have been omitted from this update. The relief and other guidance discussed in this Note is also reflected, as applicable, in other relevant PLC Swaps and Derivatives resources.

# Rules for Swap Dealers and MSPs

## Changes to Compliance Dates for SD/MSP Rules

### Further Compliance Delays for Dodd-Frank External Business Conduct (EBC) and Other Swap Dealer Rules

On December 18, 2012, the CFTC approved interim final rules delaying compliance with certain final Dodd-Frank external business conduct (EBC) rules and two other final rules for SDs and MSPs. These final rules, which were scheduled to become effective on January 1, 2013, will now become effective as follows:

- Affected EBC rules: May 1, 2013.
- Swap trading relationship documentation and portfolio compression rules: July 1, 2013.

Affected EBC rules include, among others:

- Know-your-counterparty rules.
- Verification of counterparty eligibility.
- Disclosure of material information.
- Scenario analysis.
- Institutional suitability rules.
- Reliance on representations (safe harbors).

The delay provides SDs and MSPs with additional time to comply with the final rules. For more information, see [Legal Update, Further Compliance Delays for Dodd-Frank External Business Conduct and Other Swap Dealer Rules](#). For details on these rules, including information on compliance through use of the ISDA Dodd-Frank Protocol, see [Practice Note, Swap Dealers and MSPs: Final Dodd-Frank External Business Conduct \(EBC\) Rules](#).

### Swap Data Recordkeeping Compliance Dates

In accordance with CFTC [No-action Letter 12-29](#), compliance by SDs and MSPs with many final swap data recordkeeping rules, including the obligation to record certain swap-related telephone conversations in most major swaps jurisdictions, became effective on March 31, 2013 (see [Legal Update, Swap Data Recordkeeping Compliance Delayed for Swap Dealers and MSPs](#)). However, under [No-action Letter 13-06](#), compliance with certain other swap data recordkeeping rules for SDs and MSPs, including the obligation to keep data on site and searchable, has been delayed until June 30, 2013 (see [Legal Update, CFTC Further Delays Some Swap Data Recordkeeping Rules for SDs and MSPs](#)).

### Exemptions from Final SD/MSP Rules for Non-US Persons

On December 21, 2012, the CFTC issued a final exemptive order and further proposed guidance providing temporary relief from certain cross-border, or extraterritorial, applications of the swaps provisions of the Commodity Exchange Act (CEA) as added under Title VII of the Dodd-Frank Act. Under the exemptive order:

- A non-US person registered with the CFTC as an SD or MSP may delay compliance with certain entity-level requirements of the CEA, which were added by the Dodd-Frank Act.
- Subject to certain conditions, non-US SDs and MSPs and foreign branches of US SDs and MSPs may delay compliance with certain transaction-level requirements of the CEA, which were added by the Dodd-Frank Act.

The exemptive order expires on July 12, 2013. For more information, including details on entity-level and transaction-level requirements, see [Legal Update, Final Dodd-Frank Cross-border Swap Exemptive Order Issued by CFTC](#).

## Permanent SD/MSP Compliance Exemptions

### Exemption from Filing 2012 Annual Compliance Reports

The CFTC issued a [No-action Letter 12-52](#) providing that SDs that meet the following criteria (Covered Firms) and their chief compliance officers (CCOs) need not prepare an annual Dodd-Frank compliance report and furnish such report to the CFTC for the fiscal year which ended on December 31, 2012. Covered Firms are SDs that:

- Were required to register as SDs by December 31, 2012.
- Were, as of the date of the letter, regulated by a US prudential regulator or registrants of the SEC.
- Have a fiscal year-end of December 31, 2012.

The no-action relief is limited only to the annual report required to be furnished by a Covered Firm to the CFTC for the fiscal year that ended on December 31, 2012.

