



Division of Market Oversight

U.S. COMMODITY FUTURES TRADING COMMISSION

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Vincent McGonagle
Director

Re: Request for an Extension of No-Action Position Established in CFTC Staff Letter No. 22-03 with Respect to Compliance with the Block and Cap Amendments

This letter responds to a request¹ (the “Request”) from provisionally registered swap data repositories Chicago Mercantile Exchange Inc., ICE Trade Vault, LLC, DTCC Data Repository (US) LLC, and KOR Reporting Inc. (collectively, the “Swap Data Repositories” or “SDRs”), seeking an extension of a no-action position set out in CFTC Letter No. 22-03.² Specifically, the SDRs request that the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (“CFTC” or the “Commission”) extend the period of time during which the Division will not recommend that the Commission commence an enforcement action against an entity for failure to comply with the “Block and Cap Amendments.”³

I. Background

In 2020, the Commission amended part 43 of its regulations, along with certain other regulations implementing the Commission’s swap data reporting framework.⁴ The amendments to part 43 included the Block and Cap Amendments, namely, amendments to Commission regulation 43.4(h) concerning post-initial cap sizes, and amendments to Commission regulation 43.6 concerning block trades and large notional off-facility swaps. The Commission set a May 25, 2023 compliance date for the Block and Cap Amendments.

On January 31, 2022, the Commission’s Division of Data published CFTC Letter No. 22-03, which, among other things, stated that the Division of Data would not recommend that the Commission commence an enforcement action against an entity for failure to comply with the Block and Cap Amendments before December 4, 2023, provided that the entity complied with the Commission’s block trade and cap size requirements that were in effect on January 1, 2021.⁵ In

¹ See Chicago Mercantile Exchange Inc., Ice Trade Vault, LLC, DTCC Data Repository (US) LLC, and KOR Reporting Inc., Letter Regarding Request for an Extension of No-Action Position Established in CFTC Staff Letter No. 22-03 with Respect to Compliance with the Block and Cap Amendments, Aug. 1, 2023.

² CFTC Letter No. 22-03 (Jan. 31, 2022), available at <https://www.cftc.gov/csl/22-03/download>.

³ The “Block and Cap Amendments” consist of amendments to Commission regulations 43.4(h) (Post-initial cap sizes) and 43.6 (Block trades and large notional off-facility swaps) that were published on November 20, 2020 and effective January 25, 2021. See 17 C.F.R. §§ 43.4(h), 43.6; Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020).

⁴ Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422 (Nov. 25, 2020).

⁵ See CFTC Staff Letter No. 22-03.

CFTC Letter No. 22-03, the Division of Data described particular operational and technological issues which supported the no-action position taken therein, including with respect to the Block and Cap Amendments, and stated that the no-action position would ensure market participants had adequate time for testing and preparation to implement the Commission’s amended swap data reporting regulations, including the Block and Cap Amendments.

On April 19, 2023, Commission staff published updated post-initial block and cap sizes pursuant to Commission regulations 43.6(g) and 43.4(h), respectively,⁶ based on reliable SDR data for a one-year period.⁷ CFTC Letter No. 22-03 contemplates that SDRs and market participants will be in compliance with these post-initial block and cap sizes by December 4, 2023.

Separately, during the period since the issuance of CFTC Letter No. 22-03 the Commission and staff have worked to implement the unique product identifier (“UPI”) requirements set out in amended Commission regulation 45.7.⁸ On February 16, 2023, the Commission published an order designating the UPI and product classification system to be used in swap recordkeeping and reporting for certain asset classes, and setting January 29, 2024 as the date by which the Commission expects compliance with the UPI requirements set out in Commission regulation 45.7 with respect to those asset classes.⁹ On March 10, 2023, Commission staff published revised technical specifications providing the form and manner for reporting the relevant UPIs.¹⁰

II. Requested No-Action Position

The SDRs are requesting a further extension of the no-action position concerning the Block and Cap Amendments set out in CFTC Letter No. 22-03.

The SDRs state that the lack of alignment between the December 4, 2023 expiration of the no-action position for the Block and Cap Amendments in CFTC Letter No. 22-03, and the January 29, 2024 date by which the Commission expects compliance with the UPI requirements for certain asset classes, is “unworkable from an operational and technological standpoint and would create significant inefficiencies for SDRs.”¹¹ The SDRs state that, before the implementation of the UPI requirements, SDRs will not be able to determine whether a swap in the credit asset class is based

⁶ CFTC Press Release No. 8691-23 (Apr. 19, 2023), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8691-23>. Going forward, Commission regulation 43.6(g) requires the Commission to “update the post-initial appropriate minimum block sizes” “[n]o less than once each calendar year.” 17 C.F.R. § 43.6(g)(1). Accordingly, staff anticipates the block thresholds will be updated no later than April 2024. Updated block thresholds “shall be effective on the first day of the second month following the date of publication” “[u]nless otherwise indicated on the Commission’s website.” 17 C.F.R. § 43.6(g)(6).

⁷ When publishing the Block and Cap Amendments on November 25, 2020, the Commission found that more than one year’s worth of reliable swap data had already been collected for the relevant asset classes. *See, e.g.*, Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422, 75451 (Nov. 25, 2020).

⁸ 17 C.F.R. § 45.7.

⁹ *See* CFTC Press Release No. 8659-23 (Feb. 16, 2023), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8659-23>; *see also* Order Designating the Unique Product Identifier and Product Classification System To Be Used in Recordkeeping and Swap Data Reporting, 88 Fed. Reg. 11790, 11793 (Feb. 24, 2023).

¹⁰ *See* CFTC Press Release No. 8673-23 (Mar. 10, 2023), *available at* <https://www.cftc.gov/PressRoom/PressReleases/8673-23>.

¹¹ Request, at 4.

on one of the post-initial swap categories enumerated in Commission regulations 43.6(c)(2)(i)-(xii), because there are currently no standardized product fields for the credit asset class.¹² The SDRs state that, therefore, they would be unable to cap swaps in the credit asset class between December 4, 2023, when the no-action position in CFTC Letter No. 22-03 expires, and January 29, 2024, when UPI requirements for the credit asset class are implemented. Second, the SDRs state that, even if a solution for the above-described issue for the credit asset class existed, under the current timelines the SDRs would be required to implement a new capping system both for December 4, 2023, and then again, following the implementation of the UPI requirements, for January 29, 2024. They state that it would result in unnecessary cost and inefficiency to implement two capping systems in such a short time period. Third, the SDRs state that making changes to implement the Block and Cap Amendments for all asset classes for an interim period between December 4, 2023 and January 29, 2024, before implementing a final system that incorporates UPI, would be inadvisable due to “scarce resources during the holiday season, end-of-year code freezes[,] and SDRs’, reporting counterparties’ and other market participants’ system upgrades” at that time of the year.¹³

In light of these operational and technological issues, the SDRs request an extension of the no-action position set out in CFTC Letter No. 22-03 with respect to the Block and Cap Amendments until no sooner than January 29, 2024.¹⁴

The Division has reviewed and considered the issues raised in the Request. The Division recognizes that potential operational and technological challenges may arise from implementing the Block and Cap Amendments before UPI implementation, and recognizes the potential for duplicative efforts implementing the Block and Cap Amendments for both pre- and post-UI reporting regimes. The Division believes that extending the no-action position taken in CFTC Letter No. 22-03 with respect to the Block and Cap Amendments until a time when the relevant UPI requirements have been implemented may increase efficiencies, reduce costs, and support consistent data quality.

III. No-Action Position

Based on the representations in the Request, the Division believes that an extension of the no-action position taken with respect to the Block and Cap Amendments in CFTC Letter No. 22-03 is warranted. Specifically, the Division will not recommend that the Commission commence an enforcement action against an entity for failure to comply with the Block and Cap Amendments

¹² 17 C.F.R. § 43.6(c)(2)(i)-(xii).

¹³ Request, at 5.

¹⁴ The International Swaps and Derivatives Association, Inc. (“ISDA”) and the Asset Management Group of the Securities Industry and Financial Markets Association (“SIFMA AMG”) have each separately requested an extension of the no-action position for the Block and Cap Amendments in CFTC Letter No. 22-03, until December 4, 2024. ISDA stated that complying with the Block and Cap Amendments starting on December 4, 2023 would burden market participants that are also working to implement other regulatory and market infrastructure changes. SIFMA AMG expressed concern about the reliability of SDR data used to calculate block thresholds and cap sizes. Both ISDA and SIFMA AMG stated that they believe that additional time is necessary for further analysis and study of the potential impacts of updated block thresholds and cap sizes on market liquidity. Staff appreciates the requests from ISDA and SIFMA AMG, and believes the significant extension of the no-action position set out in this letter will alleviate some of the concerns set out in those requests.

before July 1, 2024, provided that the entity complies with the Commission’s block trade and cap size requirements that were in effect on January 1, 2021. The Division believes that its extended no-action position would provide a reasonable period of time to make the operational changes necessary to implement the Block and Cap Amendments following the January 29, 2024 date by which the Commission expects compliance with UPI requirements for certain asset classes. It is the Division’s understanding that the January 29, 2024 UPI implementation date involves significant time and effort by market participants. Based on the Division’s familiarity with SDR operations and past experience implementing SDR reporting requirements, the Division believes that extending the no-action position to July 1, 2024 will provide a reasonable amount of additional time following the January 29, 2024 UPI implementation date to ensure that SDRs come into compliance with the Block and Cap Amendments. The Division also believes that extending that no-action position to July 1, 2024—as opposed to a later date—strikes an appropriate balance between ensuring operational readiness and realizing the benefits of the Block and Cap Amendments, which are discussed generally in the 2020 final rule concerning the Block and Cap Amendments.¹⁵ Moreover, the Division believes that a July 1, 2024 deadline would avoid any potential operational complications that might arise from system upgrades that the SDRs indicate market participants may intend to undertake near the end of each year.¹⁶

The Division does not currently intend to extend the no-action position provided in this letter beyond July 1, 2024.

This letter, and the no-action position taken herein, represent the views of the Division only, and do not necessarily represent the position or views of the Commission or of any other office or division of the Commission. The no-action position taken herein does not bind the Commission or Commission staff outside of the Division, nor does it excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in Commission regulations. Further, this letter and the no-action position taken herein are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances might render the no-action position taken in this letter void. As with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action position taken herein, in its discretion.

If you have any questions concerning this correspondence, please contact Paul Chaffin, Assistant Chief Counsel, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov, or Owen Kopon, Associate Chief Counsel, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov.

¹⁵ See Final Rule, Real-Time Public Reporting Requirements, 85 Fed. Reg. 75422, 75472-73 (Nov. 25, 2020).

¹⁶ See Request, at 5.

Sincerely,

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