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Division of
Market Oversight

CFTC Letter No. 17-16 (Amended)
No-Action
March 10, 2017
Division of Market Oversight

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Further Extension of Conditional Masking No-Action Relief Provided in CFTC Letters 16-03 and 16-33

Dear Ms. Hsu and Ms. Lurton:

This is in response to Ms. Hsu's February 10, 2017 letter ("ISDA Letter") to the Division of Market Oversight ("DMO") of the Commodity Futures Trading Commission ("Commission" or "CFTC") and Ms. Lurton's February 3, 2017 letter to DMO ("FIA Letter"). In the ISDA Letter, Ms. Hsu requested pursuant to § 140.99 of the Commission's regulations certain no-action relief for members of the International Swaps and Derivatives Association ("ISDA") and other similarly situated persons with reporting obligations under Parts 20, 45 or 46 of the Commission's regulations (the "Relevant Regulations"). Specifically, ISDA requested an extension of the expiration date of the no-action relief provided in CFTC Letter No. 16-03 and certain additional relief.[1] In the FIA Letter, Ms. Lurton requested pursuant to § 140.99 of the Commission's regulations an extension of the no-action relief DMO staff previously provided to

[1] *See* CFTC Letter No. 16-03 (Jan. 15, 2016), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-03.pdf.

entities, including, but not limited to, members of The Futures Industry Association ("FIA"), required to report certain information to the CFTC on Forms 102A, 102B and 102S.[2]

Background

DMO previously granted time-limited, conditional no-action relief in CFTC Letter No. 12-46[3] until no later than 12:01 a.m. eastern daylight time June 30, 2013 regarding certain Identity Information (as defined in CFTC Letter No. 12-46)[4] in certain non-U.S. jurisdictions referenced in ISDA's original no-action request to DMO dated December 3, 2012. The relief covered ISDA members and other similarly situated persons with reporting obligations under the Relevant Regulations. On June 28, 2013, DMO issued CFTC Letter No. 13-41[5] extending the relief provided in CFTC Letter No. 12-46, with respect to certain identifying information in "Enumerated Jurisdictions,"[6] until no later than 11:59 p.m. eastern daylight time June 30, 2014. On June 27, 2014, DMO issued CFTC Letter No. 14-89 extending the relief provided in CFTC Letter No. 13-41 until no later than 12:01 a.m. eastern standard time on January 16, 2015.[7] On January 8, 2015, DMO issued CFTC Letter No. 15-01 updating and further extending the relief provided in CFTC Letter No. 13-41 until no later than 12:01 a.m. eastern standard time on

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[2] DMO staff provided the prior relief relating to reporting on Form 102S in CFTC Letter No. 16-03 and provided the prior relief for reporting on Forms 102A and 102B in CFTC Letter No. 16-33 (Apr. 8, 2016), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-33.pdf.

[3] *See* CFTC Letter No. 12-46 (Dec. 7, 2012), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/12-46.pdf.

[4] *See id.* at 1, n.2.

[5] *See* CFTC Letter No. 13-41 (June 28, 2013), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/13-41.pdf.

[6] The Enumerated Jurisdictions listed in the Annex to ISDA's June 21, 2013 letter are: Algeria, Argentina, Austria, Bahrain, Belgium, China, France, Hungary, India, Korea, Luxembourg, Pakistan, Samoa, Singapore, Switzerland, and Taiwan. Two of the terms of the relief provided in CFTC Letter No. 13-41 were that Reporting Counterparties (terms not otherwise defined in this letter shall have the meaning assigned to them in the Prior Letters, CFTC Letter No. 16-33, the OCR Final Rule or CFTC regulations), or a group thereof or an industry association acting on their behalf, (1) formally request in writing that each relevant foreign authority confirm that foreign law or regulation prohibited reporting the swap data that was the subject of the relief set forth in CFTC Letter No. 13-41; and (2) obtain a formal written confirmation thereof and provide it to PrivacyLawReporting@cftc.gov within 60 days of the date CFTC Letter No. 13-41 was issued (collectively, the "Confirmation Conditions"). CFTC Letter No. 13-41 was issued on June 28, 2013. To date, DMO has not received responses from Algeria, Argentina, Bahrain, China, India, Pakistan, South Korea or Taiwan.

