CFTC Letter No. 25-18 No-Action July 09, 2025

U.S. COMMODITY FUTURES TRADING COMMISSION
Three Lafayette Centre
1155 21st Street, NW, Washington, DC 20581
Telephone: (202) 418-5000

Division of Market Oversight

Rahul Varma
Acting Director

Re: Extension of No-Action Position Related to Certain Reporting Obligations for Counterparties Clearing Swaps through Derivatives Clearing Organizations Acting Under Exemptive Orders or No-Action Letters

Dear Mr. Young:

This letter responds to a request received by the Division of Market Oversight ("DMO") of the Commodity Futures Trading Commission (the "Commission" or "CFTC") from the International Swaps and Derivatives Association, Inc. ("ISDA"), pursuant to Commission Regulation 140.99.[1]

ISDA has requested, on behalf of its members with swap data reporting obligations and other similarly situated persons, that DMO renew the no-action position provided in CFTC Letter No. 22-18[2] regarding certain reporting obligations under Part 45 of the Commission's regulations in connection with the clearing of swaps with derivatives clearing organizations ("DCOs") operating pursuant to (a) exemptive orders issued by the Commission,[3] or (b) a no-action letter granted by the Commission's Division of Clearing and Risk ("DCR").

[1] Letter from Christopher Young, Head of U.S. Public Policy, ISDA, to Rahul Varma, Acting Director, Division of Market Oversight, re: Request for Extension of CFTC No-Action Relief 22-18: No-Action Relief for SDR Reporting Requiremnets for Swaps Cleared by Exempt and No-Action DCOs (June 30, 2025) (the "ISDA Letter"), to be available at https://www.cftc.gov/LawRegulation/CFTCStaffLetters/letters.htm following issuance of this letter.

[2] CFTC Letter No. 22-18 (Dec. 2, 2022), *available at* https://www.cftc.gov/csl/22-18/download, renewed a no-action position taken in CFTC Letter No. 22-05 (May 25, 2022), *available at* https://www.cftc.gov/csl/22-05/download. CFTC Letter 22-05 renewed a no action position extended in CFTC Letter No. 21-12 (Apr. 28, 2021), *available at* https://www.cftc.gov/csl/21-12/download, CFTC Letter No. 18-03 (Feb. 20, 2018), *available at* https://www.cftc.gov/csl/18-03/download, and CFTC Letter No. 16-85 (Dec. 19, 2016), *available at* http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-85.pdf.

[3] The Commission adopted regulations for exempt DCOs in 2021. *See* Exemption From Derivatives Clearing Organization Registration, 86 Fed. Reg. 949 (Jan. 7, 2021).

I. **Definitions for No-Action Position**

Exclusively for the purposes of this letter, DMO will define the following terms:

(a) Relief DCO: Any DCO or central counterparty acting pursuant to a current and valid exemptive order issued by the Commission ("Exempt DCO"), or a current and valid no-action letter issued by DCR ("No-Action DCO"). As of the date of this letter, there are five DCOs acting pursuant to exemptive orders: ASX Clear (Futures) Pty Limited, Japan Securities Clearing Corporation, Korea Exchange, Inc., OTC Clearing Hong Kong Limited, and Taiwan Futures Exchange Corporation.

(b) Relief DCO Counterparty: Any market participant, not acting as a DCO or central counterparty, that is a counterparty to a swap cleared by a Relief DCO.

(c) Relief DCO Original Swap: A swap reported or required to be reported pursuant to Part 45 of the Commission's regulations that is subsequently accepted for clearing by a Relief DCO.

(d) Relief DCO Clearing Swap: Any swaps created pursuant to the rules of a Relief DCO between a Relief DCO and Relief DCO Counterparty.

(e) Relief Intended To Be Cleared Swap ("ITBC Swap"): Any swap which, at the time it is executed, is intended by the counterparties to be cleared by a Relief DCO.

