



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-78
No-Action
December 6, 2012
Division of Market Oversight

Chip Goodrich
Managing Director & Senior Counsel
Deutsche Bank
60 Wall Street
New York, NY 10005

Dear Mr. Goodrich:

This letter is in response to Deutsche Bank's request dated November 30, 2012 ("Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("CFTC" or "Commission"). In the Letter, Deutsche Bank requested time-limited no-action relief 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, Deutsche Bank identified six areas in which full compliance with these reporting requirements, as they pertain to swap dealers, would not be possible as of the relevant compliance deadlines⁴ due to unexpected delay in resolving various technological issues with

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").

⁴ The earliest date upon which a swap dealer would be required to report swap transaction data for swaps in the interest rate and credit asset classes ("Compliance Date 1 Swaps") pursuant to Parts 43 and 45 is December 31, 2012, if the swap dealer reaches the de minimis swap dealing threshold in October 2012. See generally Staff No-Action Letter No. 12-32 (November 19, 2012) (establishing the reporting compliance deadline for swap dealers under Parts 43 and 45 as the applicable registration deadline, regardless of whether the swap dealer chooses to register prior to that deadline). The earliest date upon which the same swap dealer would be required to report historical Compliance Date 1 Swaps under Part 46 is January 30, 2013. See id. (establishing the reporting compliance deadline for historical swaps under Part 46 as 30 days after the date upon which the swap dealer is required to begin reporting swap transaction data pursuant to Parts 43 and 45 for the asset class to which the historical swap belongs). For purposes of the discussion herein, DMO assumes that Deutsche Bank anticipates having to register as a swap dealer by December 31, 2012, and thus begin reporting Compliance Date 1 Swaps under Parts 43 and 45 as of December 31, 2012, and historical Compliance Date 1 Swaps under Part 46 as of January 30, 2013.

Deutsche Bank's trading and reporting systems. DMO has reviewed each specific request and determined to grant the following relief:

A. Delay in reporting expired, terminated, or non-electronically confirmed historical swaps under Part 46 until March 30, 2013.

Deutsche Bank represented in the Letter that due to unanticipated technical difficulties in implementing extraction scripts to report unique swap identifiers ("USI") for historical swaps that have expired or been terminated as of the Part 46 compliance date, it would not be able to report complete data for those trades by the applicable Part 46 compliance dates. Additionally, the Letter represented that Deutsche Bank required additional time to find a technological solution for generating a USI for non-electronically confirmed historical trades, and thus could not report such data by the applicable Part 46 compliance dates. Accordingly, the Letter requested no-action relief with respect to Part 46 reporting obligations until March 31, 2013.

DMO believes that, in light of the above-described technical difficulties and Deutsche Bank's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is warranted for expired, terminated, or non-electronically confirmed historical swaps. For such swaps, regardless of asset class, DMO will not recommend that the Commission commence an enforcement action against Deutsche Bank for failure to fulfill its reporting obligations under Part 46 until **March 30, 2013**. As of that date, Deutsche Bank must report all data fields for the historical swaps subject to this relief to an SDR as required under Part 46 and DMO's applicable staff guidance.⁵ DMO is satisfied that the delay in reporting of this narrow group of historical swaps will have a minimal impact on the Commission's ability to utilize historical swap data for regulatory purposes.

B. Delay in reporting correct execution timestamps for interest rate and other commodity asset classes under Parts 43 and 45 until June 30, 2013.

In the Letter, Deutsche Bank represented that while its trading systems are capable of capturing the execution timestamp for non-electronically confirmed trades across all asset classes, they currently are not capable of passing down the execution timestamp for swaps in the interest rate and other commodity asset classes to Deutsche Bank's operations systems for purposes of Parts 43 and 45 reporting to an SDR.⁶ Instead, the execution timestamp data field is

⁵ DMO recently issued staff no-action relief extending the earliest possible reporting compliance deadline for swap dealers under Part 46 with respect to historical swaps in the equity, foreign exchange ("FX") and other commodity asset classes ("Compliance Date 2 Swaps") to March 30, 2013. See CFTC Letter No. 12-41 (December 5, 2012). As DMO assumes such relief otherwise would apply to Deutsche Bank, it is limiting the overall no-action position taken in section A of this response to the same reporting start date as was provided for historical Compliance Date 2 Swaps to achieve internal consistency amongst reporting deadlines. Thus, the net effect of DMO's no-action position taken in section A of this response is to extend Deutsche Bank's reporting compliance deadline under Part 46 for historical Compliance Date 1 Swaps from January 30, 2013 until March 30, 2013. See supra note 4.