In its request for relief dated December 10, 2015 ("2015 ISDA Letter"), ISDA requested relief with respect to six more Enumerated Jurisdictions: Costa Rica, the Philippines, Romania, Spain, Uruguay, and Venezuela. In CFTC Letter No. 16-03, DMO extended the relief set forth in CFTC Letter No. 13-41, subject to, among other things, the same two conditions listed in the preceding paragraph. To date, DMO has not received request letters to or responses from any of the six Enumerated Jurisdictions listed in the 2015 ISDA Letter.

[7] *See* CFTC Letter No. 14-89 (June 27, 2014), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/14-89.pdf.

January 16, 2016.[8] On January 15, 2016, DMO issued CFTC Letter No.16-03 (collectively with CFTC Letter Nos. 12-46, 13-41, 14-89 and 15-01, the "Prior Letters") further extending the relief provided in CFTC Letter No. 13-41 until no later than 12:01 a.m. eastern standard time on March 1, 2017 and providing certain additional relief.

DMO also previously granted, in response to FIA, time-limited, conditional no-action relief in CFTC Letter No. 16-33 until no later than 11:59 p.m. Eastern Time March 1, 2017 regarding certain identifying information required on CFTC Forms 102A and 102B that may be subject to privacy statutes or regulations in non-U.S. jurisdictions.

As DMO stated in CFTC Letter No. 15-01, "the March 2014 report of the OTC Derivatives Regulators Group [("ODRG") noted that] there are statutory or regulatory prohibitions that may prevent reporting to trade repositories."[9] In a December 2, 2014 letter to DMO, ISDA wrote that the expiration date (January 16, 2015) of the relief previously provided in CFTC Letter No. 14-89 did not provide adequate time for resolution of the issues addressed in CFTC Letter No. 14-89, although international regulators and governing authorities were continuing their efforts in that regard;[10] Ms. Hsu stated in the ISDA Letter that this is still the

[8] CFTC Letter No. 15-01 updated the relief set forth in CFTC Letter No. 13-41 "by replacing the definition of 'Part 20 Identifying Information' found in section I.(F) of CFTC Letter No. 13-41 by adding certain data elements to account for New Form 102S." CFTC Letter No. 15-01 at 2. Form 102S was added to the Commission's regulations in Ownership and Control Reports, Forms 102/102S, 40/40S, and 71, 78 FR 69178 (November 18, 2013).

[9] CFTC Letter No. 15-01 at 1.

[10] In November 2015, the Financial Stability Board ("FSB") published a thematic peer review report of derivatives trade reporting in its member jurisdictions ("2015 FSB Report"). The 2015 FSB Report identified a number of legal barriers to the full reporting of trade information by counterparties to trade repositories. The 2015 FSB Report stated that FSB members agreed that all jurisdictions should remove barriers to full reporting of trade information to trade repositories, including permitting counterparties to provide standing consent where consent is required. FSB members also agreed that masking of counterparty-identifying data should be discontinued by the end of 2018, once barriers to reporting are removed by June of that year.

In August 2016, the FSB published the first follow-up report ("2016 FSB Report") to the 2015 FSB Report. The 2016 FSB Report is available at http://www.fsb.org/wp-content/uploads/Report-on-FSB-Members%E2%80%99-Plans-to-Address-Legal-Barriers-to-Reporting-and-Accessing-OTC-Derivatives-Transaction-Data2.pdf and states that "FSB members . . . agreed that jurisdictions should remove barriers to reporting complete information by June 2018 at the latest, and that masking of counterparty-identifying data be discontinued by year-end 2018, once barriers to reporting are removed." 2016 FSB Report at 4.

