

COMMODITY FUTURES TRADING COMMISSION

Determination of the Availability of a Legal Entity Identifier Meeting the Requirements of the Regulations of the Commodity Futures Trading Commission and Designation of the Provider of Legal Entity Identifiers to Be Used in the Recordkeeping and Swap Data Reporting Pursuant to Those Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Order

SUMMARY: On July 23, 2012, the Commodity Futures Trading Commission issued an order designating DTCC-SWIFT as the provider of the legal entity identifiers (LEIs) which will be used by registered entities and swap counterparties in complying with the CFTC's swap data reporting regulations. These identifiers will be known as CFTC Interim Compliant Identifiers (CICIs) until establishment of a global LEI system, and will transition into the global LEI system when it is established. The order included findings of fact by the Commission that the CICI provided by DTCC-SWIFT is the only available identifier that satisfies all requirements of the Commission's swap data reporting rules, and can be provided to market participants sufficiently in advance of the initial compliance date for swap data reporting to enable compliance with the rules. The designation is made for a limited term of two years, and is subject to four conditions specified in the order.

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SUPPLEMENTARY INFORMATION: Section 21(b) of the Commodity Exchange Act, ("CEA"), added to the CEA by Section 728 of the Dodd-Frank Act, directs the Commission to prescribe standards that specify the data elements for each swap that shall be reported to, and collected and maintained by, swap data repositories. Pursuant to this authority, part 45 of the Commission's regulations establishes recordkeeping and data reporting requirements for swaps

subject to the jurisdiction of the Commission.¹ Section 45.6, *Legal entity identifiers*, includes a legal entity identifier (“LEI”) for each swap counterparty among the data elements required to be reported for each swap. That section provides that:

Each counterparty to any swap subject to the jurisdiction of the Commission shall be identified in all recordkeeping and all swap data reporting pursuant to this part by means of a single legal entity identifier as specified in this section.²

As noted in part 45, and stated in the CPSS-IOSCO *Report on OTC Derivatives Data Reporting and Aggregation Requirements*, “a standard system of LEIs is an essential tool for aggregation of OTC derivatives data.”³

In order to enable compliance with this requirement by registered entities and swap counterparties subject to the Commission’s jurisdiction, part 45 provides that:

The Commission shall determine, as provided in paragraphs (e)(1)(i) through (iii) of this section, whether a legal entity identifier system that satisfies the requirements set forth in this section is available to provide legal entity identifiers for registered entities and swap counterparties required to comply with this part.⁴

Section 45.6(e)(1)(i) specifies five factors that the Commission shall consider in making this determination.

Section 45.6 emphasizes that making this determination and having LEIs available for identification of swap counterparties when swap data reporting commences as of the compliance dates set forth in part 45 is highly important to achieving the systemic risk mitigation, transparency, and market abuse prevention purposes of the Dodd-Frank Act. For this reason, § 45.6(e)(1)(ii) provides that:

¹ 17 CFR part 45, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012), <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-33199a.pdf>.

² § 45.6.

³ Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, *Report on OTC Derivatives Data Reporting and Aggregation Requirements* (Dec. 2011).

⁴ § 45.6(e)(1).

In making this determination, the Commission shall consider all candidates meeting the criteria set forth in paragraph (e)(1)(i) of this section, but shall not consider any candidate that does not demonstrate that it in fact can provide LEIs for identification of swap counterparties in swap data reporting commencing as of the compliance dates set forth in this part.

In addition, § 45.6(e)(1)(iii) provides that:

The Commission shall make this determination at a time it believes is sufficiently prior to the compliance dates set forth in this part to enable issuance of LEIs far enough in advance of those compliance dates to enable compliance with this part.

If the Commission determines that a provider whose LEI system provides LEIs meeting the requirements of part 45 is available, the rule calls for the Commission to inform registered entities and swap counterparties subject to the Commission's jurisdiction of where they can obtain the LEIs needed for compliance with part 45, by issuing an order designating the provider of the LEIs to be used for that purpose. Section 45.6(e)(2) provides that:

If the Commission determines pursuant to paragraph (e)(1) of this section that such a legal entity identifier system is available, the Commission shall designate the legal entity identifier system as the provider of legal entity identifiers to be used in recordkeeping and swap data reporting pursuant to this part, by means of a Commission order that is published in the Federal Register and on the website of the Commission, as soon as practicable after such determination is made. The order shall include notice of this designation, the contact information of the LEI utility, and information concerning the procedure and requirements for obtaining legal entity identifiers.

