COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AE05

Exemptive Order Regarding Compliance With Certain Swap Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Exemptive order; request for comments.

SUMMARY: On January 7, 2013, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') issued a final order (''January Order'') that granted market participants temporary conditional relief from certain provisions of the Commodity Exchange Act (''CEA''), as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'' or ''Dodd-Frank'') (and Commission regulations thereunder). The January Order expires on July 12, 2013. In this Exemptive Order (''Exemptive Order''), the Commission provides temporary conditional relief effective upon the expiration of the January Order in order to facilitate transition to the Dodd-Frank swaps regime.

DATES: The Exemptive Order is effective July 13, 2013, and will expire December 21, 2013, or such earlier date specified in the Exemptive Order.

ADDRESSES: You may submit comments, identified by RIN number 3038–AE05, by any of the following methods:

- *The agency's Web site:* at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the proposal will be retained in the public comment file and will be considered as required under the Administrative Procedure Act [2] and other applicable laws, and may be accessible under the Freedom of Information Act.[3]

FOR FURTHER INFORMATION CONTACT: Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight, (202) 418–5977, *gbarnett@cftc.gov;* Sarah E. Josephson, Director, Office of International Affairs, (202) 418–5684, *sjosephson@cftc.gov;* Mark Fajfar, Assistant General Counsel, Office of General Counsel, (202) 418–6636, *mfajfar@cftc.gov;* Laura B. Badian, Counsel, Office of General Counsel, (202) 418–5969, *lbadian@cftc.gov;* Evan H. Winerman, Attorney-Advisor, Office of General Counsel, (202) 418–5674, *ewinerman@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act,[4] which amended the CEA [5] to establish a new regulatory framework for swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and data reporting regimes with respect to swaps, including real-time public reporting; and (4) enhancing the Commission's rulemaking and enforcement authorities over all registered entities, intermediaries, and swap counterparties subject to the Commission's oversight. Section 722(d) of the Dodd-Frank Act also amended the CEA to add section 2(i), which provides that the swaps provisions of the CEA apply to cross-border activities when certain conditions are met, namely, when such activities have a ''direct and significant connection with activities in, or effect on, commerce of the United States'' or when they contravene a Commission rulemaking.[6]

In the nearly three years since its enactment, the Commission has finalized 69 actions to implement Title VII of the Dodd-Frank Act. The finalized actions include rules promulgated under CEA section 4s,[7] which address registration of SDs and MSPs and other substantive requirements applicable to SDs and MSPs. Notably, many section 4s requirements applicable to SDs and MSPs are tied to the date on which a person is required to register, unless a later compliance date is specified.[8] A number of other rules specifically applicable to SDs and MSPs have been proposed but are not finalized.[9]

Further, the Commission published for public comment the Proposed Guidance,[10] which set forth the manner in which it proposed to interpret section 2(i) of the CEA as it applies to the requirements under the Dodd-Frank Act and the Commission's regulations promulgated thereunder regarding cross-border swaps activities. Specifically, in the Proposed Guidance, the Commission described the general manner in which it proposed to consider: (1) Whether a non-U.S. person's swap dealing activities are sufficient to require registration as a ''swap dealer,'' [11] as further defined in a joint release adopted by the Commission

[1] *See* 17 CFR 145.9.

[2] 5 U.S.C. 551, *et seq.*

[3] 5 U.S.C. 552.

[4] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

[5] 7 U.S.C. 1 *et seq.* (amended 2010).

[6] 7 U.S.C. 2(i).

[7] 7 U.S.C. 6s.

[8] Examples of section 4s implementing rules that become effective for SDs and MSPs at the time of their registration include requirements relating to swap data reporting (Commission regulation 23.204) and conflicts of interest (Commission regulation 23.605(c)–(d)). The chief compliance officer requirement (Commission regulations 3.1 and 3.3) is an example of those rules that have specific compliance dates. The compliance dates are summarized on the Compliance Dates page of the Commission's Web site. (*http://www.cftc.gov/LawRegulation/DoddFrankAct/ComplianceDates/index.htm*). The Commission's regulations are codified at 17 CFR Ch. 1.

[9] These include rules under CEA section 4s(e),7 U.S.C. 6s(e) (governing capital and margin requirements for SDs and MSPs), and CEA section 4s(l), 7 U.S.C. 6s(l) (governing segregation requirements for uncleared swaps).

[10] Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41214 (Jul. 12, 2012) (''Proposed Guidance'').

[11] 7 U.S.C. 1a(49) (defining the term ''swap dealer'').

and the Securities and Exchange Commission (''SEC'') (collectively, the ''Commissions''); [12] (2) whether a non-U.S. person's swap positions are sufficient to require registration as a ''major swap participant,'' [13] as further defined in the Final Entities Rules; and (3) the treatment of foreign branches, agencies, affiliates, and subsidiaries of U.S. SDs and U.S. branches of non-U.S. SDs. The Proposed Guidance also generally described the policy basis and procedural framework underlying the Commission's determination to allow compliance with a comparable regulatory requirement of a foreign jurisdiction to substitute for compliance with the requirements of the CEA and Commission regulations thereunder. Last, the Proposed Guidance set forth the manner in which the Commission proposed to interpret section 2(i) of the CEA as it applies to the clearing, trading, and certain reporting requirements under the Dodd-Frank Act with respect to swaps between counterparties that are not SDs or MSPs.

Contemporaneously with the Proposed Guidance, the Commission published the Exemptive Order Regarding Compliance With Certain Swap Regulations (''Proposed Order'') [14] pursuant to section 4(c) of the CEA, in order to foster an orderly transition to the new swaps regulatory regime and to provide market participants greater certainty regarding their obligations with respect to cross-border swaps activities prior to finalization of the Proposed Order. The Proposed Order would have granted temporary relief from certain swaps provisions of Title VII of the Dodd-Frank Act.

On January 7, 2013, the Commission published the Final Exemptive Order Regarding Compliance with Certain Swap Regulations (''January Order''),[15] which finalized the Proposed Order, with modifications, and granted temporary relief from certain swaps provisions of Title VII of the Dodd-Frank Act. In particular, the January Order: (1) Applies, for purposes of the January Order, a definition of the term ''U.S. person'' based on the counterparty criteria set forth in CFTC Letter No. 12–22,[16] with certain modifications; (2) provides relief concerning SD de minimis and MSP threshold calculations; (3) classifies, for purposes of the January Order, requirements of the CEA and Commission regulations as either ''Entity-Level Requirements'' or ''Transaction-Level Requirements;'' (4) allows non-U.S. persons that register as SDs or MSPs to delay compliance with certain Entity-Level Requirements and Transaction-Level Requirements; and (5) allows foreign branches of U.S. SDs or MSPs to delay compliance with certain Transaction-Level Requirements. The January Order was effective December 21, 2012, and expires July 12, 2013.

II. Need for Further Exemptive Relief With Request for Comments

In issuing the January Order, the Commission attempted to be responsive to industry's concerns regarding implementation and thereby ensure that market practices would not be unnecessarily disrupted during the transition to the new swaps regulatory regime. At the same time, however, the Commission endeavored to comply with the Congressional mandate to implement the new SD and MSP regulatory scheme in a timely manner. Accordingly, the January Order was carefully tailored both in scope and duration in order to strike the proper balance between these competing demands.

Following the issuance of the January Order, Commission staff addressed various implementation issues through no-action letters and interpretative letters in order to ensure a smooth transition to the new swaps regulatory regime. Furthermore, the Commission and its staff have closely consulted with SEC staff and with foreign regulators in an effort to harmonize cross-border regulatory approaches. As a result, significant progress has been made towards implementation of the Dodd-Frank swaps regime. Under these circumstances, the Commission does not believe that an extension of the January Order is necessary or appropriate. The Commission believes, however, that further transitional relief is necessary in order to avoid unnecessary market disruptions and to facilitate market participants' transition to the new Dodd-Frank swaps regime. Specifically, with the expiration of the January Order, the temporary definition of the term ''U.S. person'' will no longer be available. As a result, market participants will need additional time to adjust their operational and compliance systems in order to incorporate the revised scope of the term ''U.S. person.''

