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## CFTC Issues Significant Relief from Reporting for Swaps between Members of a Corporate Group

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On Friday, April 5, 2013, the CFTC issued a no-action letter that significantly eases the reporting obligations of members of a corporate group that enter into swaps with their affiliates when no member of the corporate group is a swap dealer (“SD”) or a major swap participant (“MSP”). This relief changes the reporting rules that will otherwise go into effect on April 10, 2013. It does not affect other CFTC requirements, such as mandatory clearing for certain interest rate and credit default swaps, which are being implemented in stages.

Subject to certain conditions outlined below:

### Historical Swaps

Swaps in effect before April 10, 2013 between “wholly-owned affiliates” or “majority-owned affiliates” that are part of a corporate group that does not include an SD or MSP do not have to be reported at all.

- For these purposes (i) “wholly-owned affiliate” means either one company owns 100% of the equity interests in the other or the equity of each must be 100% owned by a common parent and, in either case, the companies must be part of the same consolidated group under U.S. GAAP or IFRS and (ii) “majority-owned affiliate” means either one company owns at least a majority of the equity interests in the other or the equity of each must be at least majority-owned by a common parent and, in either case, the companies must be part of the same consolidated group under U.S. GAAP or IFRS.

### New Swaps

- **Wholly-Owned Affiliates.** New swaps entered into between eligible affiliates do not need to be reported at all.
- **Majority-Owned Affiliates.** New swaps entered into between eligible affiliates must be reported under the SDR reporting system not later than 30 days after the end of each fiscal quarter, including updates on market value and other changes on a quarterly basis.

### Conditions

The relief is subject to several important conditions:

- **Not Subject to Inter-Affiliate Clearing Exemption.** New swaps cannot rely on the exemption from mandatory clearing for affiliates, which is intended to apply mainly to financial entities that are part of the same corporate group and trade with each other.
- **All New Swaps with Unaffiliated Entities Must Be Reported.** All new swaps between either affiliated entity and an unaffiliated entity must be reported pursuant to, or “as if pursuant to,” CFTC reporting rules. The scope of this requirement is not clear, particularly as it relates to swaps that are not otherwise subject to CFTC reporting requirements. For example, reliance on the no-action relief may impose new reporting requirements for swaps between non-U.S. members of a corporate group and non-U.S. dealers that are not registered SDs.

- **Not Cleared or Exchange Traded.** New swaps must not be, and historical swaps must not have been, submitted for clearing or exchange trading, including through any swap execution facility.
- **Recordkeeping.** The affiliates must comply with applicable CFTC recordkeeping requirements, which require, among other things, that transaction records for new and historical swaps be retained for five years following termination.

Here is a link to the CFTC no-action letter: <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-09.pdf>.

Please let us know if you have any questions or would like to discuss.

*This memorandum relates to general information only and does not constitute legal advice. Facts and circumstances vary. We make no undertaking to advise recipients of any legal changes or developments.*

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