Once the Commission has determined that an LEI meeting the requirements of part 45 is available, and has designated its provider as set forth in § 45.6(e)(2), registered entities and swap counterparties subject to the Commission's jurisdiction are required to use the LEIs furnished by that provider in recordkeeping and swap data reporting. Section 45.6(f)(1) provides that:

When a legal entity identifier system has been designated by the Commission pursuant to paragraph (e) of this section, each registered entity and swap counterparty shall use the legal entity identifier provided by that system in all recordkeeping and swap data reporting pursuant to this part.

II. DETERMINATION AND DESIGNATION PROCESS.

A. Request for Submissions.

Pursuant to these provisions of part 45, on March 9, 2012, the Commission issued a public request for submissions from industry participants that wished to be considered for designation by the Commission as the provider of LEIs to be used in complying with the rule.⁵

The Commission's request for submissions included provisions relating to international aspects of LEIs. It reiterated that part 45 calls for issuance of the identifier used in recordkeeping and swap data reporting under CFTC jurisdiction, and for any utility formed to issue such identifiers, to be subject to international supervision by a governance structure that includes the Commission and other financial regulators in any jurisdiction requiring use of the legal entity identifier pursuant to applicable law. It noted the Commission's ongoing participation in an international process, coordinated by the Financial Stability Board ("FSB"), to establish governance principles and reference data requirements for a global legal entity identifier, to be contained in recommendations by an international regulatory LEI Expert Group (including the Commission) for consideration by the FSB in May 2012. In light of that process, and as requested by other international financial regulators, the request for submissions stated that the Commission would refer to the identifier to be used in reporting under part 45 as the CFTC Interim Compliant Identifier ("CICI") until after the FSB Plenary meeting in May 2012, and would defer its designation of the provider of CICIs until after that meeting. The request also reiterated that, as provided in part 45, the Commission plans to adopt the governance principles and LEI reference data requirements endorsed by the FSB, making them applicable to

⁵ Commodity Futures Trading Commission Press Release, *CFTC announces process to designate the provider of CFTC Interim Compliant Identifiers*, March 9, 2012.

identification of swap counterparties under CFTC jurisdiction. The request further stated that, once these steps are completed, the Commission anticipates that the identifier then called the CICI will transition into the global LEI, and be referred to as the LEI.

In its request for submissions, the Commission stated that submitters must be prepared to demonstrate that they meet all of the requirements set forth in part 45. It further notified submitters that: (1) the Commission's determination and designation process would include an on-site, live demonstration for Commission staff of the process to be used for issuance of CICIs; (2) the Commission's designation will be for a limited term of two years, and be terminable on six months' notice if a different central utility for the global LEI is chosen later through the FSB process and becomes operational; and (3) subject to applicable confidentiality laws, the Commission's designation will require that the designated LEI utility must make public all CICI data, operations, identity validation processes and audit trail, and to pass to any successor LEI utility, free of charge, all CICI data and all CICI intellectual property rights.

B. Requirements for Designation as the LEI Utility.

Four parties expressed an interest in becoming the LEI provider. To assess their suitability, the Commission required the submitters to provide both (1) a written demonstration of their ability to meet the Commission's part 45 requirements, and (2) an on-site, live demonstration of their process for issuing CICIs.

1. *Written Demonstration of Ability to Meet Commission Requirements.*

Detailed requirements for the written demonstration were provided to each submitter. The requirements document stated that, as provided in § 45.6(e)(1)(i) of the Commission's regulations, in determining whether a CICI meeting the requirements of part 45 is available, and

if so designating its provider as the utility that will provide the CICI, the Commission would consider, without limitation, the following five factors:

- Whether the CICI provided by the utility is issued under, and conforms to, ISO Standard 17442, Legal Entity Identifier (LEI).
- Whether the CICI provided by the utility complies with all of the technical principles set forth in part 45.
- Whether the CICI utility complies with all of the governance principles set forth in part 45.
- Whether the CICI utility has demonstrated that it in fact can provide CICIs for identification of swap counterparties in swap data reporting commencing as of the compliance dates set forth in part 45.
- The acceptability of the CICI utility to industry participants required to use the LEI in complying with part 45.