The Commission also recognizes that implementation of the Commission's substituted compliance program would benefit from additional time.[17] Under this ''substituted compliance program,'' the Commission may determine that certain laws and regulations of a foreign jurisdiction are comparable to, and as comprehensive as, a corresponding category of U.S. laws and regulations.[18] A finding of comparability, however, may not be possible at this time for a number of reasons, including that the foreign jurisdiction has not yet implemented or finalized particular requirements and that the Commission does not have sufficient information to make the comparability determinations (''Substituted Compliance Determinations''). Moreover, the Commission has only recently received requests for Substituted Compliance Determinations from parties located in Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland.[19]

The Commission is issuing the Exemptive Order today, with a request for comments, as it is cognizant that, in the absence of immediate exemptive relief, market participants will be faced with significant legal uncertainty and the risk of adverse consequences to their global business, especially in light of the ongoing discussions with foreign regulatory entities and their evolving regulatory regimes. For all of the foregoing reasons, the Commission finds that public notice and comment on this Exemptive Order would be impracticable, unnecessary, and contrary to the public interest.[20]

Because the Commission understands that the transition to the Guidance is complex and could apply in varied ways to different situations, the Commission is seeking public comment on any issues that are not fully addressed by the Exemptive Order. Thus, the Exemptive Order is effective as of July 13, 2013, and the Commission is soliciting comments for 30 days. The

[12] *See* Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant,' 77 FR 305969 (May 23, 2012) (''Final Entities Rules'').

[13] 7 U.S.C. 1a(33) (defining the term ''major swap participant'').

[14] 77 FR 41110 (Jul. 12, 2012).

[15] 78 FR 858 (Jan. 7, 2013).

[16] CFTC Division of Swap Dealer and Intermediary Oversight, Re: Time-Limited No-Action Relief: Swaps Only With Certain Persons to be Included in Calculation of Aggregate Gross Notional Amount for Purposes of Swap Dealer De Minimis Exception and Calculation of Whether a Person is a Major Swap Participant, No-Action Letter No. 12–22 (Oct. 12, 2012).

[17] *See* Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, (''Guidance''), adopted concurrently with the Exemptive Order.

[18] As stated in the Guidance, any comparability analysis will be based on a comparison of specific foreign requirements against specific related CEA provisions and Commission regulations in 13 categories of regulatory obligations, considering certain factors described in the Guidance.

[19] The Commission notes that of 78 SDs and two MSPs registered as of June 14, 2013, 33 SDs are from six non-U.S. jurisdictions: Twenty from the European Union; five from Australia; five from Canada; one from Japan; one from Hong Kong; and one from Switzerland.

[20] *See* 5 U.S.C. 553(b)(B).

Commission will take into consideration arguments made in all comments received and make adjustments to the Exemptive Order, as necessary.

In summary, like the January Order, the Exemptive Order will provide targeted, time-limited relief from certain Dodd-Frank requirements to facilitate an orderly transition to the Dodd-Frank regulatory regime, while, at the same time, ensuring that the Dodd-Frank swaps market reform is implemented without undue delay.

III. Scope of Exemptive Order

A. Definition of ''U.S. Person'' and Phase-In of Guaranteed Affiliates and ''Affiliate Conduits''

As discussed above, the Commission recognizes that market participants may need additional time to facilitate their transition to the interpretation of the term ''U.S. person.'' Accordingly, under the Exemptive Order, the definition of the term ''U.S. person'' contained in the January Order will continue to apply from July 13, 2013 (the date on which the Exemptive Order is effective) until 75 days after the Final Guidance is published in the **Federal Register**. The Commission expects that this step, and the other relief provided in this Exemptive Order, will substantially address concerns regarding the complexity of implementing the swap requirements for the interim period during which the Exemptive Order is in effect. In addition, guaranteed affiliates and affiliate conduits do not need to comply with Transaction-Level Requirements relating to swaps with non-U.S. persons and foreign branches of U.S. swap dealers and MSPs until 75 days after the Final Guidance is published in the **Federal Register**.

B. De Minimis Calculation

The Commission has adopted final rules and interpretive guidance implementing the statutory definitions of the terms ''swap dealer'' and ''major swap participant'' in CEA sections 1a(49) and 1a(33).[21] The Final Entities Rules delineate the activities that cause a person to be an SD and the level of swap positions that cause a person to be an MSP. In addition, the Commission has adopted rules concerning the statutory exceptions from the definition of an SD, including the de minimis exception.[22] Commission regulation 1.3(ggg)(4) sets forth a de minimis threshold of swap dealing, which takes into account the notional amount of a person's swap dealing activity over the prior 12 months.[23] When a person engages in swap dealing transactions above that threshold, the person meets the SD definition in section 1a(49) of the CEA.[24] Commission regulations 1.3(jjj)(1) and 1.3(lll)(1) set forth swap position thresholds for the MSP definition in Commission regulation 1.3(hhh). When a person holds swap positions above those thresholds, such person meets the MSP definition in section 1a(39) of the CEA.

As described in the January Order, the Commission believed it appropriate to provide, during the pendency of the Commission's cross-border interpretive guidance, temporary relief for non-U.S. persons (regardless of whether the non-U.S. persons' swap obligations are guaranteed by U.S. persons) from the requirement that a person include all its swaps in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for SD purposes or in its calculations for MSP purposes.[25] In order to facilitate an orderly transition to the revised scope of the term ''U.S. person,'' the Exemptive Order provides that until 75 days after the Guidance is published in the **Federal Register**, a non-U.S. person (regardless of whether the non-U.S. person's swaps obligations are guaranteed by U.S. persons) does not need to include in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4) or in its calculation of whether it is an MSP for purposes of Commission regulation 1.3(hhh), any swaps where the counterparty is a non-U.S. person, or any swap where the counterparty is a foreign branch of a U.S. person that is registered as a swap dealer.

C. Aggregation

Commission regulation 1.3(ggg)(4) requires that a person include, in determining whether its swap dealing activities exceed the de minimis threshold, the aggregate notional value of swap dealing transactions entered by its affiliates under common control. Under the January Order, a non-U.S. person that is engaged in swap dealing activities with U.S. persons as of the effective date of the January Order is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of its U.S. affiliates under common control.[26] Further, a non-U.S. person that is engaged in swap dealing activities with U.S. persons as of the effective date of the January Order and is an affiliate under common control with a person that is registered as an SD is also not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of any non-U.S. affiliate under common control that is either (i) engaged in swap dealing activities with U.S. persons as of the effective date of the January Order or (ii) registered as an SD. Also, under the January Order, a non-U.S. person is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing

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promulgate regulations to establish factors with respect to the making of this determination to exempt.'' This provision is implemented in Commission regulation 1.3(ggg)(4).

[21] 7 U.S.C. 1a(49) and 1a(33). *See* Final Entities Rules.

[22] Section 1a(49)(D) of the CEA, 7 U.S.C. 1a(49)(D), provides that ''[t]he Commission shall exempt from designation as a swap dealer an entity that engages in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers. The Commission shall

[23] As used in the Exemptive Order, the meaning of the term ''swap dealing'' is consistent with that used in the Final Entities Rules.

[24] Under Commission regulations 3.10(a)(1)(v)(C) and 23.21, a person is required to register as an SD when, on or after October 12, 2012, the person falls within the definition of an SD. However, the rule defining ''swap dealer'' includes a de minimis threshold so that an entity is not an SD if it, together with the entities controlling, controlled by, and under common control with it, engages in swap dealing activity during the prior 12 months in an aggregate gross notional amount of less than the specified thresholds. The rule further specifies that swap dealing activity engaged in before the effective date of both the ''swap dealer'' and ''swap'' definition rules (*i.e.,* before October 12, 2012) does not count toward the de minimis threshold. The rule also provides that an entity that exceeds the de minimis threshold must register as an SD two months after the end of the month in which it exceeds the threshold. *See* Commission regulation 1.3(ggg)(4).

[25] On the other hand, the Commission believes that it is not appropriate to provide a non-U.S. person with relief from the registration requirement when the aggregate level of its swap dealing with U.S. persons, as that term is defined in the Guidance, exceeds the de minimis level of swap dealing, or when the level of its swap positions with U.S. persons, again as that term is defined above, exceeds one of the MSP thresholds. In the Commission's view, such relief from the registration requirement is inappropriate when a level of swaps activities that is substantial enough to require registration as an SD or an MSP when conducted by a U.S. person, is conducted by a non-U.S. person with U.S. persons as counterparties.

[26] For this purpose, the Commission construes ''affiliates'' to include persons under common control as stated in the Commission's final rule further defining the term ''swap dealer,'' which defines control as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.'' *See* Final Entities Rules, 77 FR at 30631 n. 437.

activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of its non-U.S. affiliates under common control with other non-U.S. persons as counterparties.

In order to facilitate transition to the expanded scope of the term ''U.S. person,'' the Exemptive Order allows all non-U.S. persons to apply the aggregation principle applied in the January Order until 75 days after the Guidance is published in the **Federal Register**.

D. Swap Dealer Registration

A non-U.S. person that was previously exempt from registration as an SD because of the temporary relief extended to such person under the Commission's January Order, but that is required to register as an SD under Commission regulation 1.3(ggg)(4) because of changes to the scope of the term ''U.S. person'' or changes in the de minimis SD calculation or aggregation for purposes of the de minimis calculation, is not required to register as an SD until two months after the end of the month in which such person exceeds the de minimis threshold for SD registration.

E. Entity-Level and Transaction-Level Requirements

1. Categorization

For purposes of the Exemptive Order, the Dodd-Frank swaps provisions applicable to SDs and MSPs are categorized as Entity-Level or Transaction-Level Requirements in the same way as they are categorized in the Guidance.[27] In particular, for purposes of the Exemptive Order, Entity-Level Requirements consist of: (1) Capital adequacy; (2) chief compliance officer; [28] (3) risk management; [29] (4) swap data recordkeeping; [30] and (5) swap data repository (''SDR'') Reporting.[31] The Transaction-Level Requirements consist of: (1) Clearing and swap processing; [32] (2) margin and segregation requirements for uncleared swaps; (3) trade execution; [33] (4) swap trading relationship documentation; [34] (5) portfolio reconciliation and compression; [35] (6) real-time public reporting; [36] (7) trade confirmation; [37] (8) daily trading records; [38] and (9) external business conduct standards.[39] Under the Guidance, Transaction-Level Requirements (1) to (8) are the ''Category A Transaction-Level Requirements,'' while external business conduct standards are the ''Category B Transaction-Level Requirements.''

The Commission notes that it has not yet finalized regulations regarding capital adequacy or margin and segregation for uncleared swaps. In the event that the Commission finalizes regulations regarding capital adequacy or margin and segregation for uncleared swaps before December 21, 2013, non-U.S. SDs and non-U.S. MSPs would comply with such requirements in accordance with any compliance date provided in the relevant rulemaking.

2. Application of Entity-Level Requirements

i. Application to non-U.S. SDs and non-U.S. MSPs

As described in the Guidance, non-U.S. SDs and non-U.S. MSPs can generally comply with specified Entity-Level Requirements by complying with regulations of the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established, assuming the Commission has made a Substituted Compliance Determination with respect to the particular regulatory regime.[40] In addition to SDs in the United States, there are provisionally registered SDs that are established in Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland. Market participants or regulators in all of these jurisdictions have recently submitted requests for Substituted Compliance Determinations. Given that the Guidance is being issued now, and that the Commission did not receive any submissions in support of Substituted Compliance Determinations with sufficient time to review them and reach a final determination, the Commission has determined to temporarily delay compliance with Entity-Level Requirements in these jurisdictions. Accordingly, under the Exemptive Order, a non-U.S. SD or non-U.S. MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may defer compliance with any Entity-Level Requirement for which substituted compliance would be possible, as described in the Commission's Guidance, until the earlier of December 21, 2013 or 30 days following the issuance of a Substituted Compliance Determination for the relevant regulatory requirements of the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established.[41]

Under the January Order, non-U.S. SDs and non-U.S. MSPs are required to comply with SDR Reporting for all swaps with U.S. counterparties. However, non-U.S. SDs and non-U.S. MSPs that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company or U.S. bank holding company are relieved, during the pendency of the January Order, from complying with the SDR Reporting requirements for swaps with non-U.S. counterparties. In order to facilitate the transition to fully compliant SDR Reporting, the Commission will provide non-U.S. SDs and non-U.S. MSPs established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank

[27] Because, as described in the Guidance, substituted compliance is not possible with respect to Large Trader Reporting (''LTR'') requirements (*i.e.,* non-U.S. persons that are subject to part 20 of the Commission's regulations would comply with it in the same way that U.S. persons comply), LTR requirements are not included within the term ''Entity-Level Requirements'' for purposes of the Exemptive Order.

[28] 17 CFR 3.3.

[29] 17 CFR 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.608, and 23.609.

[30] 17 CFR 1.31, 23.201 and 23.203.

[31] 17 CFR parts 45 and 46.

[32] 17 CFR 23.506, 23.610, and part 50.

[33] The Commission has adopted regulations for determining when a swap is ''available to trade'' and a compliance schedule for the trade execution requirement that applies when a swap subject to mandatory clearing is available to trade. At the present time, no swap either has been determined to be made available to trade or is subject to the trade execution requirement. *See* Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013). *See* CEA section 2(h)(8) and 17 CFR 37.12 or 38.11.

[34] 17 CFR 23.504 and 23.505.

[35] 17 CFR 23.502 and 23.503.

[36] 17 CFR 23.205 and part 43.

[37] 17 CFR 23.501.

[38] 17 CFR 23.202.

[39] 17 CFR 23.400 to 23.451.

[40] As detailed in the Guidance, non-U.S. SDs and MSPs may generally rely on substituted compliance with respect to capital adequacy, chief compliance officer, risk management, and certain swap data recordkeeping. Non-U.S persons may also generally rely on substituted compliance with respect to SDR reporting and certain aspects of swap data recordkeeping relating to complaints and marketing and sales materials, but only for transactions with non-U.S. counterparties.

[41] The Commission anticipates that non-U.S. SDs/MSPs may require additional time after a Substituted Compliance Determination in order to phase in compliance with the relevant requirements of the jurisdiction in which the non-U.S. SDs or MSP is established. The Commission and its staff intend to address the need for any further transitional relief in connection with the subject Substituted Compliance Determination.

In addition, if an SD or MSP established in another jurisdiction files a request for registration before December 21, 2013, the Commission may consider a request for deferring compliance with the Entity-Level Requirements if a substituted compliance request is filed concurrently with the application.

holding company with temporary relief from the SDR reporting requirements of part 45 and part 46 of the Commission's regulations with respect to swaps with non-U.S. counterparties on the condition that, during the relief period: (i) Such non-U.S. SDs and non-U.S. MSPs are in compliance with the swap data recordkeeping and reporting requirements of their home jurisdictions; or (ii) where no swap data reporting requirements have been implemented in their home jurisdictions, such non-U.S. SDs and non-U.S. MSPs comply with the recordkeeping requirements of Commission regulations 45.2, 45.6, 46.2 and 46.4. This relief will expire the earlier of December 21, 2013 or, in the event of a Substituted Compliance Determination for the regulatory requirements of parts 45 and 46 for the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established, 30 days following the issuance of such Substituted Compliance Determination.

3. Application of Transaction-Level Requirements

i. Application to U.S. SDs and MSPs

Generally, U.S. SDs and MSPs must comply with all Transaction-Level Requirements that are in effect. As described in the Guidance, however, a foreign branch of a U.S. SD or MSP that enters into a swap with a non-U.S. counterparty would be able to comply with the requirements of the local law and regulations in the foreign location of the branch in lieu of compliance with Category A Transaction-Level Requirements if the Commission has made a Substituted Compliance Determination with respect to those regulatory requirements. Additionally, as described in the Guidance, a foreign branch of a U.S. bank that is an SD or MSP need not comply with Category B Transaction-Level Requirements unless its swap counterparty is a U.S. person other than a foreign branch of a U.S. bank that is an SD or MSP.