### Exemption from Obligation to Provide Pre-trade Mark for Certain Swaps

The CFTC issued a [No-action Letter 12-58](#) permitting an SD or MSP to enter into certain derivatives transactions without disclosing a pre-trade mid-market mark to its swap counterparty, as otherwise required under CFTC Regulation 23.431(a)(3)(i), in connection with the following transactions (referred to as Covered Derivative Transactions):

- Untranch [credit default swaps](#) (CDS) referencing the on-the-run and most recent off-the run series of the following indices: CDX.NA.IG 5Y, CDX.NA.HY 5Y, iTraxx Europe 5Y and iTraxx Europe Crossover 5yr.
- Interest rate swaps:
  - in the "fixed-for-floating swap class" (as such term is used in Regulation 50.4(a)) denominated in USD or EUR;
  - for which the remaining term to the scheduled termination date is no more than 30 years; and
  - that have the specifications set out in CFTC Regulation 50.4.

This relief is applicable only to pre-trade mid-market marks and does not affect any obligation to provide a daily mark under the final ECB rules (Regulation 23.431(d)). SDs and MSPs also need not disclose the pre-trade mid-market mark for a Covered Derivative Transaction subsequent to the issuance of final CFTC rules on the registration of swap execution facilities (SEFs) provided that real-time executable bid and offer prices for the Covered Derivative Transaction are available on a designated contract market (DCM) or SEF and the counterparty to the Covered Derivative Transaction agrees in advance, in writing, that the SD or MSP need not disclose a pre-trade mid-market mark.

### CFTC No-action and Other Relief on Threshold Swap Dealer and MSP Calculation Exclusions

The CFTC has issued no-action letters and a final order permitting the following to be excluded from SD and MSP threshold calculations:

- **Swaps of non-US persons.** The CFTC issued a final exemptive order and further proposed guidance providing that non-US persons (regardless of whether or not their swap obligations are guaranteed by US persons) may, until July 12, 2013, exclude from their SD and MSP calculations the aggregate gross [notional](#) amount of any swap where the counterparty is a non-US person or any swap where the counterparty is a foreign branch of a US person that is registered (or intends to register by March 31, 2013) as an SD. For details, see [Legal Update, Final Dodd-Frank Cross-border Swap Exemptive Order Issued by CFTC: How Does the Order Impact SD/MSP Threshold Calculations?](#)
- **Swaps of US banks owned by Non-US entities.** The CFTC has also issued [No-action Letter 12-61](#) stating that US banks that are wholly owned by a foreign entity may omit from their *de minimis* SD threshold calculations swap activity from their foreign affiliates. This relief was made permanent under [No-action Letter 12-71](#) issued December 31, 2012, provided the bank meets certain specified criteria and fulfills certain conditions enumerated in the letter.
- **FX swaps and forwards.** These may be permanently excluded, provided the Secretary of the Treasury issued a final exemption for these transactions from the definition of "swap" under the CEA that is effective by December 31, 2012 (see [Legal Update, FX Swaps and Forwards Exempted from Dodd-Frank Clearing and Exchange Trading Requirements](#)). Treasury issued the [final determination](#) effective November 20, 2012.
- **Utility commodity swaps.** The CFTC has issued [No-action Letter 12-18](#) addressing physical commodity swaps such as energy swaps entered into in connection with the utility operations of utility special entities. These swaps need not be counted toward *de minimis* SD thresholds for these entities, up to \$800 million, provided that certain conditions are met, including that the person is not otherwise within the definition of "swap dealer" and that the person is a non-financial entity as defined in the CEA. Note that these swaps still count toward SD thresholds for banks, dealers and other financial institutions.

The CFTC has issued the following additional no-action letters on matters relating to *de minimis* SD threshold calculations:

- [No-action Letter 12-57](#) addressing the treatment of swaps transacted on natural gas exchange for purposes of making calculations under the swap dealer definition.

- [No-action Letter 12-60](#) providing time-limited no-action relief regarding the treatment of swap transactions by persons engaging in floor trader activities, for purposes of making calculations under the swap dealer definition.
- [No-Action Letter 12-62](#) providing relief regarding the treatment of swap transactions arising from multilateral portfolio compression exercises for purposes of making calculations under the swap dealer definition.