The requirements document also described the functions to be performed by the CICI system, including, but not limited to, the following:

- Utility Administration (*e.g.*, accounting; audit; CICI fee collection; billing and payment; communications, human resources; and legal department).
- Data Management (*e.g.*, receive registrant data; establish and maintain registrant data record; apply validation and data quality assurance processes to registrant data; issue unique CICI; transmit CICI to registrant; maintain and update data record history; maintain and update required metadata; maintain complete audit trail of all records, data, and messages; and maintain appropriate system safeguards).
- Verification of Entity Identification (*e.g.*, cleanse and validate identification data submitted through both self-registration and third-party registration; connect to and communicate with national business registers in jurisdictions world-wide; provide identification data challenge services; verify uniqueness of submitted identification information; provide local verification in countries world-wide; visit provided addresses to verify entity presence; process entity messages regarding identification data, for example concerning corporate actions; perform periodic re-verification; and identify the verification level at which each record has been verified).
- Public Database (*e.g.*, establish and maintain free public database of all CICIs; provide 24/7 internet query facility; provide near-real time response to queries; provide complete, current CICI directory; and provide help desk and assistance services for the public).

- CICI Registration Services (*e.g.*, provide local language services world-wide; respond to market participant queries; receive and process both electronic and paper registration requests; and provide timely processing of CICI requests and timely assignment of CICIs).
- Compliance (*e.g.*, monitor and ensure adherence to technical and governance principles, to operational and technical standards and protocols, to regulatory policies concerning access to hierarchical data; and to applicable laws; regulatory oversight reporting; compliance with directives of international Regulatory Oversight Committee, when established; and maintain capability to transfer all CICI data to international central utility when established).

In addition, the requirements document provided that each submitter was required to provide detailed information concerning its relevant background and experience. This information was required to include details of the submitter's corporate and organization background and ownership and legal structure; its financial status; and its plan for financing establishment and operation of the CICI utility on a non-profit, cost-recovery basis, without charging market participants any fees that could reasonably be construed to constitute a barrier to participation in financial markets. Each submitter was also required to include a detailed description of its experience in assigning, maintaining, and managing validated corporate or legal entity identifiers, and its experience with gathering, cleansing, maintaining, and using reference data associated with identifying corporate or legal entities.

Each submitter provided a document to the Commission in response to the requirement for a written demonstration, as set forth above.

2. On-site, Live Demonstration of Complete CICI Issuance Pprocess.

Each submitter was also required to provide an on-site, live demonstration of its systems, operations, and processes for obtaining, cleansing, and using reference data to validate the identity of a legal entity and for issuing a CICI to such an entity. Submitters were asked to provide examples of preliminary identifiers and test files or test identifiers already prepared for

or provided to swap counterparties for use in automated system preparation and testing in preparation for swap data reporting beginning on the applicable compliance date established in part 45. The demonstration was required to include live presentation of the submitter's web portal, file transmission facilities, and test processes that would be available to registered entities and swap counterparties for use in the CICI issuance process. The demonstration was also required to include live presentation of the submitter's procedures and staffing for obtaining entity reference data, entity challenge with respect to reference data, de-duplication of preliminary identifiers, and assignment of unique identifiers to all swap counterparties subject to the Commission's jurisdiction.

All four submitters provided some form of on-site, live demonstration to Commission staff.

D. Evaluation Criteria.

The requirements document set forth criteria the Commission would use in evaluating the submitters and the CICIs they provide, for the purpose of determining whether a CICI meeting the requirements of part 45 is available, and if so, designating its provider as the source of CICIs to be used in compliance with part 45. Among other things, the four submissions were evaluated based on the following criteria:

1. Evidence that the submitter can in fact provide all CICIs required by market participants for the purpose of complying with part 45 of the Commission's regulations, and can do so sufficiently in advance of July 16, 2012, to enable market participants to be ready to comply as of that date. As provided in § 45.6 of the Commission's regulations, submitters that do not demonstrate this will not be considered further.
2. Whether the written demonstration completely and satisfactorily addresses all of the Commission's requirements addressed in the requirements document. Incomplete submissions will not be considered further.
3. Evidence of the submitter's satisfactory understanding of the Commission's requirements with respect to the CICI utility, as set forth in the requirements document.