Given that the Guidance is being issued now, and that the Commission did not receive any submissions in support of Substituted Compliance Determinations with sufficient time to review them and reach a final determination, the Commission has determined to temporarily defer compliance with the Category A Transaction-Level Requirements by foreign branches of U.S. banks if they are located in any of the six jurisdictions for which the Commission has received, or expects to receive in the near term, a request for substituted compliance determinations, for transactions for which substituted compliance is possible under the Guidance for such entities.[42] Accordingly, under the Exemptive Order, a foreign branch[43] of a U.S. bank that is an SD or MSP, and which is located in Australia, Canada, the European Union, Hong Kong, Japan, or Switzerland, may comply with any law and regulations of the jurisdiction where the foreign branch is located (and only to the extent required by such jurisdiction) in lieu of complying with any Category A Transaction-Level Requirement for which substituted compliance would be possible under the Guidance (other than a clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506; a trade execution requirement under CEA section 2(h)(8) and regulation 37.12 or 38.11;[44] or a real-time reporting requirement under part 43 of the Commission regulations for swaps with guaranteed affiliates[45] of a U.S. person), until the earlier of December 21, 2013 or 30 days following the issuance of a Substituted Compliance Determination for the relevant regulatory requirements of the country in which the foreign branch is located. For swaps transactions with guaranteed affiliates of a U.S. person, a foreign branch of a U.S. SD or MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may comply with the law and regulations of the jurisdiction where the foreign branch is located related to real-time reporting (and only to the extent required by such jurisdiction) in lieu of complying with the real-time reporting requirements of part 43 of the Commission regulations until September 30, 2013. In the case of swaps with guaranteed affiliates of a U.S. person, the Commission believes that it the real-time reporting requirements of part 43 of the Commission's regulations should be effective as expeditiously as possible in order to achieve their underlying statutory objectives. Therefore, the Commission has determined that it would not be in the public interest to further delay reporting under part 43 of the Commission's regulations with respect to such swaps beyond September 30, 2013.

With respect to a swap that is subject to the clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506, any foreign branch of a U.S. bank that is an SD or MSP that was not required to clear under the January Order may delay complying with such clearing requirement until 75 days after the publication of the Guidance in the **Federal Register**. As the Commission explained in the Clearing Requirement Determination proposal,[46] the movement of swaps into central clearing by swap dealers has been taking place for many years. As part of the OTC Derivatives Supervisors' Group (''ODSG''), the Federal Reserve Bank of New York led an effort along with the primary supervisors of certain swap dealers[47] to enhance risk

[42] If an SD or MSP established in any other jurisdiction files an application for registration before December 21, 2013, the Commission may consider a request for deferring compliance with the Transaction-Level Requirements if a substituted compliance request is filed concurrently with the application.

The Commission notes that Transaction-Level Requirements apply on a transaction-by-transaction basis. As described in the Guidance, if a Substituted Compliance Determination is applicable to the jurisdiction in which a foreign branch of a U.S. bank is located for the relevant regulatory requirements and the branch enters into a swap (either in the jurisdiction in which it is located or another jurisdiction), then the branch can elect to comply with either the regulatory regime of the jurisdiction in which it is located for which the Substituted Compliance Determination has been made, or the comparable Category A Transaction-Level Requirements.

[43] For purposes of this Exemptive Order, market participants must use the term ''foreign branch'' and the interpretation of when a swap is with a foreign branch set forth in the Guidance. *See* Guidance regarding the types of offices which the Commission would consider to be a ''foreign branch'' of a U.S. bank, and the circumstances in which a swap is with such foreign branch.

[44] The Commission has adopted regulations for determining when a swap is ''available to trade'' and a compliance schedule for the trade execution requirement that applies when a swap subject to mandatory clearing is available to trade. At the present time, no swap either has been determined to be made available to trade or is subject to the trade execution requirement. *See* Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013). *See* CEA section 2(h)(8) and 17 CFR 37.12 or 38.11.

[45] As used in the Exemptive Order, the term ''guaranteed affiliate'' refers to a non-U.S. person that is affiliated with a U.S. person and guaranteed by a U.S. person. In addition, for purposes of the Exemptive Order, the Commission interprets the term ''guarantee'' generally to include not only traditional guarantees of payment or performance of the related swaps, but also other formal arrangements that, in view of all the facts and circumstances, support the non-U.S. person's ability to pay or perform its swap obligations with respect to its swaps. *See* Proposed Guidance, 77 FR at 41221 n. 47. The term ''guarantee'' encompasses the different financial arrangements and structures that transfer risk directly back to the United States. In this regard, it is the substance, rather than the form, of the arrangement that determines whether the arrangement should be considered a guarantee for purposes of the Exemptive Order.

[46] 77 FR 47170, 47209 (Aug. 7, 2012).

[47] The ODSG's group of 14 dealers included: Bank of America-Merrill Lynch; Barclays Capital; BNP Paribas; Citi; Credit Suisse; Deutsche Bank AG;

Continued

mitigation practices for OTC derivatives, a key element of which was introduction of and commitment to central clearing of swaps, including clearing CDS (credit default swap) indices and interest rate swaps. Clearing is at the heart of the Dodd-Frank financial reform.[48]

With regard to the CDS indices that are subject to the Commission's clearing determination rules, SDs and other market participants have been working since 2008 to comply with their commitment to their ODSG supervisors to clear CDS. Similarly, while clearing of interest rate swaps began in the late 1990s, SDs and other market participants began committing in the mid-2000s to clear interest rate swaps in significant volumes. The SD commitments included both dealer-to-dealer clearing, as well as clearing by buy-side participants and others. Because SDs and MSPs have been committed to clearing their CDS and interest rate swaps for many years, and indeed have been voluntarily clearing for many years, any further delay of the Commission's clearing requirement is unwarranted.

In addition, under this Exemptive Order, a foreign branch of a U.S. SD or MSP located in any jurisdiction other than Australia, Canada, European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the jurisdiction where the foreign branch is located (and only to the extent required by such jurisdiction) for the relevant Transaction-Level Requirement in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance until 75 days after the publication of the Guidance in the **Federal Register**.

ii. Application to Non-U.S. SDs and Non-U.S. MSPs

As described in the Guidance, a non-U.S. SD or non-U.S. MSP should generally comply with the Category A Transaction-Level Requirements for its swaps with U.S. persons and with non-U.S. persons that are guaranteed by, or are affiliate conduits of,[49] a U.S. person (although substituted compliance would generally be available to a non-U.S. SD or non-U.S. MSP for transactions with (1) foreign branches of a U.S. bank that is an SD or MSP and (2) guaranteed affiliates or affiliate conduits of a U.S. person). Additionally, as described in the Guidance, a non-U.S. SD or non-U.S. MSP would generally need to comply with Category B Transaction-Level Requirements for all swaps with a U.S. person (other than a foreign branch of a U.S. bank that is an SD or an MSP).

Given that the Guidance is being issued now, and that the Commission did not receive any submissions in support of Substituted Compliance Determinations with sufficient time to review them and reach a final determination, the Commission has determined to temporarily defer compliance with the Category A Transaction-Level Requirements by non-U.S. SDs and non-U.S. MSPs established in any of the six jurisdictions for which the Commission has received, or expects to receive in the near term, a request for substituted compliance determinations for transactions for which substituted compliance is possible under the Guidance for such entities.[50] Accordingly, under the Exemptive Order, a non-U.S. SD or non-U.S. MSP established in Australia, Canada, European Union, Hong Kong, Japan or Switzerland [51] may comply with any law and regulations of the home jurisdiction where such non-U.S. SD or non-U.S. MSP is established (and only to the extent required by such jurisdiction) in lieu of complying with any Category A Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance (other than a clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506; a trade execution requirement under CEA section 2(h)(8) and regulation 37.12 or 38.11; [52] or a real-time reporting requirement under part 43 of the Commission regulations for swaps with guaranteed affiliates of a U.S. person), until the earlier of December 21, 2013 or 30 days following the issuance of a Substituted Compliance Determination for the relevant regulatory requirements of the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established.[53] For swap transactions with guaranteed affiliates of a U.S. person under the Commission's Guidance, a non-U.S. SD or non-U.S. MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the home jurisdiction where such non-U.S. SD or non-U.S. MSP is established related to real-time reporting requirements (and only to the extent required by such home jurisdiction) in lieu of complying with the real-time reporting requirements of part 43 of the Commission regulations, until September 30, 2013. In the case of swaps with guaranteed affiliates of a U.S. person, the Commission believes that the real-time reporting requirements of part 43 of the Commission's regulations should be effective as expeditiously as possible in order to achieve their underlying statutory objectives. Therefore, the Commission has determined that it would not be in the public interest to further delay reporting under part 43 of the Commission's regulations with respect to such swaps beyond September 30, 2013.