II. **Background**

A. Certain Reporting Obligations

On June 27, 2016, the Commission published its final rule on Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (the "Cleared Swap Rule").[4] The Cleared Swap Rule amended Part 45 of the Commission's regulations[5] to clarify or address certain reporting obligations, including the obligations for DCOs to (a) report the termination of swaps accepted for clearing by the DCO (defined as "original swaps" and known in the industry as "alpha swaps");[6] (b) report creation data and continuation data for swaps to which the DCO is a counterparty (defined as "clearing swaps")[7]; and (c) generate the unique swap identifier ("USI") for each clearing swap and transmit that USI to the DCO's counterparty.[8]

[4] 81 Fed. Reg. 41736 (June 27, 2016). The compliance date for the Cleared Swap Rule was December 27, 2016.
[5] 17 CFR part 45.
[6] 17 CFR § 45.4(c) (2016).
[7] 17 CFR § 45.3(e) (2016) (creation data for clearing swaps); 17 CFR 45.4(b) (2016) (continuation data for clearing swaps).
[8] 17 CFR § 45.5(d) (2016). The Commision subsequently amended regulation 45.5 to require creation of unique transaction identifiers ("UTIs"). *See* 17 C.F.R. § 45.5 (2025); *see also* Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020).

The Cleared Swap Rule defined "derivatives clearing organization" exclusively as a DCO registered with the Commission.[9] Because a Relief DCO would not be a "derivatives clearing organization" for purposes of the Cleared Swap Rule, a swap accepted for clearing by a Relief DCO would not be an "original swap" under § 45.4 of the Commission's regulations.[10] Therefore, the obligation to terminate the Relief DCO Original Swap does not fall to the Relief DCO. Further, Relief DCO Clearing Swaps are not considered "clearing swaps." As a result, reporting obligations for Relief DCO Clearing Swaps fell to the Relief DCO Counterparty (either a swap dealer ("SD"), major swap participant ("MSP"), or non-SD/MSP counterparty) by operation of the reporting hierarchy under § 45.8.[11]

Although not subject to reporting obligations imposed on registered DCOs under the Cleared Swap Rule, Relief DCOs are required to fulfill many of the same obligations pursuant to both § 39.6(d)[12] and as a term of an exemptive order or as condition to no-action letters. As noted above, there are currently five DCOs acting under exemptive orders issued by the Commission.[13] Each of the exemptive orders includes the following requirement:

> (10) Swap Data Recordkeeping and Reporting Requirements. If a clearing member clears through [Relief DCO] a swap that has been reported to a Commission-registered swap data repository ("SDR") pursuant to Part 45 of the Commission's regulations, then [Relief DCO] must report to an SDR, pursuant to this Order, data regarding the two swaps resulting from the novation of the original swap that had been submitted to [Relief DCO] for clearing. [Relief DCO] must also report the termination of the swap accepted for clearing by [Relief DCO], to the SDR to which the swap was originally reported. In order to avoid duplicative reporting for such transactions, [Relief DCO] shall have rules that prohibit the Part 45 reporting of the two new swaps by the original counterparties to the original swap.[14]

Although the exemptive orders have placed, and any Relief DCO no-action letter would place, certain reporting obligations on the Relief DCOs, the exemptive orders do not, and a Relief DCO no-action letter would not, provide any no-action position to the Relief DCO Counterparty for any reporting obligations.

B. Certain Reporting Data Fields in Part 45

The Cleared Swap Rule's definition of "derivatives clearing organization" implicates certain data elements historically required to be reported for Relief ITBC Swaps. Specifically, at

---

[9] 17 CFR § 45.1 (definition of "derivatives clearing organization"); Cleared Swap Rule, 81 FR at 41739 (declining to extend the definition of "derivatives clearing organization" to include exempt DCOs). Although the Commission recently amended certain Part 45 regulations, Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020), the definition of "derivatives clearing organization" remains a DCO registered with the Commission. Therefore, Relief DCO counterparties would still likely seek the no-action position described below from their reporting obligations.

[10] 17 CFR § 45.4.

[11] 17 CFR § 45.8.

[12] 17 CFR § 39.6(d).

[13] ASX Clear (Futures) Pty Limited, Japan Securities Clearing Corporation, Korea Exchange, Inc., OTC Clearing Hong Kong Limited, and Taiwan Futures Exchange Corporation.

[14] *See, e.g.*, http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf (ASX exemptive order). Any Relief NAL would include similar language.

the time the Cleared Swap Rule was promulgated in 2016, Part 45 required certain primary economic terms data ("PET data") be reported for each swap, including "Clearing indicator" data and "Clearing venue" data, which referenced DCOs.[15] Because Relief DCOs would not be "derivatives clearing organizations" for purposes of those data fields, absent a no-action position, the Cleared Swap Rule would require any entity reporting a Relief ITBC Swap to indicate that such swap was not intended to be cleared.