## CFTC Temporary Relief on Swap Data Reporting

### Further Changes to Swap Data Reporting Compliance Dates

On December 5, 2012, the CFTC's Division of Market Oversight issued [No-action Letter 12-41](#) delaying swap data reporting requirements for equity, foreign exchange (FX) and commodity swaps (Compliance Date 2 Swaps) due to the effects of Hurricane Sandy. This relief extended the date that SDs must comply with swap data reporting obligations for Compliance Date 2 Swaps to 12:01 a.m. Eastern Time on:

- February 28, 2013 for swap data reporting obligations under final real-time swap data reporting rules (Part 43 of the CFTC's Regulations) and final "SDR" reporting rules (Part 45).
- March 30, 2013 for swap data reporting obligations under final historical swap data reporting rules (Part 46).

Data reporting for these swaps was originally required to begin for SD parties to such swaps on January 10, 2013. For more detail, see [Legal Update, Further Changes to Swap Data Reporting Compliance Dates Issued by CFTC](#) and [Practice Note, US Derivatives Regulation: Practical Guide to Over-the-Counter \(OTC\) Swap Data Reporting: Compliance Dates for Swap Data Reporting Rules](#).

### No-action Relief from Certain Swap Data Reporting Obligations

The CFTC has also issued a number of no-action letters and other relief relating to a variety of swap data reporting rules for certain swaps under certain circumstances. Parties to these swaps should consider these temporary exemptions before providing the required information (see [Checklist, The Dodd-Frank Act: CFTC Swap Data Reporting Required Data Fields](#)), as the obligation to provide some of the information required by the final rules may be temporarily suspended. These apply to:

- **Non-US swaps.** The CFTC has issued an exemptive order exempting until July 12, 2013 non-US SDs and MSPs from compliance with many applicable final rules including many swap data reporting rules (see [Legal Update, Final Dodd-Frank Cross-border Swap Exemptive Order Issued by CFTC](#)).
- **Valuation data reporting.** The CFTC issued [No-action Letter 12-55](#) providing relief to reporting counterparties that are SDs and MSPs until June 30, 2013 from compliance with the requirement to report valuation data for cleared swaps under the final SDR rules (see [Legal Update, Limited No-action Relief from Swap Data Reporting Rules Issued by CFTC: Limited No-action Relief from Swap Data Reporting Rules Issued by CFTC](#)).
- **Bespoke swaps.** The CFTC issued [No-action Letter 12-39](#) providing relief until June 30, 2013 from the obligation to report certain data fields for [bespoke](#) uncleared swaps due to certain technological restrictions (see [Legal Update No-action Relief for Bespoke Swap Data Reporting Issued by CFTC](#)).
- **Prime broker swaps.** The CFTC issued [No-action Letter 12-53](#) providing relief until June 30, 2013 from certain data reporting obligations relating to [prime brokerage](#) swaps (see [Legal Update, Swap Data Reporting Relief for Prime Brokers Issued by CFTC](#)).
- **Unavailable counterparty information.** The CFTC issued [No-action Letter 12-65](#) providing relief until April 10, 2013 to market participants from reporting certain non-reporting counterparty information that may be unavailable to the reporting counterparty at the time of reporting (see [Legal Update, Limited No-action Relief from Swap Data Reporting Rules Issued by CFTC: No-action Relief for Trade Participants from Reporting Certain Identifying Information](#)).
- **Emerging market swaps.** The CFTC issued [No-action Letter 12-66](#) providing relief until April 30, 2013 for delays in reporting data for interest rate and credit swaps (Compliance Date 1 Swaps) executed by branches in emerging market jurisdictions (see [Legal Update, Further Limited Swap Data Reporting Relief for Swap Dealers Issued by CFTC](#)).
- **Certain life-cycle events.** The CFTC issued [No-action Letter 12-66](#) providing relief until April 30, 2013 for failure to report or for incorrect reporting of certain Compliance Date 1 Swap "life cycle" events, including terminations, exercises, partial terminations, partial exercises and credit events (see [Legal Update, Further Limited Swap Data Reporting Relief for Swap Dealers Issued by CFTC](#)).

- **Pricing data and USIs for certain swaps.** The CFTC issued [No-action Letter 12-66](#) providing relief until April 30, 2013 to SDs for delays in reporting aggregate pricing data for exotic/multi-leg Compliance Date 1 Swaps and delays in linking reports made for post-trade swap allocations, compressions or novations to the unique swap identifier (USI) of the previously reported initial Compliance Date 1 Swap. For more detail, see [Legal Update, Further Limited Swap Data Reporting Relief for Swap Dealers Issued by CFTC](#).
- **Certain counterparty LEIs and identifying information.** The CFTC issued [No-action Letter 12-46](#) providing relief until June 30, 2013 from the obligation to report legal entity identifiers (LEIs) and certain other counterparty identifying information, which may be in violation of non-US privacy laws. The relief extends to reporting parties under the final SDR rules, final historical swap data reporting rules and large-trader reporting (see [Legal Update, Legal Opinion Language Issued by CFTC in Connection with LEI No-action Compliance](#)).
- **CDS clearing-related swaps.** The CFTC issued [No-action Letter 12-59](#) providing relief until June 30, 2013 from reporting of swap data for certain specialized "test" CDS, referred to as "CDS clearing-related swaps" (see [Legal Update, Limited No-action Relief from Swap Data Reporting Rules Issued by CFTC: No-action Relief from Reporting of Data on CDS Clearing-related Swaps](#)).

## No-action Relief from CPO Rules

### Expanded CPO Registration Exemption for ABS Issuers

On December 7, 2012, the CFTC's Division of Swap Dealer and Intermediary Oversight (Division) issued [No-action Letter 12-45](#) (12-45 Letter) that:

- Excludes from commodity pool regulations securitization vehicles (issuers of [asset-backed securities](#)) that generally do not use derivatives as a way to obtain investment exposure but rather use derivatives for credit support and/or to alter the payment characteristics of the cash flows from the issuer (see [Practice Note, Securitization: US Overview: Use of Derivatives in Securitization](#)). These exclusions are in addition to those excluded under a [no-action letter](#) issued on October 11, 2012 (12-14 Letter) (see [Legal Update, Dodd-Frank CPO Registration Delayed for ABS Issuers](#)).
- Provides permanent no-action relief from CPO registration and requirements to operators of most securitization vehicles that issued securities only before October 12, 2012, referred to as "legacy vehicles."
- Issues temporary no-action relief until March 31, 2013 to operators of securitization vehicles that do not meet the criteria specified in either the 12-45 Letter or the 12-14 Letter.

In the 12-14 Letter, the Division clarified that if a securitization vehicle receives only limited types of support from swaps and qualifies to use an alternative disclosure regime under [Regulation AB](#) or an exemption from regulation under the [Investment Company Act of 1940](#), then it is excluded from the definition of "commodity pool" under the CEA. The 12-14 Letter therefore excludes these vehicles from the CFTC's commodity pool regulations, including registration and reporting requirements, and operators of the vehicles are exempt from registration as CPOs.

However, the 12-14 Letter was a non-exclusive list of criteria for exemption from the "commodity pool" definition for securitization vehicles. The 12-45 Letter adds to that list certain securitization vehicles that do not strictly meet the criteria listed in the 12-14 Letter. Generally the letters advise that most traditional securitization vehicles will qualify for the exemption. [Synthetic](#) securitizations, such as synthetic [collateralized debt obligations](#) (CDOs), which invest in derivatives, would not qualify.

For more details on which vehicles are exempted, see [Legal Update, CFTC Expands CPO Registration Exemption for ABS Issuers under No-action Letter](#).

### Fund-of-funds CPO Exemption

The CFTC has issued [No-action Letter 12-38](#) providing relief from CFTC CPO registration requirements for fund of funds under CFTC Regulations 4.5 and 4.13(a)(3), which exempt certain regulated persons from CPO registration until the later of:

- June 30, 2013.
- Six months after the CFTC issues revised guidance on the application to fund-of-funds operators of the calculation of *de minimis* thresholds under CFTC Regulation 4.5, which allows certain regulated persons to be excluded from the definition of CPO, and Regulation 4.13(a)(3), which exempts certain regulated persons from CPO registration.