4. Evidence satisfying the Commission that the submitter has commenced setting up, will fully set up before June 1, 2012, and can satisfactorily manage and maintain, a CICI utility meeting all of the Commission's requirements, as set forth in the requirements document and in part 45 of the Commission's regulations. Submissions not providing such evidence will not be considered further.
5. A successful, onsite, live, complete demonstration for Commission staff of the submitter's systems, operations, and processes for obtaining, cleansing, and using level one reference data to validate the identity of a legal entity and issuing a CICI to such an entity. Submitters who do not provide such a successful demonstration will not be considered further.
6. The submitter's relevant experience, as described in the requirements document, in assigning, maintaining, and managing validated corporate or legal entity identifiers, and the submitter's experience with gathering, cleansing, maintaining, and using reference data associated with identifying corporate or legal entities.
7. A workable plan for financing the non-profit, cost-recovery-based establishment and operation of the CICI utility, without charging market participants any fee reasonably deemed to constitute a barrier to market participation.

III. FINDINGS AND ORDER

Now, therefore, based on the statutory provisions and Commission regulations cited above, and on the written submissions and on-site, live demonstrations provided by the submitters, the Commission makes the following findings and rulings:

The Commission FINDS that:

1. An LEI is available that: satisfies the requirements set forth in § 45.6 of the Commission's regulations; is provided by a utility fully set up by June 1, 2012; and can be provided to market participants sufficiently in advance of the initial compliance date for swap data reporting to enable compliance with the Commission's regulations. That LEI is the LEI provided by DTCC-SWIFT. DTCC-SWIFT met all of the Commission's requirements and evaluation criteria set forth in part 45 of the Commission's regulations and the requirements document.

2. The LEI provided by DTCC-SWIFT is the only available LEI that: satisfies the requirements set forth in § 45.6 of the Commission's regulations; is provided by a utility fully set up by June 1, 2012; and can be provided to market participants sufficiently in advance of the initial compliance date for swap data reporting to enable compliance with the Commission's regulations.

Therefore:

IT IS HEREBY ORDERED THAT:

1. DTCC-SWIFT is designated as the provider of legal entity identifiers ("LEIs"), to be known as CFTC Compliant Interim Identifiers ("CICIs") until establishment of the global LEI system or further action by the Commission, to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations.

a. This designation is conditioned on modification of the DTCC-SWIFT website and other facilities and documents used to provide identifiers for use in complying with parts 45 and 46, to refer to the CICI and not to refer to the LEI, the preliminary LEI, or other similar terms including the term LEI. This shall include, without limitation, references to the CICI rather than the LEI on the utility logo, documentation, instructions and field labels used by DTCC-SWIFT.

b. This designation is conditioned on DTCC-SWIFT's continuing compliance, for as long as it is authorized to provide LEIs (to be known as CICIs until establishment of the global LEI system), by this order or any future order of the Commission, with all of the legal entity identifier requirements of Part 45 of the Commission's regulations, and any related requirements as set forth in this order or in the requirements document provided to DTCC-SWIFT during the determination and designation process; including, without limitation, the requirement to be subject to supervision by a governance structure that includes the Commission and other

financial regulators in any jurisdiction requiring use of legal entity identifiers pursuant to applicable law, for the purpose of ensuring that issuance and maintenance of CICIs and of associated reference data adheres on an ongoing basis to the Commission's requirements set forth in part 45.

c. This designation is further conditioned on the requirement that, subject to applicable confidentiality laws and other applicable law, (1) DTCC-SWIFT shall make public all CICI identifiers and associated reference data, utility operations, and identity validation processes, and (2) following establishment of the global LEI system by means of a charter acceded to by the Commission, or following designation by the Commission of a successor CICI utility, DTCC-SWIFT shall pass to any successor CICI utility, or to the global LEI system, free of charge, all CICI identifiers and associated reference data and all CICI intellectual property rights.

d. This designation is made for a limited term of two years from the date of this Order, and may be terminated by the Commission on six months' notice in connection with the establishment of a global LEI system. At the conclusion of the term of this designation, if the global LEI system is not yet operational, the Commission may consider the feasibility of having multiple CICI providers and the feasibility of coordination among them to avoid duplicative LEIs, and if it believes this is feasible, may consider submissions from DTCC-SWIFT as well as from other parties that seek to become CICI providers.

2. Registered entities and swap counterparties subject to the Commission's jurisdiction shall use CICIs provided by DTCC-SWIFT to comply with the legal entity identifier requirements of parts 45 and 46 of the Commission's regulations. For this purpose, registered entities and swap counterparties may contact DTCC-SWIFT at: The Depository Trust & Clearing Corporation, 55 Water Street, New York, N.Y. 10041, 212-855-1000.

Issued in Washington, D.C. this 23rd day of July, 2012.

By the Commission

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Assistant Secretary of the Commission