A second follow-up report on plans to remove legal barriers will be published ahead of the G20 Leaders Summit in Hamburg, Germany on July 7-8, 2017.

The ISDA Letter also noted that the ODRG has "sent several letters to the Chairman of the . . . FSB[ ] highlighting the urgent need for . . . legislative changes, to remove barriers to reporting counterparty-identifying information to trade repositories[]" and has suggested that "the FSB discuss setting an 'ambitious but realistic deadline' for addressing such barriers to reporting," and "stated its belief that any deadline set should be appropriate in order to achieve the G20's objectives of effective reporting and supervision of reporting entities, while being 'feasible for the jurisdictions concerned, having regard to their legislative processes.'"

case.[11] Similarly, Ms. Lurton stated in the FIA Letter that the "OCR Final Rule . . . mandates, in some instances, the unlawful disclosure of data covered by foreign privacy-protection laws . . ."[12] and that "[s]ince the issuance of the privacy relief[,] there have been no meaningful changes to the reporting requirements that would lessen the burden on reporting firms where non-U.S. laws restrict the disclosure of certain information."[13]

The ISDA Letter made the observations below regarding eight of the Enumerated Jurisdictions.

Non-FSB Member Enumerated Jurisdictions. ISDA observed that five Enumerated Jurisdictions—Austria, Belgium, Hungary, Luxembourg and Samoa—are neither FSB member jurisdictions nor referenced in the 2016 FSB Report and that, with respect to all but Samoa, the need for continuing no-action relief with respect to privacy law restrictions imposed by these jurisdictions hinges on European Commission ("EC") action.[14]

France. ISDA observed that, based on a 2016 "Amendment of the Articles of the Monetary and Financial Code" adopted by the National Assembly and subsequently passed by the Senate ("Amendment"), France no longer has barriers to full reporting, according to the 2016 FSB Report. ISDA noted, however, that it would be premature to require market participants to apply an immediate "'blanket' unmasking" for all counterparties and transactions because

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[11] For example, in the ISDA Letter, Ms. Hsu cited the following passage from the 2016 FSB Report:

> [i]n summary, while some work is in process to remove barriers to both reporting of complete OTC derivatives transaction information to TRs and authorities' access to TR-held data, significant work remains across FSB member jurisdictions to achieve this[,] and concrete plans to address the barriers have not been formulated in a number of cases. Therefore, based on reports received to date, it appears that, across FSB member jurisdictions, further significant planning and implementation efforts will be needed in order to meet the agreed June 2018 deadlines.

ISDA previously noted the following in the 2015 ISDA Letter, citing the 2015 FSB Report:

> [b]arriers to reporting are widespread among FSB member jurisdictions, particularly in the case of reporting pursuant to foreign reporting requirements. While in many cases these barriers can be overcome through obtaining counterparty consent or authority authorisation, or through equivalence and recognition frameworks, in other cases barriers cannot be addressed in these ways.".

[12] FIA Letter, citing a February 24, 2016 letter from FIA to DMO that, among other things, "raised privacy . . . concerns with the OCR Final Rule . . . ."

[13] *But see* discussion below regarding France and Switzerland.

[14] Specifically, ISDA noted that "national barriers to reporting pursuant to foreign requirements (e.g., counterparty consent) would be superseded as soon as the . . . EC . . . has adopted an equivalence decision. The EC has not yet adopted an equivalence determination. The EC is still evaluating multiple jurisdictions as to whether such equivalence should be granted."

market participants need to review[15] and reassess the impact of the Amendment on things such as:

- the impact on non-French branches;
- data protection statutes in clients' jurisdictions other than France; and
- applicable local laws in locations in which swaps are executed, given that banking secrecy requirements may still apply based on the location of sales and trading personnel.

ISDA added that "[d]ue to the Amendment, market participants must review what was previously implemented to determine instances in which masking of counterparty information can be lifted [("French Reportable Swaps")], and cases where masking may be required to be retained [("French Restricted Swaps")]."

