



U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000
Facsimile: (202) 418-5521
www.cftc.gov

CFTC Letter No. 13-56
No Action
September 27, 2013
Division of Market Oversight

Time Limited No-Action Relief for Reporting Counterparties from Certain Continuation Data Reporting Requirements of Section 45.4 of the Commission's Regulations with respect to Uncleared Swaps Executed on or Pursuant to the Rules of a Temporarily Registered Swap Execution Facility

Background

The Division of Market Oversight (“Division”) is issuing this letter to provide time-limited no-action relief to Reporting Counterparties¹ from Part 45 continuation data reporting requirements for certain uncleared swaps that are executed on, or pursuant to, the rules of a temporarily registered swap execution facility (“SEF”). The relief in this Division No-Action Letter is in part responsive to requests made by market participants² and is being issued in connection with relief provided by the Division to temporarily registered SEFs from certain requirements of Part 43 and Part 45 of the Commission’s regulations in a separate No-Action Letter.³

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)⁴ amended the Commodity Exchange Act (the “CEA”) to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention and reporting of data regarding swap transactions. Pursuant to these newly added provisions, the Commission added to its regulations Part 45,⁵ which sets forth swap data recordkeeping rules, as well as rules for the reporting of swap transaction data to a registered swap data repository (“SDR”).

¹ As defined in § 45.1 of the Commission’s Regulations.

² See e.g., Letter from the International Swaps and Derivatives Association (ISDA) “Re: Revised request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Reporting Requirements for Swaps executed on a Swap Execution Facility” (September 23, 2013); Letter from the Asset Management Group (AMG) of the Securities Industry and Financial Markets Association (SIFMA) “Request for Relief Relating to Swap Execution Facility Implementation and Swap Trade Execution” (September 23, 2013).

³ See CFTC Letter No. 13-55 (September 27, 2013)

⁴ Pub. L. 111-203, 124 Stat. 1376 (2010).

⁵ Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (January 13, 2012)

Part 45 of the Commission’s regulations require a registered SEF to report all required swap creation data⁶ to an SDR, as soon as technologically practicable after execution, for each swap executed on or pursuant to the rules of the SEF.⁷ Thereafter, as set forth in section 45.4, swap counterparties are required to report required swap continuation data electronically to the same SDR,⁸ in a manner sufficient to ensure that all data in the SDR concerning the particular swap remains current and accurate, and includes all changes to the primary economic terms (“PET”) of the swap occurring during the swaps existence.⁹ For uncleared swaps, the Reporting Counterparty is required to report all required swap continuation data as provided in section 45.4, including when the swap is executed on or pursuant to the rules of a SEF.

Discussion

The Division is aware that a Reporting Counterparty’s ability to meet its continuation data reporting obligations may, in some cases, depend on the SEF’s fulfillment of its obligations under section 45.3(a) to report to an SDR all required swap creation data for each swap executed on the SEF or pursuant to its rules. Additionally, the Division has been informed that a Reporting Counterparty’s ability to meet its continuation data reporting obligations may, in some cases, depend on the SEF’s fulfillment of its regulatory obligations to transmit certain key data elements—that facilitate continuation data reporting—to the counterparties to a swap. Market participants have expressed concerns regarding the ability of Reporting Counterparties to report full, complete, accurate and timely continuation data for uncleared swaps executed on or pursuant to the rules of a temporarily registered SEF on an ongoing basis in light of certain operational challenges faced by temporarily registered SEFs.¹⁰ In this regard, the Division received requests from SEFs for no-action relief from the SEF’s obligations to report certain Part 43 and Part 45 data.

A Reporting Counterparty’s ability to fulfill its continuation data reporting obligations depends, in part, on the ability of a SEF to first fulfill its regulatory obligations under Part 45. In light of the circumstances described above, the Division believes that time limited relief is appropriate when a Reporting Counterparty: (i) is unable to report continuation data; or (ii) reports continuation data containing errors or omissions as a result of either: (i) a SEF’s failure to transmit required creation data to the Reporting Counterparty; or (ii) a SEF’s failure to report, or to cause to be reported, required creation data to an SDR.