With respect to a swap that is subject to the clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506, any non-U.S. SD or non-U.S. MSP that was not required to clear under the January Order may delay complying with such clearing requirement until 75 days after the

Goldman Sachs & Co.; HSBC Group, J.P. Morgan; Morgan Stanley; The Royal Bank of Scotland Group; Société Générale; UBS AG; and Wells Fargo Bank N.A.

[48] *See* Clearing Requirement Determination under Section 2(h) of the CEA, 77 FR 74284, 74285 (Dec. 13, 2013).

[49] *See* Guidance regarding when a non-U.S. person generally would be considered to be an affiliate conduit.

[50] The Commission notes that Transaction-Level Requirements apply on a transaction-by-transaction basis. As described in the Guidance, if a Substituted Compliance Determination is applicable to the jurisdiction in which a non-U.S. SD or non-U.S. MSP is established and that entity enters into a swap (either in the jurisdiction in which it is established or another jurisdiction), then the entity can elect to comply with either the regulatory regime of the jurisdiction in which it is established for which the Substituted Compliance Determination has been made, or the comparable Category A Transaction-Level Requirements.

[51] If an SD or MSP established in any other jurisdiction files an application for registration before December 21, 2013, the Commission may consider a request for deferring compliance with the Transaction-Level Requirements if a substituted compliance request is filed concurrently with the application.

[52] The Commission has adopted regulations for determining when a swap is ''available to trade'' and a compliance schedule for the trade execution requirement that applies when a swap subject to mandatory clearing is available to trade. At the present time, no swap either has been determined to be made available to trade or is subject to the trade execution requirement. *See* Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013). *See* CEA section 2(h)(8) and 17 CFR 37.12 or 38.11.

[53] The Commission anticipates that non-U.S. SD and MSPs may require additional time after a Substituted Compliance Determination in order to phase in compliance with the relevant requirements of the jurisdiction in which the non-US SD or MSP is established. The Commission and its staff intend to address the need for any further transitional relief at the time that the subject Substituted Compliance Determination is made.

publication of the Guidance in the **Federal Register**.[54]

In addition, under this Exemptive Order, for swaps transactions with guaranteed affiliates of a U.S. person, a non-U.S. SD or a non-U.S. MSP established in any jurisdiction other than Australia, Canada, European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the home jurisdiction where such non-U.S. SD or non-U.S. MSP is established (and only to the extent required by such jurisdiction) in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance until 75 days after the publication of the Guidance in the **Federal Register**.

iii. Application to Non-Registrants

Under this Exemptive Order, for swaps transactions between a guaranteed affiliate of a U.S. person (established in any jurisdiction outside the United States) that is not registered as a SD or MSP and another guaranteed affiliate of a U.S. person(established in any jurisdiction outside the United States) that is not registered as a SD or MSP, such non-registrants may comply with any law and regulations of the jurisdiction where they are established (and only to the extent required by such jurisdictions) for the relevant Transaction-Level Requirement in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance until 75 days after the publication of the Guidance in the **Federal Register**.

IV. Section 4(c) of the CEA

Section 4(c)(1) of the CEA authorizes the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transaction from any of the provisions of the CEA (subject to certain exceptions) where the Commission determines that the exemption would be consistent with the public interest and the purposes of the CEA.[55] Under section 4(c)(2) of the CEA, the Commission may not grant exemptive relief unless it determines that: (1) The exemption is appropriate for the transaction and consistent with the public interest; (2) the exemption is consistent with the purposes of the CEA; (3) the transaction will be entered into solely between ''appropriate persons;'' and (4) the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.

The Commission has determined that the Exemptive Order meets the requirements of CEA section 4(c). First, in enacting section 4(c), Congress noted that the purpose of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [56] Like the January Order, the Commission is issuing this relief in order to ensure an orderly transition to the Dodd-Frank regulatory regime.

This exemptive relief also will advance the congressional mandate concerning harmonization of international standards with respect to swaps, consistent with section 752(a) of the Dodd-Frank Act. In that section, Congress directed that, in order to ''promote effective and consistent global regulation of swaps and security-based swaps,'' the Commission, ''as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation'' of swaps and security-based swaps.[57] This relief, by providing non-U.S. registrants the latitude necessary to develop and modify their compliance plans as the regulatory structure in their respective home jurisdictions evolve, will promote the adoption and enforcement of robust and consistent standards across jurisdictions. The Commission emphasizes that the Exemptive Order is temporary in duration and reserves the Commission's enforcement authority, including its anti-fraud and anti-manipulation authority. As such, the Commission has determined that the Exemptive Order is consistent with the public interest and purposes of the CEA. For similar reasons, the Commission has determined that the Exemptive Order will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the CEA. Finally, the Commission has determined that the Exemptive Order is limited to appropriate persons within the meaning of CEA section 4c(3), since the SDs and MSPs eligible for the relief are likely to be the types of entities enumerated in that section and active in the swaps market. Therefore, upon due consideration, pursuant to its authority under section 4(c) of the CEA, the Commission hereby issues the Exemptive Order.

V. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [58] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Exemptive Order does not require the collection of any information as defined by the PRA.

VI. Cost-Benefit Considerations

Section 15(a) of the CEA [59] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

A. Introduction

Throughout the Dodd-Frank rulemaking process, the Commission has strived to ensure that new regulations designed to achieve Dodd-Frank's protections are implemented in a manner that is both timely and also minimizes unnecessary market disruption. In its effort to implement the Dodd-Frank regulations on a cross-border basis, the Commission's approach has not been different. In this respect, the Commission has attempted to be responsive to industry's concerns regarding implementation and the timing of new compliance obligations, and thereby to ensure that market practices would not be unnecessarily disrupted during the transition to the new swaps regulatory regime. At the same time, however, the Commission has endeavored to comply with the

[54] *See* discussion, *supra*.

[55] CEA section 4(c)(1), 7 U.S.C. 6(c)(1).

[56] H.R. Conf. Rep. No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (1992).

[57] *See* section 752(a) of the Dodd-Frank Act.

[58] 44 U.S.C. 3501 *et seq.*

[59] 7 U.S.C. 19(a).

Congressional mandate to implement the new SD and MSP regulatory scheme in a timely manner. The Commission, therefore, also seeks to ensure that the implementation of these requirements is not subject to undue delay. The Commission believes that the Exemptive Order strikes the proper balance between promoting an orderly transition to the new regulatory regime under the Dodd-Frank Act, while appropriately tailoring relief to ensure that market practices are not unnecessarily disrupted during such transition.

The Exemptive Order also reflects the Commission's recognition that international coordination is essential in this highly interconnected global market, where risks are transmitted across national borders and market participants operate in multiple jurisdictions.[60] The Exemptive Order would allow market participants to implement the calculations related to SD and MSP registration on a uniform basis and to delay compliance with certain Dodd-Frank requirements while the Commission continues to work closely with other domestic financial regulatory agencies and its foreign counterparts in an effort to further harmonize the cross-border regulatory framework.

B. Consideration of Costs and Benefits of the Exemptive Order

The Exemptive Order permits, subject to the conditions specified therein, market participants outside the United States to: (i) Apply the January Order's limited, interim definition of the term ''U.S. person'' for a period of 75 days; (ii) make the SD and MSP registration calculations in accordance with the January Order's guidance for a period of 75 days; and (iii) delay compliance with certain Dodd-Frank requirements specified in the Exemptive Order. The Exemptive Order reflects the Commission's determination to protect U.S. persons and markets through the cross-border application of the provisions of the Dodd-Frank Act and the Commission's regulations in a manner consistent with section 2(i) of the CEA and longstanding principles of international comity. By carefully tailoring the scope and extent of the phasing-in provided by the Exemptive Order, the Commission believes that it achieves an appropriately balanced approach to implementation that mitigates the costs of compliance while avoiding open-ended delay in protecting the American public from swaps activities overseas. To be sure, the conditions attached to the Exemptive Order are not without cost, but the Commission believes that the phasing-in of certain Dodd-Frank requirements as permitted by the Exemptive Order will reduce overall costs to market participants.