⁶ Pursuant to Regulation 43.3 and Appendix A to Part 43, an execution timestamp for all publicly reportable swap transactions must be reported to an SDR as soon as technologically practicable after execution. Additionally, Regulation 45.3 and Appendix 1 to Part 45 require regulatory reporting to an SDR of multiple primary economic terms, including the execution timestamp data field. An "execution timestamp" is

populated with the time at which the trade was entered into Deutsche Bank's operations systems, reflecting a usual delay of up to several minutes from the time of actual trade execution. Accordingly, Deutsche Bank requested no-action relief with respect to reporting accurate execution timestamp data fields for swaps in the interest rate and other commodity asset classes until June 30, 2013 to allow time for it to make enhancements to its interest rates and other commodities platforms.

DMO believes that, in light of the above-described technical difficulties and Deutsche Bank's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is warranted to allow Deutsche Bank to make the enhancements to its systems necessary to report accurate execution timestamps under Parts 43 and 45. For swaps in the interest rate and other commodity assets classes, DMO will not recommend that the Commission commence an enforcement action against Deutsche Bank for failure to fulfill its reporting obligations under Parts 43 or 45 by reporting to an SDR execution timestamps that are accurate to within 30 minutes of the actual time of execution. This no-action position will expire on **June 30, 2013**. As a condition of relief, Deutsche Bank must correct the execution timestamp data field in its SDR reporting records under Parts 43 and 45 for the swaps subject to this no-action position as soon as technologically practicable, but no later than July 31, 2013.

C. Delay in reporting the initial USI of a swap for purposes of linking that initial USI to the USI of a new swap created through a novation or compression until June 30, 2013.

In the Letter, Deutsche Bank represented that it requires additional time to develop and implement the technology infrastructure necessary to append the USI of a previously reported initial swap to the data reported under a new USI for a subsequent swap that results from the initial swap being novated or compressed. In addition to technological challenges, the Letter represented that the industry still lacks consensus on how to capture previously reported USIs for a swap requiring a new USI due to a novation or compression. To provide additional time to come into full compliance with Regulation 45.5,⁷ Deutsche Bank requested no-action relief until December 31, 2013 with respect to reporting a swap's initial USI for purposes of linking that USI to a new USI generated for the swap after it is novated or compressed.

DMO believes that, in light of the above-described technical difficulties and Deutsche Bank's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is appropriate. Accordingly, for swaps across all asset classes, DMO will not recommend that the Commission commence an enforcement action against Deutsche Bank for failure to fulfill its reporting obligations under Part 45 due to non-reporting of the initial USI associated with a USI created for a new swap after a novation or compression of the initial swap until **June**

defined as "[t]he time and date of execution of the publicly reportable swap transaction in Coordinated Universal Time (UTC)." See, e.g., Real-Time Reporting Rule at 1251.

⁷ Regulation 45.5 prescribes the general requirements for reporting a USI to an SDR. 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 Regulatory Reporting Rule at 2159.

30, 2013. DMO believes that a six-month timeframe should be sufficient for Deutsche Bank to build out its recordkeeping and reporting systems to capture prior USIs for novated or compressed swaps. Upon the expiration of this no-action position, Deutsche Bank must come into full compliance with reporting the initial USI of a novated or compressed swap in order to be linked with the swap's new USI as required under Part 45. As a condition of relief, Deutsche Bank must complete the SDR reporting records with respect to the USI data field under Part 45 for the swaps subject to this no-action position as soon as technologically practicable, but no later than July 31, 2013.

D. Delay in reporting valuation data for multi-legged and exotic swaps under Parts 45 and 46 until June 30, 2013.

In the Letter, Deutsche Bank represented that its valuation repository stores the values of approximately 1,000 multi-legged swaps at the individual leg level rather than the trade level, which, if reported at the leg level, would inaccurately represent the value of the trades as the multiple legs are valued using different models and managed for risk separately. Additionally, Deutsche Bank represented that the valuations of several hundred exotic swaps are not stored in its valuation repository at all. To provide additional time for bringing its systems into full compliance with reporting accurate swap valuations under Parts 45 and 46,⁸ Deutsche Bank requested no-action relief until June 30, 2013.

DMO believes that, in light of the above-described technical difficulties and Deutsche Bank's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is warranted for Deutsche Bank to enhance its valuation repository systems to capture correct valuation data that can be reported for both price transparency and regulatory purposes. DMO will not recommend that the Commission commence an enforcement action against Deutsche Bank for failure to report valuation data for multi-legged and exotic swaps,⁹ regardless of asset class, pursuant to Parts 45 and 46 until **June 30, 2013**. As a condition of relief, Deutsche Bank must complete the SDR reporting records with respect to valuation data under Parts 45 and 46 for the swaps subject to this no-action position as soon as technologically practicable, but no later than July 31, 2013.

E. Delay in reporting FX transactions executed by non-hub branches located in Frankfurt and Johannesburg under Parts 43, 45, and 46 until June 30, 2013.

⁸ 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. 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.

⁹ For purposes of the no-action position taken in section D, "exotic" swaps are swaps that meet all of the following characteristics: (i) not listed for trading on a designated contract market; (ii) not available to be traded on a swap execution facility; (iii) not eligible to be cleared by a derivatives clearing organization; (iv) not eligible to be confirmed through an electronic matching confirmation system; and (v) not represented in Financial products Markup Language ("FpML").

In the Letter, Deutsche Bank represented that a small proportional volume of its global swap transactions in the FX asset class (approximately less than 500 transactions per month total) are executed between “non-hub” branches and U.S. persons. While major hub locations such as London are connected to a global processing platform capable of reporting these transactions in full compliance with the Commission’s regulations, smaller non-hub branches in Frankfurt and Johannesburg currently are not connected with that platform and, thus, are not capable of complying with Parts 43, 45, and 46 with respect to the FX asset class. In order to provide Deutsche Bank additional time to migrate existing positions and new trading activity to hub branches that are supported by its main global processing platform, or to complete a technology solution that would permit direct SDR reporting of these transactions by the affected non-hub branches, Deutsche Bank requested no-action relief from all reporting requirements for the affected non-hub branches with respect to the FX asset class under Parts 43, 45, and 46 until December 31, 2013.

DMO believes that, in light of the above-described technical difficulties and Deutsche Bank’s representations of good faith efforts to remedy these difficulties, time-limited no-action relief is appropriate. Additionally, given the small volume of trades affected relative to Deutsche Bank’s overall dealing in FX swaps, DMO is satisfied that the impact on market transparency will be minimal. For swaps in the FX asset class executed between a U.S. person and a Deutsche Bank non-hub branch located in Frankfurt or Johannesburg, DMO will not recommend that the Commission commence an enforcement action against Deutsche Bank for failure to fulfill its reporting obligations under Parts 43, 45, or 46 due to non-reporting of any data to an SDR as required under those rules until **June 30, 2013**. DMO believes that a six-month timeframe should be sufficient for Deutsche Bank either to migrate existing and new FX trades to hub locations, or to implement a technology solution in the affected non-hub branches. As a condition of relief, Deutsche Bank must promptly notify DMO if the volume of FX swaps transacted in the affected non-hub branches increases by 50 percent or more during any single month of the no-action relief period, as compared to the same month during the 2012 calendar year. Additionally, affected non-hub branches of Deutsche Bank must report those trades subject to this no-action position pursuant to Parts 43, 45, and 46 as soon as technologically practicable, but no later than July 31, 2013.

F. Delay in reporting document images of non-electronic confirmations for FX and other commodity swaps under Part 45 until March 31, 2013.

The Letter represented that while Deutsche Bank currently possesses the functionality to report document images of non-electronically confirmed swap transactions in the interest rate, credit, and equity asset classes, it will not have similar functionality completed and tested for the FX and other commodity assets classes by the relevant compliance dates. The Letter explained that the effort to extract the document images from the systems in which the paper confirmation document is stored has proven to be more complex than initially planned. Accordingly, the Letter requested no-action relief under Part 45 until March 31, 2013.¹⁰

¹⁰ Under Parts 45 and 46, the reporting counterparty is required to report confirmation data to an SDR, which includes the confirmation itself. See Regulatory Reporting Rule at 2148. “Confirmation” is defined as “legally binding documentation (electronic or otherwise) that memorializes the agreement of the parties to all terms of a swap,” which “must be in writing (whether electronic or otherwise).” See, e.g., *id.* at 2197.

DMO believes that, in light of the above-described technical difficulties and Deutsche Bank's representations of good faith efforts to remedy these difficulties, time-limited no-action relief is warranted to allow Deutsche Bank to bring its reporting functionality into full compliance with the Commission's reporting requirement that a document image of non-electronically confirmed trades be reported to an SDR under Part 45. For swap transactions in the FX and other commodity assets classes that are not electronically confirmed, DMO will not recommend that the Commission commence an enforcement action against Deutsche Bank for failure to fulfill its reporting obligations under Part 45 due to non-reporting of a document image of the paper trade confirmation until **March 31, 2013**. As a condition of relief, Deutsche Bank must complete its SDR reporting records pursuant to Part 45 for the swaps subject to this no-action position by reporting the confirmation document image as soon as technologically practicable, but no later than April 30, 2013. DMO is satisfied that the three-month delay in reporting of complete creation data for the FX and other commodity assets classes will have a minimal impact on the Commission's ability to utilize such data for regulatory purposes.

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 Deutsche Bank in its capacity as the requestor of this relief. Further, despite each staff no-action position taken herein expiring upon a certain future date, Deutsche Bank 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. 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.

If you have any questions regarding the content of this staff no-action letter, please contact Graham McCall, Attorney-Advisor, DMO, at 202-418-6150 or gmccall@cftc.gov.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight