

## Alert

### Reminder: Swaps Compliance Dates for Commodity Pool Operators and Investment Fund Managers

May 31, 2013

Given the large number of regulatory developments coming from the Commodity Futures Trading Commission, the National Futures Association and other regulatory agencies, we have compiled a short list of important recent and upcoming deadlines facing commodity pool operators and investment advisers. Along with each deadline, the list provides a concise summary of certain actions that may need to be taken and the relevant guidance provided by the applicable regulator.

Date	Topic or Area	Action	Relevant Guidance
<p><b>May 29, 2013</b></p>	<p>Transaction Reporting</p>	<p>A number of CFTC transaction reporting obligations become effective for “reporting counterparties” that are financial entities but are not swap dealers or major swap participants.</p> <p>While fund managers should carefully review their particular circumstances, most investment funds <i>will not be required to report</i> because their counterparty swap dealer will be the “reporting counterparty.” However, funds should carefully consider situations like inter-affiliate swaps, swaps with third-party funds and swaps with non-U.S. persons not registered with the CFTC as swap dealers or major swap participants, all of which may trigger reporting obligations.</p> <p>The reporting obligation generally applies to all swap asset classes, including the following:</p> <ul style="list-style-type: none"> <li>• Foreign exchange swaps;</li> <li>• Equity swaps;</li> <li>• Commodity swaps;</li> <li>• Interest rate swaps;* and</li> <li>• Credit default swaps.*</li> </ul> <p><i>*Obligation in effect from April 10, 2013.</i></p>	<p>CFTC No-Action Letter (“Time-Limited No-Action Relief for Swap Counterparties that are not Swap Dealers or Major Swap Participants, from Certain Swap Data Reporting Requirements of Parts 43, 45 and 46 of the Commission’s Regulations”), April 9, 2013<sup>1</sup></p>

<sup>1</sup> <http://cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-10.pdf>.

Date	Topic or Area	Action	Relevant Guidance
May 30, 2013	Systemic Risk Reporting	Form PF filing deadline for quarterly filers (i.e., funds with regulatory assets under management above \$1.5 billion).	Form PF (with Instructions) <sup>2</sup> Form PF: Frequently Asked Questions <sup>3</sup>
May 30, 2013	Systemic Risk Reporting	Form PQR filing deadline for registered Commodity Pool Operators. Please note the following: <ul style="list-style-type: none"> <li>• <b>(Most) PF filers</b> will only be required to fill out Schedule A and the “Schedule of Investments” in Schedule B.</li> <li>• <b>Non-PF filers with assets under management below \$1.5 billion</b> will have the same requirement for this quarter (i.e., only filling out Schedule A and the Schedule of Investments).</li> <li>• <b>Non-PF filers with assets under management above \$1.5 billion</b> will be required to complete Schedule A, Schedule B, and Part 1 of Schedule C. Part 2 of Schedule C is also required for each fund with a NAV above \$500 million.</li> </ul>	Form PQR <sup>4</sup> NFA Form CPO-PQR Filing System Overview <sup>5</sup>
June 1, 2013	Trading Documentation	When an investment fund manager allocates a transaction on a post-trade basis to multiple funds, the CFTC requires that the manager enter into an agreement with the FCM to screen bunched orders to comply with the FCM’s applicable risk limits. (The Futures Industry Association has published a draft form of agreement for this purpose. <sup>6</sup> ) Industry participants have asked the CFTC for an extension of the June 1 compliance date.	CFTC Rule 1.73(a)(2)(v)
June 10, 2013	Centralized Clearing	<p>“Category 2” entities<sup>7</sup> are required to clear certain specified swaps if one of the counterparties is a U.S. Person:</p> <p><u>Interest Rate Swaps</u></p> <ul style="list-style-type: none"> <li>• Fixed-to-Floating Swap (USD, Euro, Sterling and Yen);</li> <li>• Basis Swap (USD, Euro, Sterling and Yen);</li> <li>• Forward Rate Agreement (USD, Euro, Sterling and Yen); and</li> <li>• Overnight Index Swap (USD, Euro and Sterling).</li> </ul> <p><u>Credit Default Swaps</u></p> <ul style="list-style-type: none"> <li>• North American Untranchcd CDS Indices (CDX.NA.IG and CDX.NA.HY).</li> </ul>	CFTC Rule 50.4 CFTC Rule 50.25(b)

<sup>2</sup> <http://www.sec.gov/about/forms/formpf.pdf>.

<sup>3</sup> <http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml>.

<sup>4</sup> [http://www.nfa.futures.org/NFA-electronic-filings/CPO-PQR\\_CFTC.pdf](http://www.nfa.futures.org/NFA-electronic-filings/CPO-PQR_CFTC.pdf). The version with footnotes/instructions is only available after logging in to ORS.

<sup>5</sup> <http://www.nfa.futures.org/NFA-electronic-filings/PQR-Help.pdf>.

<sup>6</sup> <http://www.futuresindustry.org/downloads/Customer%20Limit%20Screening%20Agreement%205%2020%2013%20FINAL.docx>.

<sup>7</sup> For investment funds, “Category 2” means all commodity pools and private funds which are not active funds (which are “Category 1”). An “active fund” is a private fund that executed, on average, 200 or more swaps per month over the 12-month period preceding a mandatory clearing determination. Managed accounts where the beneficial owner is responsible for clearing documentation are also Category 2.

Date	Topic or Area	Action	Relevant Guidance
June 29, 2013	Transaction Reporting	Investment funds that are “reporting counterparties” commence reporting trade data for foreign exchange swaps, equity swaps and commodity swaps entered into between April 10, 2013 and May 29, 2013. (Interest rate and credit default swaps entered into between those dates are already subject to live reporting.)	CFTC No-Action Letter, April 9, 2013 (cited above)
July 1, 2013	Trading Documentation	Rules related to the March 2013 DF Protocol become effective, <sup>8</sup> including requirements that swap dealers have policies and procedures that address: <ul style="list-style-type: none"> <li>• Swap trading relationships;</li> <li>• Portfolio reconciliation;</li> <li>• Confirmations; and</li> <li>• Portfolio compression.</li> </ul> Fund managers will be asked or required by swap dealers to adhere to the Protocol; they should review the relevant documentation carefully, as it involves elections and representations that may affect the terms of their trading relationships.	Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 Fed. Reg. 55904 (Sept. 11, 2012)
July 12, 2013	“U.S. Person” definition	The temporary “U.S. Person” definition is scheduled to expire on July 12. <sup>9</sup> Many fund managers and their swap dealer counterparties rely on the current definition to determine whether requirements such as mandatory clearing, adhering to the DF Protocols and swaps reporting are required. (The CFTC would most likely need to either release a new definition or extend the current definition past July 12.)	CFTC Exemptive Order (“Final Exemptive Order Regarding Compliance With Certain Swap Regulations”), Jan. 7, 2013 <sup>10</sup>
July 25, 2013	Centralized Clearing	“Category 2” entities will commence clearing the swaps on the following iTraxx European Untranchd CDS Indices if one of the counterparties is a U.S. Person: <ul style="list-style-type: none"> <li>• iTraxx Europe;</li> <li>• iTraxx Europe Crossover; and</li> <li>• iTraxx Europe HiVol.</li> </ul>	CFTC Rule 50.4 CFTC Rule 50.25(b)
Aug. 29, 2013	Systemic Risk Reporting	Form PF filing deadline for quarterly filers (i.e., funds with regulatory assets under management above \$1.5 billion).	Form PF (with Instructions) <sup>11</sup> Form PF: Frequently Asked Questions <sup>12</sup>

<sup>8</sup> See the ISDA protocol: <http://www2.isda.org/functional-areas/protocol-management/protocol/12>.

<sup>9</sup> “Final Exemptive Order Regarding Compliance With Certain Swap Regulations” is available at the following website: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-31736a.pdf>.

<sup>10</sup> <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-31736a.pdf>.

<sup>11</sup> <http://www.sec.gov/about/forms/formpf.pdf>.

<sup>12</sup> <http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml>.

Date	Topic or Area	Action	Relevant Guidance
Aug. 29, 2013	Systemic Risk Reporting	Form PQR filing deadline for registered Commodity Pool Operators (as described above).	Form PQR <sup>13</sup> NFA Form CPO-PQR Filing System Overview <sup>14</sup>
Sept. 9, 2013	Centralized Clearing	<p>“Category 3” entities<sup>15</sup> required to clear for certain specified swaps if one of the counterparties is a U.S. Person:</p> <p><u>Interest Rate Swaps</u></p> <ul style="list-style-type: none"> <li>Fixed-to-Floating Swap (USD, Euro, Sterling and Yen);</li> <li>Basis Swap (USD, Euro, Sterling and Yen);</li> <li>Forward Rate Agreement (USD, Euro, Sterling and Yen); and</li> <li>Overnight Index Swap (USD, Euro and Sterling).</li> </ul> <p><u>Credit Default Swaps</u></p> <ul style="list-style-type: none"> <li>North American Untranchd CDS Indices (CDX.NA.IG and CDX.NA.HY).</li> </ul>	<p>CFTC Rule 50.4</p> <p>CFTC Rule 50.25(b)</p> <p>CFTC Exemptive Order (“Final Exemptive Order Regarding Compliance With Certain Swap Regulations”), Jan. 7, 2013<sup>16</sup></p>
Sept. 30, 2013	Transaction Reporting	Investment funds that are “reporting counterparties” commence reporting trade data for certain swaps entered into prior to April 10, 2013.	CFTC No-Action Letter, April 9, 2013 (Cited above)

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<sup>13</sup> [http://www.nfa.futures.org/NFA-electronic-filings/CPO-PQR\\_CFTC.pdf](http://www.nfa.futures.org/NFA-electronic-filings/CPO-PQR_CFTC.pdf).

<sup>14</sup> <http://www.nfa.futures.org/NFA-electronic-filings/PQR-Help.pdf>.

<sup>15</sup> “Category 3” entities include certain accounts managed by third party investment managers as well as ERISA pension plans.

<sup>16</sup> <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-31736a.pdf>.