In the absence of the Exemptive Order, non-U.S. SDs or MSPs would be required to be fully compliant with the Dodd-Frank regulatory regime without further delay. The Exemptive Order allows non-U.S. SDs and MSPs (and foreign branches of U.S. SDs and MSPs) to delay compliance with a number of these requirements until (at latest) December 21, 2013. With respect to these entities, therefore, the benefits include not only the avoided costs of compliance with certain requirements during the time that the Exemptive Order is in effect, but also increased efficiency, because the additional time allowed to phase in compliance will allow market participants more flexibility to implement compliance in a way that is compatible with their systems and practices. The additional time provided by the Exemptive Order will also give foreign regulators more time to adopt regulations covering similar topics, which could increase the likelihood that substituted compliance will be an option for market participants. Thus, the Exemptive Order is expected to help reduce the costs to market participants of implementing compliance with certain Dodd-Frank requirements. These and other costs and benefits are considered below.

1. Costs

The costs of the Exemptive Order are similar to those of the January Order. One potential cost, which is difficult to quantify, is the potential that the relief provided herein—which will delay the application of certain Dodd-Frank requirements to non-US SDs and MSPs and to foreign branches of U.S. SDs and MSPs—will leave market participants without certain protections and will leave U.S. taxpayers exposed to systemic risks. As with the January Order, however, the Commission believes that these risks are mitigated by the relatively short time period of the Exemptive Order's application.

When the Commission issued the January Order, it also considered the possibility that the order could result in competitive disparities from the delay in compliance permitted to non-U.S. market participants, discouraging potential non-U.S. counterparties from engaging in swaps with U.S. persons. As the Commission noted in the January Order, it was difficult to estimate quantitatively the potential negative effects that the January Order would have on U.S. SDs and MSPs. Similarly, while the Commission cannot exclude the possibility that the Exemptive Order could result in negative competitive effects on U.S. SDs and MSPs, it would be difficult to estimate those potential negative effects quantitatively. Nevertheless, the Commission notes that, in the six months since it issued the January Order, it has not observed significant competitive disparities that discouraged potential non-U.S. counterparties from engaging in swaps with U.S. SDs and MSPs. Given the short time period of the Exemptive Order's application, the Commission believes it is unlikely that the Exemptive Order (which is more limited in scope than the January Order) will cause significant competitive disparities that will harm U.S. SDs and MSPs.

2. Benefits

As with the January Order, the primary benefit of the Exemptive Order is that it affords entities additional time to come into compliance with certain of the Commission's regulations. By phasing in (1) the term ''U.S. person,'' (2) SD and MSP calculations, and (3) the application of various Entity- and Transaction-Level requirements to persons in six jurisdictions outside the U.S., the Exemptive Order will reduce compliance costs for such persons. This relief will provide market participants with the additional time that they need for an orderly transition and will allow market participants to apply the Dodd-Frank requirements flexibly to their particular circumstances.

Importantly, the Exemptive Order allows non-U.S. SDs and non-U.S. MSPs and foreign branches of U.S. SDs and MSPs from six jurisdictions to delay compliance with Entity-Level Requirements (as defined in the Exemptive Order) and Transaction-Level Requirements (other than clearing and trade execution) for which substituted compliance is possible, as described in the Guidance. This delay will permit the Commission to properly develop the scope and standards of its ''substituted compliance'' regime by allowing foreign regulators additional time to implement regulatory changes necessary to facilitate the Commission's determination of comparability.

[60] *See generally* CFTC–SEC Joint Report on International Swap Regulation Required by Section 719(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act at 105–09 (Jan. 31, 2012), available at *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/dfstudy_isr_013112.pdf.*

C. Section 15(a) Factors

1. Protection of Market Participants and the Public

The exemptive relief provided in the Exemptive Order will protect market participants and the public by facilitating a more orderly transition to the new regulatory regime than might otherwise occur in the absence of the order. In particular, non-U.S. persons are afforded additional time to come into compliance than would otherwise be the case, which contributes to greater stability and reliability of the swaps markets during the transition process.

2. Efficiency, Competitiveness, and Financial Integrity of the Markets

The Commission believes that the efficiency and integrity of the markets will be furthered by the additional compliance time provided in the Exemptive Order. As discussed above, the Commission is mindful of the possibility that the Exemptive Order could potentially cause competitive disparities, but believes it is unlikely that the Exemptive Order will cause significant competitive disparities that will harm U.S. SDs and MSPs.

3. Price Discovery

The Commission has not identified any costs or benefits of the Exemptive Order with respect to price discovery.

4. Risk Management

As with the January Order, application of Entity-Level risk management and capital requirements to non-U.S. SDs and MSPs could be delayed by operation of the Exemptive Order, which could weaken risk management. However, such potential risk is limited by the fact that the Exemptive Order is applicable for a finite time.

5. Other Public Interest Considerations

The Commission has not identified any other public interest considerations relating to costs or benefits of the Exemptive Order.

VII. Exemptive Order

The Commission, in order to provide for an orderly implementation of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), and consistent with the determinations set forth above, which are incorporated in the Exemptive Order by reference, hereby grants, pursuant to section 4(c) of the Commodity Exchange Act (''CEA''), time-limited relief to non-U.S. swap dealers (''SDs'') and major swap participants (''MSPs'') and to foreign branches of U.S. SDs and MSPs, from certain swap provisions of the CEA, subject to the terms and conditions below.

(1) *Phase-in of ''U.S. Person'' Definition:* For purposes of the Exemptive Order, from July 13, 2013 until 75 days after the Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations (''Guidance'') is published in the **Federal Register**, all market participants, including a prospective or registered SD or MSP, must apply a ''U.S. person'' definition which would define the term as:

(i) A natural person who is a resident of the United States;

(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States;

(iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity;

(iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or

(v) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above.

Until 75 days after the Guidance is published in the **Federal Register**, any person not listed in (i) to (v) above is a ''non-U.S. person'' for purposes of the Exemptive Order.

(2) *Phase-In of Guaranteed Affiliates and ''Affiliate Conduits'':* Guaranteed affiliates and affiliate conduits do not need to comply with Transaction-Level Requirements relating to swaps with non-U.S. persons and foreign branches of U.S. swap dealers and MSPs until 75 days after the Final Guidance is published in the **Federal Register**.

(3) *De Minimis SD and MSP Threshold Calculations:* From July 13, 2013 until 75 days after the Guidance is published in the **Federal Register**, a non-U.S. person is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), or in its calculation of whether it is an MSP for purposes of Commission regulation 1.3(hhh):

(i) Any swap where the counterparty is not a U.S. person, or

(ii) Any swap where the counterparty is a foreign branch of a U.S. person that is registered as an SD.

(4) *Aggregation for Purposes of the De Minimis Calculation:* From July 13, 2013 until 75 days after the Guidance is published in the **Federal Register**, a non-U.S. person that was engaged in swap dealing activities with U.S. persons as of December 21, 2012 is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of its U.S. affiliates under common control.[61] Further, from July 13, 2013 until 75 days after the Guidance is published in the **Federal Register**, a non-U.S. person that was engaged in swap dealing activities with U.S. persons as of December 21, 2012 and is an affiliate under common control with a person that is registered as an SD is also not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of any non-U.S. affiliate under common control that is either (i) engaged in swap dealing activities with U.S. persons as of December 21, 2012 or (ii) registered as an SD. Also, from July 13, 2013 until 75 days after the Guidance is published in the **Federal Register**, a non-U.S. person is not required to include, in its calculation of the aggregate gross notional amount of swaps connected with its swap dealing activity for purposes of Commission regulation 1.3(ggg)(4), the aggregate gross notional amount of swaps connected with the swap dealing activity of its non-U.S. affiliates under common control with

[61] For this purpose, the Commission construes ''affiliates'' to include persons under common control as stated in the Commission's final rule further defining the term ''swap dealer,'' which defines control as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.'' *See* Final Entities Rules, 77 FR at 30631, n. 437.

other non-U.S. persons as counterparties.

(5) *SD Registration:* A non-U.S. person that was previously exempt from registration as an SD because of the temporary relief extended to such person under the Commission's exemptive order issued on January 7, 2013,[62] but that is required to register as an SD under Commission regulation § 1.3(ggg)(4) because of changes to the scope of the term ''U.S. person'' or changes in the de minimis SD calculation or aggregation for purposes of the de minimis calculation, is not required to register as an SD until two months after the end of the month in which such person exceeds the de minimis threshold for SD registration.

