

The Financial Markets Lawyers Group

**33 Liberty St., 7th Floor
New York, NY 10045**

Commodity Exchange Act § 2(a)(13) and 4r
Commission Regulations Part 43 and 45

June 28, 2013

Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Commission Action with respect to Reporting of Prime Brokerage Transactions

Dear Ms. Jurgens:

The Financial Markets Lawyers Group (“**FMLG**”) is composed of lawyers who support foreign exchange and other financial markets trading in leading worldwide financial institutions.¹ The FMLG is sponsored by the Federal Reserve Bank of New York.² The FMLG is writing to request that the Commodity Futures Trading Commission (the “**Commission**”) exercise its authority pursuant to Section 2(a)(13), Section 8a(5) and other applicable provisions of the Commodity Exchange Act (“**CEA**”), or take such other action as it deems appropriate, to grant the requests set forth below with respect to uncleared transactions in foreign currencies that constitute “foreign exchange forwards”, “foreign exchange swaps” or “swaps”, within the meaning of, respectively, CEA Sections 1a(24), 1a(25) and 1a(47).

In response to a request from the FMLG, the Commission’s Division of Market Oversight (“**DMO**”) granted no-action relief³ to permit an allocation of responsibilities between a prime broker and an executing dealer, each of which is registered as a swap dealer with the Commission, for Part 43 and Part 45 reporting with respect to the “**ED-PB Swap**” and the “**Mirror Swap**” (as such terms are defined in CFTC Letter No. 12-53) entered into pursuant to a prime brokerage arrangement. In addition, CFTC Letter No. 12-53 permits the prime broker to treat the time of acceptance by the prime broker of the ED-PB Swap associated with the Mirror Swap as the time of execution of the Mirror Swap for purposes of Part 43 and Part 45 reporting of the Mirror Swap.

The DMO stated that it believed such relief was “appropriate to provide staff with the necessary time to further evaluate the relationships and reporting obligations among market participants involved in Prime Brokerage swap transactions” and “[t]herefore, the relief [was] time-limited”, ending in all respects

¹ The FMLG includes members from the following institutions signing on to this letter: Bank of America, NA; Barclays; BNP Paribas; Citigroup Global Markets Inc.; Credit Suisse; Deutsche Bank; Goldman Sachs & Co.; HSBC Securities (USA) Inc. (affiliate member); JP Morgan Chase & Co.; Morgan Stanley; Royal Bank of Canada; Standard Chartered Bank; State Street Bank and Trust Company; The Bank of New York Mellon; UBS AG; U.S. Bank National Association; and Wells Fargo.

² Although the FMLG is sponsored by the Federal Reserve Bank of New York, this request letter is not endorsed by the Federal Reserve Bank of New York or the Federal Reserve System.

³ CFTC Letter No. 12-53 (Dec. 17, 2012).

on or before June 30, 2013. The DMO noted that there may be other reporting methodologies, aside from the allocation of responsibilities specified in CFTC Letter No. 12-53, for parties to fulfill their reporting obligations with respect to prime brokerage transactions.

The rationale for CFTC Letter No. 12-53, however, continues as of this date, as the fundamental issues relating to the reporting of foreign exchange prime brokerage transactions under Part 43 and Part 45 remain unchanged. The bifurcated roles of the prime broker and the executing dealer, and the fact that the ED-PB Swap and the Mirror Swap both correspond to a single price discovery event, are not accommodated in the Part 43 and Part 45 reporting rules in their current form. Dedicated rulemaking to address the reporting obligations of market participants involved in prime brokerage transactions would enable the unique features of prime brokerage to be recognized and provide prime brokers and executing dealers with a clear regulatory framework to comply with their reporting obligations.


In order to allow time for this effort and to avoid interim uncertainty caused by the expiration of CFTC Letter No. 12-53, the FMLG requests that the Commission, through rulemaking or such other action as it deems appropriate, extend the ability of prime brokers and executing dealers to rely on the reporting methodology set out in CFTC Letter No. 12-53, as a non-exclusive means of satisfying their Part 43 and Part 45 reporting obligations until the earlier of December 31, 2013 or the effectiveness of the rulemaking (and the expiration of any associated transition period). The non-exclusive nature of the Commission's action will be vital to those executing dealers who are in the aggregate important liquidity providers, but who may not have the systems capabilities to function under extended CFTC Letter No. 12-53 relief. In any case, FMLG urges the Commission to take account of the Commission's evolving position on cross-border application of its reporting rules in fashioning its action.

We ask that the extension apply to all aspects of the relief granted in CFTC Letter No. 12-53, including in respect of the prime broker's reporting of the USI of the ED-PB Swap. We note that the USI relief by its terms applies only until the requisite functionality is built and is conditioned on amendment of the Mirror Swap report by the prime broker as soon as technologically practicable after it receives the ED-PB Swap USI. Although the industry has made substantial progress in implementing the capability for initial reporting of the ED-PB Swap USI, additional time is warranted due to lack of systems capability among an important segment of executing dealers, as well as lack of systems infrastructure for amending the records of expired Mirror Swaps to include the ED-PB Swap USI, if such amendments are deemed necessary. FMLG members would be glad to discuss the technological challenges of creating such USI linkages with Commission staff.

For the reasons stated above, the FMLG respectfully requests that the Commission take the requested action. Please do not hesitate to contact the FMLG's legal counsel, Joshua Cohn of Mayer Brown LLP, at 212-506-2539 or jcohn@mayerbrown.com, should you have any questions regarding our request.

Sincerely,

The Financial Markets Lawyers Group

By: 
Jeff Lillian