

December 30, 2014

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CFTC Staff Issues Annual Report Advisory and Extends Annual Report and Acknowledgment Letter Deadlines

Annual Report Advisory

On December 22, 2014, the Division of Swap Dealer and Intermediary Oversight (Division) of the U.S. Commodity Futures Trading Commission (CFTC) released an advisory (Advisory) providing guidance to the chief compliance officers (CCOs) of registered swap dealers (SDs), major swap participants (MSPs) and futures commission merchants (FCMs) on the content and format of the annual report required by CFTC Rule 3.3.¹ The Advisory provides recommendations for each of the required elements of the annual report (as enumerated in CFTC Rules 3.3(e)(1) through (5)) and includes a sample chart that can be included in a CCO's annual report in addition to — not as a substitute for — the “complete and substantive discussion” required to be included in the annual report.

In the Advisory, the Division states that its guidance is intended to provide recommendations for “best practices” for future annual report filings, not to establish new regulatory requirements or mandate a specific template, organization or approach for the annual report.² However, the Division also states that it “expects CCOs to make efforts to incorporate [the Advisory] into their current annual report” and that the recommendations and practices described in the Advisory “should be considered for purposes of improving the registrant’s ability to comply effectively and efficiently with the statutory and regulatory requirements ... going forward.”³

Extension of Annual Report Filing Deadline

To provide CCOs with additional time to consider the recommendations in the Advisory, the Division concurrently released a no-action letter providing SDs, MSPs and FCMs, as well as their CCOs, with an additional 30 days for the submission of their annual reports (effectively extending the annual report submission deadline in CFTC Rule 3.3(f)(2) from 60 days to 90 days after the end of the firm’s fiscal year).⁴ This no-action relief only applies to SDs, MSPs and FCMs filing annual reports for fiscal years that end on or before January 31, 2015. The no-action relief provides an additional 30 days (extending the annual report submission deadline to 120 days after the end of the firm’s fiscal year) for the submission of the firm’s annual report as long as the Division is informed of any “material non-compliance events” that occurred during the fiscal year no later than 90 days after the end of the firm’s fiscal year. No relief is provided to SDs, MSPs or FCMs filing annual reports for fiscal years that end after January 31, 2015.

Extension of Acknowledgment Letter Filing Deadline

On December 29, 2014, the Division released a no-action letter extending the deadline for FCMs to submit executed copies of the acknowledgement letters required by CFTC Rules

¹ CFTC Staff Advisory No. 14-153.

² Advisory, p. 2.

³ *Id.*

⁴ CFTC Staff Letter No. 14-154.

1.26, 22.5 and 30.7 until April 30, 2015.⁵ The extension was granted because the CFTC has not yet executed the online access agreements needed to obtain electronic, read-only access to the transaction and account balance information for FCMs' customers from the depositories holding the FCM customer funds (the acknowledgment letter contains a representation that such access has already been granted).

⁵ CFTC Staff Letter No. 14-157.