Singapore. ISDA observed that, although the 2016 FSB Report notes that legislative amendments have been proposed in Singapore that would remove the need for client consent prior to complying with foreign reporting obligations and that such amendments were "targeted . . . to take effect in 2017[,]" the relevant legislation "is still currently going through the Parliamentary process."

Switzerland. ISDA summarized three fact patterns with respect to which ISDA's Swiss counsel ("Swiss Counsel") advised ISDA regarding barriers to reporting information to trade repositories. ISDA observed that, although—consistent with the 2016 FSB Report—Swiss law in some cases no longer restricts reporting Identity Information, Form 102A Information or Form 102B Information,[16] Swiss Counsel advised ISDA that Swiss law continues to restrict such reporting in certain other cases.[17] Specifically, ISDA noted that Swiss Counsel advised it that reporting the foregoing information would be permitted "[w]here the reporting counterparty is located outside Switzerland but the non-reporting party is located in Switzerland[,]" ("Swiss Reportable Swaps") adding that:

> FMIA is not applicable. The reporting obligation would lie with the foreign counterparty under foreign laws; to the extent that the

[15] ISDA added that the review will require the involvement of multiple functional areas within market participant institutions, "including legal, compliance, back and middle office, and information technology[,]" and that "[o]nce the review is complete, the technology infrastructure for trade reporting must be partially rebuilt in order to incorporate this more complex logic."

[16] ISDA observed that the 2016 FSB Report indicated that "Switzerland no longer has barriers to reporting information to TRs . . . since the Swiss Financial Market Infrastructure Act ("FMIA") went into effect[,]" citing http://www.fsb.org/wp-content/uploads/Switzerland.pdf.

[17] Specifically, ISDA stated that, although "[t]he [2016] FSB Report indicated that Switzerland no longer has barriers to reporting information to TRs, and no barriers to authorities' access to TR-held data, since the Swiss Financial Market Infrastructure Act ("FMIA") went into effect[,] ISDA was advised by Swiss counsel of the applicability of the FMIA for certain scenarios including[]" the three scenarios discussed herein.

> reporting counterparty can make the reports on the basis of the information it has available, no further consents are required from the counterparty located in Switzerland.

ISDA also noted that Swiss Counsel advised it that reporting restrictions remain in place "[w]here the reporting counterparty is located and registered in Switzerland[]"[18] and "[w]here the reporting counterparty is located in Switzerland as a branch, including as a branch of a U.S. person[]" (collectively with any other swaps with respect to which Swiss law still imposes barriers to reporting information to swap data repositories, "Swiss Restricted Swaps").[19]

Requests for Relief

FIA requested "an extension of the privacy relief for Forms 102A, 102B, and 102S from March 1, 2017, to March 1, 2018."

ISDA requested the following relief:

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[18] ISDA added that Swiss Counsel further advised it that:

> Reporting obligations under FMIA apply; rules of Article 105(4) of FMIA apply. Article 105(4) states 'Reports to a recognized foreign trade repository may include further details. If these consist of personal data, the approval of the person in question is to be obtained.' Therefore, to the extent the reporting fields include further information not required to be reported under Swiss laws, there would be a requirement to obtain client consent if personal data is to be reported. One example may be in the case where a Swiss bank provides delegated reporting services under EMIR, the bank would need the consent of the client to report personal data not required to be reported under the reporting rules of the FMIA. Note that no TRs have been recognized by Swiss Financial Market Supervisory Authority ("FINMA") to date.

[19] ISDA added that Swiss Counsel further advised it that:

> Reporting obligations under foreign law apply, except to the extent that FINMA were to determine that the Swiss branch is subject to Swiss reporting obligations under FMIA because the relevant foreign rules are not equivalent to those of the FMIA. This would be a case-by-case determination for the relevant branches concerned.
>
> In addition to FMIA rules, data transfer out of the Swiss branch to comply with the relevant foreign reporting obligations must also meet the requirements of Article 42c of the Swiss Financial Market Supervision Act . . . which entered into force on 1 January 2017.
>
> Regarding data transfer out of the Swiss branch to comply with the relevant reporting obligations under FMIA, the rules of FMIA Article 105(4) would apply . . . .

