



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-75
No-Action
December 18, 2012
Division of Market Oversight

A.P. Charlton
Group Head, Compliance
Standard Chartered Bank
1 Basinghall Avenue
London EC2V 5DD

Dear Mr. Charlton:

This letter is in response to Standard Chartered Bank's ("SCB") request dated December 14, 2012 ("Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission"). In the Letter, SCB requested time-limited no-action relief pursuant to Commission regulation 140.99 with respect to certain reporting requirements promulgated by the Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") under Parts 43,¹ 45,² and 46³ of the Commission's regulations. Specifically, SCB identified five areas in which it will be unable to comply with provisions of these reporting rules, by the relevant compliance dates, due to limitations in SCB's trading and reporting systems. Based on SCB's representations in the Letter and in communications with DMO staff, the Division has determined to grant the relief described below:

- A. Delay in complying with requirements associated with the exchange of USI data with a counterparty under Regulation 45.5(b)(2)(ii) until 12:01 a.m. eastern daylight time on April 30, 2013.

SCB represented in the Letter that it will maintain and report to a swap data repository ("SDR") USI data for swap transactions in which SCB is the reporting counterparty. However, SCB also represented that it does not yet have automated capability to exchange USI data with a

¹ See generally Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (January 9, 2012) ("Real-Time Reporting Rule").

² See generally Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012) ("Regulatory Reporting Rule").

³ See generally Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012) ("Historical Swap Reporting Rule").

non-reporting counterparty where SCB is the reporting counterparty. To provide additional time to come into full compliance with Regulation 45.5(b)(2)(ii)⁴ SCB requested no-action relief until June 30, 2013 with respect to reporting and recordkeeping requirements associated with its exchange of USI data with non-reporting counterparties. SCB made this request subject to the condition that it will retain records with respect to all swap transactions and make them available to the Commission upon request.

Accordingly, in light of SCB's representations as to its technological limitations, the Division believes that time-limited no-action relief from Regulation 45.5(b)(2)(ii)'s requirement that a swap reporting counterparty electronically transmit the USI for such swap to the non-reporting counterparty as soon as technologically practicable after execution of the swap is appropriate upon meeting the following condition:

- (1) SCB's chief information officer (or equivalent) must document an internal determination that technical difficulties result in an inability to comply with Regulation 45.5(b)(2)(ii), and maintain a record of such documentation.

In addition, such no-action relief shall be subject to the following further conditions:

- (1) If the reporting of USIs previously withheld pursuant to section A of this Division letter becomes technologically practicable prior to the expiration of the relief granted herein, then SCB must transmit any previously withheld USI data to the relevant non-reporting counterparties no more than 30 days after such reporting becomes technologically practicable, but in all cases no later than 30 days after the expiration of the relief granted herein; and
- (2) Upon request of a non-reporting counterparty, SCB will provide USI data to such non-reporting counterparty through non-automated methods.⁵

Subject to the conditions above, for swaps in all asset classes, DMO will not recommend that the Commission commence an enforcement action against SCB for failure to comply with Regulation 45.5(b)(2)(ii)'s requirement that the reporting counterparty transmit the USI electronically to the non-reporting counterparty to the swap as soon as technologically practicable after execution of the swap. The Division will extend this relief until the earlier of: (1) resolution of the technological issues preventing timely compliance; or (2) 12:01 a.m. eastern daylight time on **April 30, 2013**.

B. Delay in complying with requirements associated with the storage of USI data under Regulation 45.5(e) until 12:01 a.m. eastern daylight time on April 30, 2013.

⁴ Regulation 45.5 prescribes the general requirements for reporting a USI. Regulation 45.5(b)(2)(ii) requires that for each off-facility swap where the reporting counterparty is a swap dealer, the reporting counterparty shall transmit the USI electronically to the non-reporting counterparty to the swap as soon as technologically practicable after execution of the swap. See Regulatory Reporting Rule at 2203.

⁵ This is as represented in the Letter's request for relief. SCB also represented in the Letter that non-reporting counterparties will be able to obtain USI data for such swaps from the SDR.

SCB represented in the Letter that it will maintain and report to an SDR USI data for swap transactions in which SCB is the reporting counterparty. However, SCB also represented that it does not have the ability to store USI data with respect to transactions in which it is the non-reporting counterparty.⁶ To provide additional time to come into full compliance with Regulation 45.5(e),⁷ SCB requested no-action relief until June 30, 2013 with respect to reporting and recordkeeping requirements associated with its storage of USI data for transactions in which SCB is the non-reporting counterparty. SCB made this request subject to the condition that it will retain records with respect to all swap transactions and make them available to the Commission upon request.