⁶ Required creation data reporting must include all confirmation data for the swap, as defined in part 23 and section 45.1, and all primary economic terms data for the swap, as defined in section 45.1.

⁷ Section 45.3(a).

⁸ Section 45.10 requires that all required swap continuation data reported for a swap be reported to the same swap data repository that the SEF reported required swap creation data as required by section 45.3.

⁹ See generally § 45.4.

¹⁰ See Notes 2 and 3, *supra*.

No-Action Relief

In light of the foregoing, the Division will not recommend that the Commission commence an enforcement action against a Reporting Counterparty for failure to report required swap continuation data or for errors and omissions in swap continuation data reported, to an SDR, pursuant to section 45.4, for uncleared swaps in the equity, FX and other commodity asset classes that are executed on, or pursuant to, the rules of a SEF and for which the Reporting Counterparty:¹¹

- (1) Fails to report required swap continuation data due to the failure of a temporarily registered SEF to provide the Reporting Counterparty with:
 - a. the identity of the SDR to which required creation data for the swap was reported;
 - b. the unique swap identifier (USI) for the swap¹²; or
 - c. any other creation data that the Reporting Counterparty requires to enable it to fulfill its obligation to report continuation data for the swap;
- (2) Fails to report required swap continuation data for the swap as a result of a temporarily registered SEF's reliance on Section III, Condition (1)b of CFTC No-Action Letter No. 13-55;
- (3) Reports required swap continuation data to the SDR which continuation data includes errors or omissions that are the result of the circumstances described in (1) above, or that result from errors or omissions in the swap creation data reported to the SDR.

The Division will extend this relief until the earlier of: 1) such time as the Reporting Counterparty can fulfill its continuation data reporting obligations; and 2) **October 29, 2013** for affected swaps within the FX asset class and **December 1, 2013** for affected swaps within the equity and other commodity asset classes. Such no-action relief is subject to the following conditions:

- A. The Reporting Counterparty must inform the temporarily registered SEF in a timely manner of the circumstances enumerated in (1) through (3) above that preclude the Reporting Counterparty from reporting all required swap continuation data to the SDR in compliance with section 45.4, including a description of any related error messages received from the SDR to which the creation data for the swap was reported.

¹¹ Section 45.2 sets forth recordkeeping requirements for counterparties to swap transactions. The limited reporting relief provided to the Reporting Counterparties herein does not extend to recordkeeping requirements of the Reporting Counterparties.

¹² Pursuant to § 45.5(a)(2) a SEF is required to transmit the unique swap identifier electronically to each counterparty to the swap, as soon as technologically practicable after execution of the swap.

- B. The Reporting Counterparty must retain records with respect to all transactions covered by the relief (i.e., all transactions for which the Reporting Counterparty relied upon relief provided herein) and make such records available to the Commission for inspection and production immediately upon request.

This Division Letter provides limited relief to Reporting Counterparties regarding the circumstances described in (1) through (3) above in the equity, FX and other commodity asset classes only. It is time limited and ends in all respects **on October 29, 2013** for affected swaps within the FX asset class and **December 1, 2013** for affected swaps within the equity and other commodity asset classes.

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act.¹³ No-action relief letters are covered by collection 3038-0049. In addition Part 45 recordkeeping and reporting obligations are covered by collections 3038-0088 and 3038-0096.

The Division's letter, and the no-action position taken herein reflects the views of the Division only, and not necessarily the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the CEA or the regulations thereunder. As with all no-action letters, the Division 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 this correspondence, please contact Stuart Armstrong, Special Counsel, Division of Market Oversight, at (202) 418-5095 or sarmstrong@cftc.gov.

Sincerely,

Nancy Markowitz
Deputy Director
Division of Market Oversight

David Van Wagner
Chief Counsel
Division of Market Oversight

¹³ 44 U.S.C. §§ 3501 *et. seq.*