1. Austria, Belgium, Hungary, Luxembourg, Samoa, and Singapore (Non-FSB Member Enumerated Jurisdictions): An extension of the expiration date of the no-action relief provided in NAL 16-03 until the earlier of (i) such time as the reporting counterparty no longer holds the requisite reasonable belief regarding the consequences of reporting the specified counterparty identity information (the "Reasonable Belief Expiration Date")[20] and (ii) such time as the relevant privacy law barrier to reporting has been removed in accordance with the recommendations of the ODRG and the FSB;

2. France and Switzerland: An extension of the expiration date of the no-action relief provided in NAL 16-03 until the earlier of (i) the Reasonable Belief Expiration Date and (ii) six months from the date of expiry of NAL 16-03;[21]

3. Non-Enumerated Jurisdictions: An extension of the relief provided in CFTC Letter No. 16-03 to new non-Enumerated Jurisdictions, providing that "a reporting party (or a group, or industry association on behalf of similarly situated parties) [("Requesting Party")] notifies DMO that the . . . [Requesting Party] has formed the requisite reasonable belief with respect to the Privacy Laws of the additional jurisdiction(s), and meets the requisite conditions[;]"[22] and

4. Privacy Law Identifier: Permitting market participants to rely on the relief set forth in CFTC Letter No. 16-03, regardless of the Privacy Law Identifier ("PLI") condition, if such market participants "are acting in good faith and utilizing their best efforts to . . . comply with this condition."[23]

The Privacy Law Identifier Condition of Relief

DMO has included in each Prior Letter as a condition of relief a requirement that "[t]he Reporting Counterparty shall include the Privacy Law Identifier [("PLI")] with all swap data

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[20] DMO has stated that it will not recommend that the Commission commence an enforcement action against a reporting counterparty for failure to report identifying information, pursuant to Parts 20, 45, or 46, if, among other requirements, the reporting counterparty has formed a reasonable belief that statutory or regulatory prohibitions in the non-U.S. jurisdiction preclude the reporting counterparty from reporting such identifying information. *See* CFTC Letter No. 13-41 at 5, 8.

[21] ISDA added that "if[,] as a result of the review currently undertaken by industry participants[,] it is determined that there are circumstances under which masking is still required, ISDA would like the opportunity to request a revision and extension of the relief available." As a result of the way DMO has designed the expiration date in today's relief (i.e., linked to a Reasonable Belief Expiration Date rather than a calendar date), such a request should not be necessary.

[22] ISDA cited in its request for relief CFTC Letter No. 16-03, which permitted non-Enumerated Jurisdictions to be covered by reporting relief provided that certain conditions were met.

[23] ISDA contended in its request for relief that market participants "continue to face cross-border challenges with the use of a . . . PLI[ ] when reporting a swap to multiple jurisdictions through the use of global trade repositories and via vendor-provided middleware."

reported pursuant to Parts 45 or 46 in each instance in which it would otherwise have been required to report an Opposite LEI or Other Enumerated Identifier[.]"[24] The term "Privacy Law Identifier" or "PLI" is defined as "a unique identifier, which is not an LEI, and is used to identify a Privacy Law Counterparty pursuant to [CFTC Letter No. 13-41]."[25] The foregoing PLI definition further states that "[e]ach Reporting Counterparty shall use a consistent and static [PLI] for a Privacy Law Counterparty in each instance that it would use the Opposite LEI and Other Enumerated Identifiers."

It has come to DMO's attention that at least one Reporting Counterparty has taken the position that "name withheld" and similar generic terms that do not correspond to a particular Privacy Law Counterparty satisfy the PLI condition of relief in the Prior Letters. That is incorrect. The purpose of the PLI condition of relief is to permit the CFTC to identify Privacy Law Counterparties that are significant counterparties to Reporting Counterparties or that may have engaged in particular market conduct that the CFTC may wish to investigate further. PLIs that are not unique to each Privacy Law Counterparty, such as "name withheld" and other generic terms, indicate that a Reporting Counterparty is relying on masking relief but do not give the CFTC visibility into the significance to a Reporting Counterparty of a Privacy Law Counterparty or into patterns of conduct by a Privacy Law Counterparty that the CFTC may wish to investigate further. Therefore, *to satisfy the PLI condition of relief in the Prior Letters and this letter, a PLI must be unique to each Privacy Law Counterparty and identify the Privacy Law Counterparty to the exclusion of all other counterparties*.

DMO declines to expand the PLI condition of relief pursuant to ISDA's request that DMO allow market participants to rely on the relief if, as stated in the ISDA Letter, "they are acting in good faith and utilizing their best efforts to . . . comply with this condition." DMO believes that the requested relief is not warranted based on (1) the importance to risk surveillance of identifying large swap counterparties, (2) that the PLI condition has been a condition of relief for over four years[26] (giving market participants ample time to resolve PLI-related problems caused by global trade repositories and/or vender-provided middleware) and (3) that market participants and global trade repositories generally have been able to resolve "cross-border challenges with the use of a . . . PLI[ ] when reporting a swap to multiple jurisdictions . . .",

No-Action Relief

Extension of the Relief Granted in CFTC Letter No. 16-03 and the other Prior Letters from Specified Requirements of Parts 20, 45 and 46

[24] *See, e.g.*, CFTC Letter No. 13-41, at 7.

[25] *See, e.g., id.* at 4.

[26] The PLI condition has been a condition of relief since CFTC Letter No. 12-46, issued December 7, 2012.

DMO believes that a further conditional extension of the existing relief in the Prior Letters is appropriate so that relevant jurisdictions and parties with reporting obligations may continue their efforts to resolve issues raised in the Prior Letters and herein.

In light of the foregoing, DMO is extending the expiration of the relief provided in the Prior Letters,[27] as modified and explained and subject to the conditions herein, until: (i) midnight eastern time on September 1, 2017 for French Reportable Swaps and Swiss Reportable Swaps; and (ii) the applicable Reasonable Belief Expiration Date[28] for each swap or group of swaps other than French Reportable Swaps and Swiss Reportable Swaps,[29] contingent on satisfaction of all terms and conditions enumerated in the Prior Letters[30] remaining in effect,[31] other than the Confirmation Conditions. The Confirmation Conditions are no longer conditions of this relief.

This relief is conditioned upon ISDA notifying DMO of each Reasonable Belief Expiration Date promptly after it occurs with respect to each jurisdiction covered by the relief. DMO believes that this is required so that it is aware of the occurrence of a Reasonable Belief Expiration Date with respect to each jurisdiction and can notify interested parties that a Reasonable Belief Expiration Date has occurred (and that, consequently, the masking relief has expired, triggering the backloading condition).[32]

Extension of the Relief Granted in CFTC Letter No. 16-33 from Specified Requirements of Parts 17 and 20

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[27] This would include, without limitation, the relief granted in CFTC Letter No. 16-03 with respect to non-Enumerated Jurisdictions and, therefore, would address the third request for relief set forth in the ISDA Letter.

[28] Both conditions II.(i) and III.(i) of CFTC Letter No. 13-41 require that the reporting party form a reasonable belief that reporting certain information under the relevant regulations would violate applicable foreign privacy laws. *See* CFTC Letter No. 13-41, at 5, 8. In CFTC Letter No. 16-03, DMO further noted that "the current extension does not require[] any particular means of forming the requisite 'reasonable belief'". CFTC Letter No. 16-03, at 3. Although there is no required means of forming the requisite belief, DMO clarifies that the reasonable belief must be formed in good faith after careful analysis of the applicable authority.