Accordingly, in light of SCB's representations as to its technological limitations, the Division believes that time-limited no-action relief from Regulation 45.5(e)'s requirement that each swap counterparty include the USI for a swap in all of its records is appropriate with respect to swaps in which SCB is the non-reporting counterparty upon meeting the following condition:

- (1) SCB's chief information officer (or equivalent) must document an internal determination that technical difficulties result in an inability to comply with Regulation 45.5(e) with respect to the storage of USI data for transactions in which SCB is not the reporting counterparty, and maintain a record of such documentation.

In addition, such no-action relief shall be subject to the following further condition:

- (1) If recordkeeping of USIs previously not stored pursuant to section B of this Division letter becomes technologically practicable prior to the expiration of the relief granted herein, then SCB must begin recordkeeping with respect to such USIs, in full compliance with Regulation 45.5, no more than 30 days after such recordkeeping becomes technologically practicable, but in all cases no later than 30 days after the expiration of the relief granted herein.

Subject to the conditions above, for swaps in all asset classes, DMO will not recommend that the Commission commence an enforcement action against SCB for failure to comply with Regulation 45.5(e)'s requirement that each registered entity or swap counterparty include the USI for a swap in all of its records and all of its swap data reporting concerning that swap, in cases in which SCB is not the reporting counterparty and it is unable to store USI data. The Division will extend this relief until the earlier of: (1) resolution of the technological issues preventing timely compliance; or (2) 12:01 a.m. eastern daylight time on **April 30, 2013**.

⁶ SCB represented in the Letter that it will have the ability to access such USI data from the SDR.

⁷ Regulation 45.5(e) requires that each registered entity or swap counterparty include the USI for a swap in all of its records and all of its swap data reporting concerning that swap, from the time it receives the USI throughout the existence of the swap and for as long as any records are required by the CEA or Commission regulations to be kept by that registered entity or counterparty concerning the swap. See Regulatory Reporting Rule at 2204.

C. Delay in linking the report made for an Allocated Trade, a Compression Trade, or a Novation Trade, to the USI of the previously reported initial swap under Part 45⁸ until 12:01 a.m. eastern daylight time on April 30, 2013.

In the Letter, SCB represented that its systems are unable to link the report made for an Allocated Trade, a Compression Trade, or a Novation Trade to the USI of the original trade that was previously reported by it.⁹ SCB also represented that its records will capture all relevant data for the transactions, including internal fields linking the relevant transactions to the original trade. To provide additional time to come into full compliance with Part 45,¹⁰ SCB requested no-action relief until June 30, 2013 with respect to its reporting and recordkeeping requirements associated with the linkage¹¹ of USI data for an Allocated Trade, a Compression Trade, or a Novation Trade to the original trade. SCB made this request subject to the conditions that it will (1) retain records with respect to all of its swap transactions and these will be available to the Commission upon request; and (2) no later than 30 days after it has remedied the technical difficulties preventing compliance with Regulation 45.5 with respect to the linkage of USI data for Allocated Trades, Compression Trades, or Novation Trades to the original trade, report the corrected data to an SDR.

⁸ The Part 45 relief requested and granted in this section relates specifically to Regulations 45.5(b)(2), 45.5(d)(1)(ii), 45.5(d)(2), 45.5(e), and 45.14(a).

⁹ SCB defined such trades as follows:

- 1) Allocations are post-trade events whereby an agent (usually an asset manager) allocates a portion of an executed swap to clients who are the actual counterparties to the original transaction. Solely for purposes of this no-action relief letter, the Division will refer to trades relating to this allocation process, as described by SCB, as “Allocation Trades.”
- 2) Portfolio compression is a mechanism whereby substantially similar transactions among two or more counterparties are terminated and replaced with a smaller number of transactions of decreased notional value in an effort to reduce the risk, cost and inefficiency of maintaining unnecessary transactions on the counterparties’ books. Solely for purposes of this no-action relief letter, the Division will refer to trades relating to this compression mechanism, as described by SCB, as “Compression Trades.”
- 3) Novation means the process by which a party to a swap transfers all of its rights, liabilities, duties and obligations under the swap to a new legal party other than the counterparty to the swap. Solely for purposes of this no-action relief letter, the Division will refer to trades relating to this allocation process, as described by SCB, as “Novation Trades.”

¹⁰ To help ensure data accuracy, Regulation 45.14(a) requires registered entities and swap counterparties to report any errors or omissions in the data they report, as soon as technologically practicable after discovery of any error or omission. See Regulatory Reporting Rule at 2170.

¹¹ In the context of allocated swaps, a USI must be generated for each of the individual swaps resulting from allocation and linked to the USI of the initial swap. See Regulatory Reporting Rule at 2159. Similarly, for post-execution events, such as full novations and compressions where the initial swap is extinguished and replaced by a new swap, a USI for the new swap must be generated by the reporting counterparty and linked to the USI of the initial swap such that when the new swap is reported to the SDR, the SDR is able “to map the new USI back to the USIs of the swaps from which the new swap originated, in a manner sufficient to allow the Commission and other regulators to follow the entire history and audit trail of each affected swap.” See id.

