DAY PITNEY LLP

alert

May 8, 2013

CFTC External Business Conduct Standards – Temporary Relief with Respect to Certain Foreign Exchange Transactions

A no-action letter issued on May 2 provides swap dealers and major swap participants with temporary relief from compliance with External Business Conduct Standards rules in connection with certain foreign exchange transactions that have a settlement cycle of no more than seven local business days (T+7). The applicable Commodity Futures Trading Commission (CFTC) External Business Conduct Standards rules became effective on May 1, 2013. The no-action relief applies only to transactions executed before September 1, 2013.

In general, a foreign exchange transaction will be considered a bona fide spot transaction if it settles via an actual delivery of the relevant currencies within two business days after the trade date (T+2). However, in some markets the settlement cycle for certain securities conversion transactions can be significantly longer than two business days. The CFTC has recognized such transactions may be considered bona fide spot transactions depending on the customary time line of the relevant market.[1]

The CFTC received information from an industry group that, for administrative ease, some swap dealers were treating all foreign exchange transactions that settle on a greater than T+2 basis as foreign exchange forwards. Although foreign exchange forwards are not regulated as "swaps," the parties to such transactions must conform to the External Business Conduct Standards rules.

The CFTC's Division of Swap Dealer and Intermediary Oversight issued the no-action letter. The stated purpose of the no-action relief is to allow market participants time to develop systems to distinguish between bona fide foreign exchange spot transactions (which are beyond the regulatory jurisdiction of the CFTC) and foreign exchange forwards (i.e., transactions that are not bona fide foreign exchange spot transactions and are subject to the External Business Conduct Standards rules).

The CFTC granted the no-action relief due to concern that parties seeking to transact bona fide foreign exchange spot transactions would find their activities disrupted because their counterparties were treating these

Related practice areas:

Broker-Dealers, Investment Advisers and Commodities Firms

For more information, please contact any of the individuals listed below:

Frank E. Lawatsch Jr. NY, NJ
flawatsch@daypitney.com
(212) 297 5830

Henry Nelson Massey NJ, NY
hmassey@daypitney.com
(973) 966 8105

Eliza Sporn Fromberg NY
efromberg@daypitney.com
(212) 297 5847

Greg H. Kahn NY
gkahn@daypitney.com
(203) 977 7370

Samuel A. Jennings MA, CT, NY
sjennings@daypitney.com
(617) 345 4652

transactions as subject to the External Business Conduct Standards rules. The temporary relief will allow parties engaging in bona fide foreign exchange spot transactions to continue their normal activities (so long as those transactions have a settlement cycle no longer than seven local business days) while spot dealers and major swap participants address operational issues.

Please contact the Day Pitney attorneys listed to the right to discuss any questions you may have about the timing and implementation of the Dodd-Frank swap market reforms.

---

[1] See Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208, 48256-58 (Aug. 13, 2012).

Bar Admissions: Connecticut CT Massachusetts MA New Jersey NJ New York NY