[29] Each Reporting Party must analyze, based on its own circumstances, whether and the extent to which a Reasonable Belief Expiration Date has occurred with respect to some or all of the Reporting Party's French Restricted Swaps and/or Swiss Restricted Swaps.

[30] For example, once the relief expires, those relying on the relief granted herein must comply with the backloading condition of relief set forth in sections II.iii and III.iv of CFTC Letter No. 16-03.

[31] To the extent that a term or condition of a Prior Letter was removed in a later Prior Letter, compliance therewith would not be required. Similarly, to the extent a term or condition in a Prior Letter modified or superseded a term or condition of an earlier Prior Letter, compliance with the more recent term or condition, but not the earlier term or condition, would be required.

[32] While the relief will expire by its terms upon the occurrence of a Reasonable Belief Expiration Date whether or not DMO notifies affected parties, DMO currently intends to provide some sort of public notice of the occurrence of each Reasonable Belief Expiration Date.

DMO believes that a further conditional extension of the existing relief in CFTC Letter No. 16-33 is appropriate so that relevant jurisdictions and parties with reporting obligations may continue their efforts to resolve issues raised in CFTC Letter No. 16-33 and herein.

In light of the foregoing, DMO is extending the expiration of the relief provided in CFTC Letter No. 16-33, as modified and explained and subject to the conditions herein, until: (i) midnight eastern time on September 1, 2017 for French Reportable Swaps and Swiss Reportable Swaps; and (ii) the Reasonable Belief Expiration Date[33] for each swap or group of swaps other than French Reportable Swaps and Swiss Reportable Swaps,[34] contingent on satisfaction of all terms and conditions enumerated in CFTC Letter No. 16-33[35] other than the Confirmation Conditions. The Confirmation Conditions are no longer conditions of this relief.

This relief is conditioned upon FIA notifying DMO of each Reasonable Belief Expiration Date promptly after it occurs with respect to each jurisdiction covered by the relief. DMO believes that this is required so that it is aware of the occurrence of a Reasonable Belief Expiration Date with respect to each jurisdiction and can notify interested parties that a Reasonable Belief Expiration Date has occurred (and that, consequently, the masking relief has expired, triggering the backloading condition).[36]

This letter reflects DMO's views alone, and not necessarily the position or views of the Commission or of any other division or office of the Commission. The no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the regulations thereunder. As with all no-action letters, DMO retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions concerning the extension in this correspondence of the relief previously provided in CFTC Letter No. 16-03 or any of the other Prior Letters, please contact Dan Bucsa, Deputy Director, Division of Market Oversight—Data and Reporting Branch, at (202) 418-5435, or David E. Aron, Special Counsel, Division of Market Oversight—Data and Reporting Branch, at (202) 418-6621.

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[33] *See* paragraph (1) on page 3 of CFTC Letter No. 16-33.

[34] Each Reporting Party must analyze, based on its own circumstances, whether and the extent to which a Reasonable Belief Expiration Date has occurred with respect to some or all of the Reporting Party's French Restricted Swaps and/or Swiss Restricted Swaps.

[35] For example, once the relief expires, those relying on the relief granted herein must comply with the backloading condition of relief set forth in condition iv on page 5 of CFTC Letter No. 16-33.

[36] While the relief will expire by its terms upon the occurrence of a Reasonable Belief Expiration Date whether or not DMO notifies affected parties, DMO currently intends to provide some sort of public notice of the occurrence of each Reasonable Belief Expiration Date.

If you have any questions concerning the extension in this correspondence of the relief previously provided in CFTC Letter No. 16-33, please contact Sebastian Pujol Schott, Associate Director, Division of Market Oversight—Compliance Branch, at (202) 418-5641, or Joseph Otchin, Special Counsel, Division of Market Oversight—Compliance Branch, at (202) 418-5623.

Sincerely,

Amir Zaidi
Director
Division of Market Oversight