Accordingly, in light of SCB's representations as to its technological limitations, the Division believes that time-limited no-action relief from the Part 45 requirement that a report made for an Allocated Trade, a Compression Trade, or a Novation Trade be linked to the USI of the previously reported initial swap, is appropriate upon meeting the following condition:

- (1) SCB's chief information officer (or equivalent) must document an internal determination that the above-described technical difficulties result in an inability to comply with Part 45 with respect to the linkage of a report made for an Allocated Trade, a Compression Trade, or a Novation Trade to the USI of the previously reported initial swap, and maintain a record of such documentation.

In addition, such no-action relief shall be subject to the following further condition:

- (1) If the linkage of USIs previously unlinked pursuant to the relief granted in section C of this Division letter becomes technologically practicable prior to the expiration of the relief granted herein, then SCB must correct previously submitted data and link USI data for Allocated Trades, Compression Trades, and Novation Trades with the original trade, in full compliance with Part 45, no more than 30 days after such linkage become technologically practicable, but in all cases no later than 30 days after the expiration of the relief granted herein.

Subject to the conditions above, for swaps in all asset classes, DMO will not recommend that the Commission commence an enforcement action against SCB for failure to comply with its reporting and recordkeeping obligations under Part 45 with respect to linkage of USI data for Allocated Trades, Compression Trades and Novation Trades to the original trade and reporting of errors and omissions with respect to that unreported USI data. The Division will extend this relief until the earlier of: (1) resolution of the technological issues preventing timely compliance; or (2) 12:01 a.m. eastern daylight time on **April 30, 2013**.

D. Relief on account of reporting life cycle events as new trades and/or terminations under Parts 43 and 45¹² until 12:01 a.m. eastern daylight time on April 30, 2013.

In the Letter, SCB represented that its current systems designs do not support the linkage between the reporting of life-cycle events to original trades because SCB systems currently report life cycle events as new trades and/or terminations. The specific life cycle events at issue are: compressions, allocations, novations and credit events. To provide additional time to come into full compliance with Parts 43¹³ and 45,¹⁴ SCB requested no-action relief until June 30, 2013

¹² The Part 43 and 45 relief requested and granted in this section relates specifically to Regulations 43.3(a)(3), 45.4(a), 45.4(b)(2)(ii), 45.4(c)(1)(i)(A), 45.4(c)(2)(i), and 45.14(a).

¹³ Regulation 43.3(a)(3) requires that all off-facility swaps shall be reported by the reporting party as soon as technologically practicable following execution to an SDR. See Real-Time Reporting Rule at 1244.

¹⁴ Regulation 45.4 requires that life cycle event data, one subset of continuation data, be reported on a daily basis to an SDR by a swap dealer that is the reporting counterparty, as well as the derivatives clearing organization if the swap is cleared. See Regulatory Reporting Rule at 2202-03.

from Commission action that may result from SCB's reporting of such life cycle events as new trades and/or terminations. SCB made this request subject to the conditions that it will (1) retain records with respect to all of its swap transactions and these will be available to the Commission upon request; and (2) no later than 30 days after it has remedied the above-described technical difficulties, report the corrected data to the SDR.

Accordingly, in light of SCB's representations as to its technological limitations, the Division believes that time-limited no-action relief from Regulation 45.4(a), 45.4(b)(2)(ii), 45.4(c)(1)(i)(A), and 45.4(c)(2)(i) continuation data reporting requirements, Regulation 45.14(a) error reporting requirements and Regulation 43.3(a)(3) real-time reporting requirements is appropriate solely to the extent that SCB fails to comply with such provisions by incorrectly reporting the following life cycle events: (i) compressions, (ii) allocations, (iii) novations, and (iv) credit events as new trades and/or terminations. The foregoing no-action relief is appropriate upon meeting the following condition:

- (1) SCB's chief information officer (or equivalent) must document an internal determination that technical difficulties result in an inability to comply fully with Parts 43 and 45 due to life cycle events being reported as new trades and/or terminations, and maintain a record of such documentation.

In addition, such no-action relief shall be subject to the following further condition:

- (1) If reporting life cycle events as events pertaining to a previously reported swap, rather than as a new swap and/or termination, becomes technologically practicable prior to the expiration of the relief granted herein, SCB must report data in full compliance with Parts 43 and 45 no more than 30 days after such reporting becomes technologically practicable, but in all cases no later than 30 days after the expiration of the relief granted herein.