(6) *Entity-Level Requirements:*

(i) *Non-U.S. SDs and non-U.S. MSPs.* Except as provided in (ii) of this paragraph 6, a non-U.S. SD or non-U.S. MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland need not comply with any Entity-Level Requirement[63] for which substituted compliance is possible under the Commission's Guidance until the earlier of December 21, 2013 or 30 days following the issuance of an applicable substituted compliance determination under the Guidance (''Substituted Compliance Determination'') for the relevant Entity-Level Requirement of the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established.

(ii) Notwithstanding paragraph (6)(i), non-U.S. SDs and non-U.S. MSPs established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland that are not part of an affiliated group in which the ultimate parent entity is a U.S. SD, U.S. MSP, U.S. bank, U.S. financial holding company, or U.S. bank holding company may delay compliance with the swap data repository (''SDR'') reporting requirements of part 45 and part 46 of the Commission's regulations with respect to swaps with non-U.S. counterparties on the condition that, during the relief period: (1) Such non-U.S. SDs and non-U.S. MSPs are in compliance with the swap data recordkeeping and reporting requirements of their home jurisdictions; or (2) where no swap data reporting requirements have been implemented in their home jurisdictions, such non-U.S. SDs and non-U.S. MSPs comply with the recordkeeping requirements of Regulations 45.2, 45.6, 46.2 and 46.4. This relief will expire the earlier of December 21, 2013 or, in the event of a Substituted Compliance Determination for the regulatory requirements of parts 45 and 46 of the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established, 30 days following the issuance of such Substituted Compliance Determination.[64]

(7) *Transaction-Level Requirements Applicable to Non-U.S. SDs and MSPs.*[65] A non-U.S. SD or non-U.S. MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the home jurisdiction where such non-U.S. SD or non-U.S. MSP is established (and only to the extent required by such jurisdiction) in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance (other than a clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506; a trade execution requirement under CEA section 2(h)(8) and regulation 37.12 or 38.11;[66] or a real-time reporting requirement under part 43 of the Commission regulations for swaps with guaranteed affiliates of a U.S. person),[67] until the earlier of December 21, 2013 or 30 days following the issuance of a Substituted Compliance Determination for the relevant regulatory requirement of the jurisdiction in which the non-U.S. SD or non-U.S. MSP is established.

(8) With respect to a swap that is subject to a clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506, any non-U.S. SD or non-U.S. MSP that was not required to clear under the January Order may delay complying with such clearing requirement until 75 days after the publication of the Guidance in the **Federal Register**.

(9) For swaps transactions with guaranteed affiliates of a U.S. person, a non-U.S. SD or non-U.S. MSP established in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the home jurisdiction where such non-U.S. SD or non-U.S. MSP is established related to real-time reporting requirements (and only to the extent required by such home jurisdiction) in lieu of complying with the real-time reporting requirements of part 43 of the Commission regulations, until September 30, 2013.

(10) For swaps transactions with guaranteed affiliates of a U.S. person, a non-U.S. SD or a non-U.S. MSP established in jurisdiction other than Australia, Canada, European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of

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[62] Final Exemptive Order Regarding Compliance with Certain Swap Regulations, 78 FR 858 (Jan. 7, 2013) (''January Order'').

[63] For purposes of the Exemptive Order, the term ''Entity-Level Requirements'' refers to the requirements set forth in Commission regulations 3.3, 23.201, 23.203, 23.600, 23.601, 23.602, 23.603, 23.605, 23.606, 23.608, 23.609, and parts 45 and 46. The Commission notes that it has not yet finalized regulations regarding capital adequacy or margin and segregation for uncleared swaps. In the event that the Commission finalizes regulations regarding capital adequacy or margin and segregation for uncleared swaps before December 21, 2013, non-U.S. SDs and non-U.S. MSPs would comply with such requirements in accordance with any compliance date provided in the relevant rulemaking.

[64] Commission staff also extended no-action relief regarding reporting in the cross-border context to address privacy law conflicts. *See* CFTC Division of Market Oversight, Time-Limited No-Action Relief Permitting Part 45 and Part 46 Reporting Counterparties to Mask Legal Entity Identifiers, Other Enumerated Identifiers and Other Identifying Terms and Permitting Part 20 Reporting Entities to Mask Identifying Information, with respect to certain Enumerated Jurisdictions, No-Action Letter No. 13–41 (Jun. 28, 2013).

[65] For purposes of the Exemptive Order, the term ''Transaction-Level Requirements'' refers to the requirements set forth in Commission regulations 23.202, 23.205, 23.400 to 23.451, 23.501, 23.502, 23.503, 23.504, 23.505, 23.506, 23.610 and parts 43 and 50. The Commission notes that (1) it has not yet finalized regulations regarding margin and segregation for uncleared swaps and (2) it has not yet determined that any swap is ''available to trade'' such that a trade execution requirement applies to the swap.

In addition, to the extent that a guaranteed affiliate is given exemptive relief from any particular Transaction-Level Requirement under this Exemptive Order, the same exemptive relief would apply to affiliate conduits.

[66] The Commission has adopted regulations for determining when a swap is ''available to trade'' and a compliance schedule for the trade execution requirement that applies when a swap subject to mandatory clearing is available to trade. At the present time, no swaps no swap either has been determined to be made available to trade or is subject to a trade execution requirement. *See* Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013). *See* CEA section 2(h)(8) and 17 CFR 37.12 or 38.11.

[67] As used in the Exemptive Order, the term ''guaranteed affiliate'' refers to a non-U.S. person that is affiliated with a U.S. person and guaranteed by a U.S. person. In addition, for purposes of the Exemptive Order, the Commission interprets the term ''guarantee'' generally to include not only traditional guarantees of payment or performance of the related swaps, but also other formal arrangements that, in view of all the facts and circumstances, support the non-U.S. person's ability to pay or perform its swap obligations with respect to its swaps. *See* Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41214, 41221 n. 47 (Jul. 12, 2012). The term ''guarantee'' encompasses the different financial arrangements and structures that transfer risk directly back to the United States. In this regard, it is the substance, rather than the form, of the arrangement that determines whether the arrangement should be considered a guarantee for purposes of the Exemptive Order.

the home jurisdiction where such non-U.S. SD or non-U.S. MSP is established (and only to the extent required by such jurisdiction) in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance until 75 days after the publication of the Guidance in the **Federal Register**.

(11) *U.S. Registrants:* The Exemptive Order does not apply to a U.S. person that is required to register as an SD or MSP. Notwithstanding the previous sentence, a foreign branch of a U.S. SD or MSP located in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the jurisdiction where the foreign branch is located (and only to the extent required by such jurisdiction) for the relevant Transaction-Level Requirement in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance (other than a clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506; a trade execution requirement under CEA section 2(h)(8) and regulation 37.12 or 38.11;[68] or a real-time reporting requirement under part 43 of the Commission regulations for swaps with guaranteed affiliates of a U.S. person), until the earlier of December 21, 2013 or 30 days following the issuance of a Substituted Compliance Determination for the relevant Transaction-Level Requirement in the applicable jurisdiction in which the foreign branch is located.

(12) With respect to a swap that is subject to the clearing requirement under CEA section 2(h)(1), Commission regulations under part 50, and Commission regulation 23.506, any foreign branch of a U.S. SD or MSP that was not required to clear under the January Order may delay complying with such clearing requirement until 75 days after the publication of the Guidance in the **Federal Register**.

(13) For swaps transactions with guaranteed affiliates of a U.S. person, a foreign branch of a U.S. SD or MSP located in Australia, Canada, the European Union, Hong Kong, Japan or Switzerland may comply with the law and regulations of the jurisdiction where the foreign branch is located related to real-time reporting (and only to the extent required by such jurisdiction) in lieu of complying with the real-time reporting requirements of part 43 of the Commission regulations until September 30, 2013.

(14) A foreign branch of a U.S. SD or MSP located in any jurisdiction other than Australia, Canada, European Union, Hong Kong, Japan or Switzerland may comply with any law and regulations of the jurisdiction where the foreign branch is located (and only to the extent required by such jurisdiction) for the relevant Transaction-Level Requirement in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance until 75 days after the publication of the Guidance in the **Federal Register**.