For more information, see [Legal Update, CFTC Issues No-action Relief on Fund-of-funds CPO Registration](#).

## Revised Compliance for OCC Bank Swaps Rules

### Revised Bank Lending Limits Rules

On December 31, 2012, the Office of the Comptroller of the Currency (OCC) extended until July 1, 2013 the temporary exception from revised lending limits rules implemented under Section 610 of the Dodd-Frank Act. Under the revised rules, banks must include exposure from derivatives and securities financing agreements in determining their compliance with single-counterparty exposure limits. The OCC extended the temporary exception to address concerns that national banks and savings and loan associations to which it applies would not have sufficient time to comply with the rules, which were scheduled to become effective on January 1, 2013. For more information, see [Legal Update, OCC Delays Compliance with Revised Bank Lending Limits Rules](#).

### Pushout Rule Compliance Extensions

On January 3, 2013, the OCC issued guidance on how an insured federal depository institution (IDI) may request an additional transition period to implement section 716 of the Dodd-Frank Act, known as the swaps Pushout Rule (or sometimes, the Lincoln Rule), which is set to become effective on July 16, 2013. The Pushout Rule requires federally insured depository institutions to push their swaps trading activity out to separately capitalized affiliates (see [Practice Note, The Dodd-Frank Act's Pushout Rule](#)).

When requested by the banking entity, the applicable banking regulator may initially grant a transition period of up to 24 months, beginning on July 16, 2013, with a possible extension of one additional year. The maximum possible transition period expires on July 16, 2016. During the transition period, IDIs will be allowed to engage in non-exempt swap trading activity. Requests for a transition period must be submitted by January 31, 2013. For more information, see [Legal Update, OCC Offers Swaps Pushout Rule Extensions](#).

**Note that the Swaps Pushout Rule has been amended by federal legislation signed into law by President Obama in December 2014 and will now affect only a limited range of transactions** (see [Legal Update, Dodd-Frank Swaps Pushout Rule Substantially Repealed](#)).

## Registration of Associated Persons

The CFTC has issued [No-action Letter 12-69](#) extending until March 31, 2013 the registration deadline for associated persons (APs) of an FCM, CPO, CTA or introducing broker (IB) for persons who would be APs solely because of:

- The person's swap activity.
- The person's involvement with certain derivatives contracts of the Intercontinental Exchange, Inc. (ICE) or the New York Mercantile Exchange (NYMEX).

The relief is subject to certain conditions, including the filing of an application for registration as an AP on or before March 31, 2013. Note that the CPO, CTA, FCM or IB, as applicable, not the AP, must register the AP.

This relief relates to matters addressed by the CFTC in [No-action Letter 12-15](#).

For information on final CFTC Dodd-Frank rules on associated persons, see [Legal Update, Final Rules on Associated Persons of Swap Dealers and MSPs Issued by CFTC](#).

## Clarification on Dodd-Frank Cleared Swaps Collateral Matters

The CFTC also issued CFTC [Letter 12-31](#) regarding Part 22, which provides clarification on the treatment of cleared swaps customer collateral by FCMs and DCOs. For details on these rules, see [Practice Note, The Dodd-Frank Act: Derivatives Margin Collateral Rules: Segregation of Cleared Swaps Customer Collateral by FCMs and DCOs](#).

## ECP Rules

CFTC [No-action letter 12-17](#) granted a very limited exception from Dodd-Frank rules requiring parties that enter into off-exchange swaps to be [eligible contract participants](#) (ECPs) as defined under the CEA. However, that letter had greater implications, as it clarified the CFTC's position that swap guarantors must also be ECPs. This has important implications for loan guarantees and loan documentation. For more information, see [Practice Note, The Dodd-Frank Act's Swap Guarantor Rule: Implications for Secured Bank Financings](#).

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