Subject to the conditions above, for swaps in all asset classes, DMO will not recommend that the Commission commence an enforcement action against SCB for failure to comply fully with Part 45 continuation data and error reporting requirements or to comply fully with Part 43 real-time reporting requirements due solely to SCB incorrectly reporting life cycle events as new trades and/or terminations. The Division will extend this relief until the earlier of: (1) resolution of the technological issues preventing timely compliance; or (2) 12:01 a.m. eastern daylight time on April 30, 2013.

E. Delay in reporting corrected historical valuation data under Parts 45 and 46¹⁵ until 12:01 a.m. eastern daylight time on April 30, 2013.

In the Letter, SCB represented that its current systems enable it to submit daily valuation data to its SDR. If a revaluation of a transaction renders a historical valuation incorrect, SCB can also submit a corrected valuation for that transaction as of the next business day. However,

¹⁵ The Part 45 and 46 relief requested and granted in this section relates specifically to Regulations 45.4(a), 45.4(b)(2)(ii), 45.4(c)(2)(i), 45.14(a), 46.3(a)(2), and 46.11(a).

SCB is unable to submit corrected historical valuations. SCB also represented that this represents a small percentage of the total reportable population and approximately five new reportable trades per day. To provide additional time for bringing its systems into full compliance with reporting corrected historical valuation data under Parts 45¹⁶ and 46,¹⁷ SCB requested no-action relief until June 30, 2013. SCB made this request subject to the condition that upon becoming aware of an inaccurate historical valuation for a transaction under Part 45 or Part 46, it will on the following business day report the correct valuation for such day.

Accordingly, in light of SCB's representations as to its technological limitations, the Division believes that time-limited no-action relief from Part 45 and 46 requirements that a swap counterparty report corrections of erroneous, previously reported valuation data as soon as technologically practicable after discovery of such errors is appropriate upon meeting the following condition:

- (1) SCB's chief information officer (or equivalent) must document an internal determination that technical difficulties result in an inability to report corrections of errors with respect to valuation data that has been reported for swaps under Parts 45 and 46, and maintain a record of such documentation.

In addition, such no-action relief shall be subject to the following further condition:

- (1) If reporting of corrections of previously reported valuation data pursuant to section E of this Division letter becomes technologically practicable prior to the expiration of the relief granted herein, then SCB must begin recordkeeping with respect to such USIs, in full compliance with Parts 45 and 46, no more than 30 days after such recordkeeping becomes technologically practicable, but in all cases no later than 30 days after the expiration of the relief granted herein.

Subject to the conditions above, for swaps in all asset classes, DMO will not recommend that the Commission commence an enforcement action against SCB for failure to with report corrections of erroneous valuation data as soon as technologically practicable after discovery of such errors under Parts 45 and 46. The Division will extend this relief until the earlier of: (1) resolution of the technological issues preventing timely compliance; or (2) 12:01 a.m. eastern daylight time on April 30, 2013.

¹⁶ Regulation 45.4 requires that valuation data, one subset of continuation data, be reported on a daily basis to an SDR by a swap dealer that is the reporting counterparty, as well as the derivatives clearing organization if the swap is cleared. See Regulatory Reporting Rule at 2202-03. "Valuation data" is defined as "all of the data elements necessary to fully describe the daily mark of the transaction, pursuant to CEA section 4s(h)(3)(B)(iii), and to [17 C.F.R. 23.431] if applicable." Id. at 2198.

¹⁷ For uncleared historic swaps in existence on or after April 25, 2011, Regulation 46.3(a)(2) requires that the reporting counterparties for such swaps report all swap continuation data required to be reported pursuant to Part 45, which includes valuation data. See Historic Swap Reporting Rule at 35228. Regulation 46.11 requires that each swap counterparty required by Part 46 to report swap data shall report any errors or omissions in the data so reported. See id. at 35230.

This Division letter, and the no-action positions taken herein, represent the views of DMO only, and do not necessarily represent 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 Commission regulations thereunder, and applies only to SCB in its capacity as the requestor of this relief. As with all no-action letters, DMO retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Further, despite each staff no-action position taken herein expiring upon a certain future date, SCB is required to begin reporting in full compliance with the applicable provisions of the CEA and Commission's regulations as soon as the technological issues preventing timely compliance with such provisions have been resolved, even if such resolution occurs prior to the applicable no-action position expiration date. In addition, no later than 30 days upon expiration of the relief granted in each section, SCB is required to take corrective action concerning the swaps subject to the no-action relief in order to achieve full compliance with the applicable regulations of Part 43, Part 45 and Part 46.

If you have any questions regarding the content of this staff no-action letter, please contact Marilee Dahlman, Attorney-Advisor, DMO, at 202-418-5264 or mdahlman@cftc.gov or Sebastian Pujol Schott, Associate Director, DMO, at 202-418-5641 or sps@cftc.gov.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight