

Expiration of CFTC Cross-Border Exemption May Impact Non-US Swap Trading

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Earlier this year, the Commodity Futures Trading Commission (CFTC) issued Cross-Border Guidance that set out the agency's interpretation on the extent to which CFTC swap regulations would apply outside the U.S.¹ The Cross-Border Guidance also addressed whether the CFTC could permit "substituted compliance" with non-U.S. regulatory regimes in lieu of complying with certain CFTC swap regulations. The CFTC simultaneously issued an exemptive order to relieve swap dealers from compliance with particular CFTC regulations for certain non-U.S. activities and operations while the CFTC considered whether to approve substituted compliance in specific jurisdictions.

On Saturday, December 21, 2013, the CFTC's exemptive order will expire. If the CFTC does not make substituted compliance determinations by that date, the non-U.S. activities and operations of registered swap dealers would no longer be exempt from the CFTC's Cross-Border Guidance.

We understand that the CFTC is working to release substituted compliance determinations for specific jurisdictions, but such determinations may only address a subset of CFTC regulations that are covered by the expiring exemptive order. The CFTC has not announced the scope of its substituted compliance determinations or its expectations for compliance deadlines with CFTC regulations that would not be eligible for substituted compliance.

As swap dealers assess the impact of any CFTC substituted compliance announcements, they may face regulatory uncertainty with respect to their non-U.S. operations and trading activities. This uncertainty also may impact, albeit indirectly, non-U.S. swap market participants that trade with swap dealers outside of the U.S.

We will provide further updates as more information is made available by the CFTC.

¹ You can find Skadden's analysis of the CFTC's Cross-Border Guidance [here](#).