(15) For swaps transactions between a guaranteed affiliate of a U.S. person (established in any jurisdiction outside the United States) that is not registered as a SD or MSP and another guaranteed affiliate of a U.S. person (established in any jurisdiction outside the United States) that is not registered as a SD or MSP, such non-registrants may comply with any law and regulations of the jurisdiction where they are established (and only to the extent required by such jurisdiction) for the relevant Transaction-Level Requirement in lieu of complying with any Transaction-Level Requirement for which substituted compliance would be possible under the Commission's Guidance until 75 days after the publication of the Guidance in the **Federal Register**.

(16) *Inter-Affiliate Exemption.* Where one of the counterparties is electing the Inter-Affiliate Exemption, nothing in this Exemptive Order affects or eliminates the obligation of any party to comply with the conditions of the Inter-Affiliate Exemption, including the treatment of outward-facing swaps condition in Commission regulation 50.52(b)(4)(i).

(17) *Expiration of Relief:* The relief provided to non-U.S. SDs, non-U.S. MSPs and foreign branches of a U.S. SD or U.S. MSP in this order shall be effective on July 13, 2013 and expire on December 21, 2013 or such earlier date specified in the Order.

(18) *Scope of Relief:* The time-limited relief provided in this order: (i) Shall not affect, with respect to any swap within the scope of this order, the applicability of any other CEA provision or Commission regulation (*i.e.,* those outside the Entity-Level and Transaction-Level Requirements); (ii) shall not limit the applicability of any CEA provision or Commission regulation to any person, entity or transaction except as provided in this order; (iii) shall not affect the applicability of any provision of the CEA or Commission regulation to futures contracts, or options on futures contracts; and (iv) shall not affect any effective or compliance date set forth in any Dodd-Frank Act rulemaking by the Commission. Nothing in this order affects the Commission's enforcement authority, including its anti-fraud and anti-manipulation authority.

Issued in Washington, DC, on July 16, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

Appendices to Exemptive Order Regarding Compliance With Certain Swap Regulations—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton and Wetjen voted in the affirmative. Commissioner O'Malia voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the Exemptive Order Regarding Compliance with Certain Swap Regulations (Order). With this Commission action another important step has been taken to make swaps market reform a reality.

Since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act), the Commission has worked steadfastly toward a transition from an opaque unregulated marketplace to a transparent, regulated swaps marketplace and has phased in the timing for compliance to give market participants time to adjust to the new regulatory regime and smooth the transition. The Order provides a phased-in compliance period for foreign swap dealers (including overseas affiliates of U.S. persons) and overseas branches of U.S. swap dealers with respect to certain requirements of the Dodd-Frank Act.

Today's Order is a continuation of the Commission's commitment to this phasing of compliance—in this case for foreign market participants—and follows upon the Commission's January 2013 phase-in exemptive order, which expired on July 12, 2013. The Order will remain in effect until December 21, 2013, and is intended to complement other Commission and staff actions that facilitate an orderly transition.

As of July 12th, 80 swap dealers have registered with the Commission. Of these, 35

[68] The Commission has adopted regulations for determining when a swap is ''available to trade'' and a compliance schedule for the trade execution requirement that applies when a swap subject to mandatory clearing is available to trade. At the present time, no swap either has been determined to be made available to trade or is subject to a trade execution requirement. *See* Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act, 78 FR 33606 (Jun. 4, 2013). *See* CEA section 2(h)(8) and 17 CFR 37.12 or 38.11.

are established in jurisdictions other than United States, including Australia, Canada, the European Union, Hong Kong, Japan, and Switzerland.

The Order provides for a phase-in of the cross-border application of Dodd-Frank requirements. Such phase-in period provides for 75 days following the publication of the Order in the **Federal Register** for market participants to adapt to the cross-border application of the Dodd-Frank requirements. This relates to, for example, who is a U.S. person, swap activity conducted by or with affiliates that are guaranteed by a U.S. person, swap activity conducted by or with overseas branches of U.S. based swap dealers, the aggregation guidelines applicable to a group of affiliates for the purpose of determining whether a specific affiliate is required to register as a swap dealer, and identifying relevant transactions for the purpose of the swap dealer registration de minimis calculation.

Thus, within several months, the public will gain greater protections as hedge funds, organized in the Cayman Islands, but with their principal place of business here in the U.S., will be subject to reforms applicable to all other U.S. persons, including the clearing requirement.

Secondly, during the transitional period through December 21st, a foreign swap dealer may phase in compliance with certain entity-level requirements. In addition, those entities (as well as foreign branches of U.S. swap dealers) are provided time-limited relief from specified transaction-level requirements when transacting with overseas affiliates guaranteed by U.S. entities (as well as with foreign branches of U.S. swap dealers).

The phase-in period provides time for the Commission to work with foreign regulators to consider their jurisdictions' submissions related to substituted compliance. Substituted compliance, where appropriate, would allow for foreign swap dealers to meet the reform requirements of the Dodd-Frank Act by complying with comparable and comprehensive foreign regulatory requirements. With respect to any transaction with a U.S. person, though, compliance will be required in accordance with previously issued rules and staff guidance.

To this end, the Commission has received substituted compliance submissions from market participants or regulators located in Australia, Canada, the European Union, Hong Kong, Japan and Switzerland. Commission staff has actively engaged in substantive discussions and active coordination with the appropriate regulators in these jurisdictions as an integral part of the submission review process.

Now, 3-years after the passage of financial reform, and a full year after the Commission proposed guidance with regard to the cross border application of reform, it is time for reforms to properly apply to and cover those activities that, as identified by Congress in section 722(d) of the Dodd-Frank Act, have ''a direct and significant connection with activities in, or effect on, commerce of the United States.'' With the additional transitional phase in period provided by this Order, it is now time for the public to get the full benefit of the transparency and the measures to reduce risk included in Dodd Frank reforms.

[FR Doc. 2013–17467 Filed 7–19–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 513

Indebtedness of Military Personnel

AGENCY: Department of the Army, DoD.

ACTION: Final rule; removal.

SUMMARY: This action removes regulations concerning indebtedness of military personnel. The regulations are being removed because they are obsolete and no longer govern policies and procedures for handling debt claims against soldiers. These rules in the Army Regulation have been superseded. Program responsibility has been transferred to the Defense Finance and Accounting Services (DFAS), which directs all policy for personnel finances across the services. The removal of the regulations is part of DoD's retrospective plan under Executive Order 13563 completed in August 2011.

DATES: Effective July 22, 2013.

ADDRESSES: Department of the Army, Office of the Deputy Chief of Staff, G–1, DAPE–HR, 200 Army Pentagon, Washington, DC 20310–0300.

DoD's full retrospective plan under E.O. 13563 can be accessed at: *http://exchange.regulations.gov/exchange/topic/eo-13563.*

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Moman, (703) 325–0050.

SUPPLEMENTARY INFORMATION: The responsibility for this program was originally with the Department of the Army and was published as 32 CFR Part 513. The program responsibility was transferred to DFAS and now covered by Department of Defense policy and guidance codified at 32 CFR Part 112, ''Indebtedness of Military Personnel,'' and DoD Financial Management Review (FMR), Volume 7a, ''Stoppages and Collections.'' Therefore, to avoid confusion with the public, 32 CFR Part 513 is removed, which was established in the **Federal Register**, March 3, 1986 (51 FR 7268). Rules in the Army Regulation have been superseded by Department of Defense (DoD) policy and guidance covered in DoD Instruction 1344.09, ''Indebtedness of Military Personnel,'' [1] and codified at 32 CFR Part 112, and DoD Financial Management Review (FMR), Volume 7a, ''Stoppages and Collections.'' [2]

List of Subjects in 32 CFR Part 513

Credit, Military personnel.

PART 513—[REMOVED]

Accordingly, for reasons stated in the preamble, under the authority of 10 U.S.C. 3012, 32 CFR part 513, Indebtedness of Military Personnel, is removed in its entirety.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–17490 Filed 7–19–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0535]

Drawbridge Operation Regulation; China Basin, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Third Street Drawbridge across the China Basin, mile 0.0 at San Francisco, CA. The deviation is necessary to allow the bridge to be part of the staging area for runners participating in the scheduled Giant Race event. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

DATES: This deviation is effective from 6 a.m. to 11:30 a.m. on August 4, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0535], is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

[1] Available online at *http://www.dtic.mil/whs/directives/corres/pdf/134409p.pdf*

[2] Available online at *http://comptroller.defense.gov/fmr/archive/07aarch/07a50.pdf*