On November 25, 2020, the Commission published amendments to Part 45.[16] As part of these amendments, the Commission replaced the old concept of PET data with new appendices specifying the data elements to be reported.[17] Staff has published updated technical specifications that provide the form and manner for reporting those data elements to SDRs.[18] Whereas Part 45 PET data incorporated the Cleared Swap Rule's definition of "derivatives clearing organization" for purposes of identifying swaps that were intended to be cleared, the newer technical specifications instead use the term "central counterparty," which is defined to include both a "derivatives clearing organization" and an "exempt derivatives clearing organization."[19] The current version of the technical specifications do not, however, explicitly state that the term "central counterparty" also includes central counterparties acting pursuant to Relief DCO NALs.

III. Requested No-Action Position With Respect To Certain Reporting Obligations Under Part 45

ISDA requests the renewal of the no-action position in CFTC Letter No. 22-18 regarding reporting obligations for counterparties facing Relief DCOs. Specifically, ISDA's request covered the following reporting obligations of counterparties that are neither DCOs nor central counterparties:

1. Reporting swap continuation data for alpha swaps that have been accepted for clearing by a Relief DCO;[20]
2. Reporting any creation data and continuation data for swaps resulting from novation of an alpha swap accepted for clearing by a Relief DCO, as well as any related swaps which may be entered into as part of post-trade activities including netting or compression exercises or novations; and

---

[15] *See* Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012), App'x 1.

[16] *See* Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75503 (Nov. 25, 2020). The compliance date for regulations subject to those amendments was May 25, 2022. On January 31, 2022, the Division of Data issued CFTC Letter No. 22-03, stating that the Division of Data would not recommend that the Commission take an enforcement action against an entity for failure to comply with the regulations amending Part 45 before December 5, 2022. *See* CFTC Letter No. 22-03 (Jan. 31, 2022), *available at* https://www.cftc.gov/csl/22-03/download. Accordingly, market participants implemented swap data reporting in the form and manner provided in the technical specifications on December 5, 2022.

[17] *See id.* at 75507.

[18] *See, e.g.*, Parts 43 and 45 swap data reporting and public dissemination requirements, Version 3.2 (Mar. 1, 2023), *available at* https://www.cftc.gov/media/8261/Part43_45TechnicalSpecification03012023CLEAN/download.

[19] *See id.* at 1 n.14.

[20] ISDA requested a no-action position relating to ITBC Swaps with central counterparties exempted by the Commission and central counterparties that received no-action letters from DCR. DMO has combined these two types of central counterparties as "Relief DCOs" for purposes of this letter.

3. Generating Unique Transaction Identifiers ("UTIs") for swaps created through the process of clearing a swap with a Relief DCO.

ISDA requested that the no-action position remain in effect until the earlier of (a) the revocation or expiration of the exemptive order or no-action letter issued to the relevant Relief DCO, or (b) until further Commission action renders the no-action position inapplicable.

IV. No-Action Position

Based on the facts presented and the representations that ISDA has made, DMO will not recommend enforcement action to the Commission against Relief DCO Counterparties, solely for failure to comply with the following reporting obligations:

a. Reporting continuation data pursuant to regulation § 45.4 on Relief DCO Original Swaps after the acceptance of such Relief DCO Original Swaps for clearing by the Relief DCO, including reporting the termination of the Relief DCO Original Swap;
b. Reporting creation data pursuant to regulation § 45.3 and continuation data pursuant to regulation 45.4 on Relief DCO Clearing Swaps; and
c. Generating UTIs for Relief DCO Clearing Swaps pursuant to regulation § 45.5.

This no-action position is subject to the condition that the Relief DCO Counterparty must provide to the Relief DCO all information on the Relief DCO Original Swap required by the Relief DCO in its clearing agreement.

For Relief DCO Original Swaps and Relief DCO Clearing Swaps, the no-action position taken herein will continue until the earlier of: (a) the revocation or expiration of the exemptive order or no-action letter issued to the relevant Relief DCO; or (b) Commission action that renders the no-action position inapplicable. Relief DCO Counterparties retain all other reporting obligations for which they are responsible under the Commission's regulations, and the no action position herein does not apply if the Relief DCO rejects the swap for clearing.

In the ISDA Letter, ISDA requests clarification that reporting counterparties should report a value of "Yes" in the cleared field for swaps intended to be submitted for clearing to a No-Action DCO and report the LEI of the No-Action DCO in the central counterparty field for swaps intended to be cleared at a No-Action DCO. Staff notes that under the no-action position taken here, Relief DCO Original Swaps and Relief DCO Clearing Swaps are treated as original swaps and cleared swaps for purposes of the Part 45 reporting requirements. Accordingly, it would be consistent with the no-action position herein to treat the swaps cleared by a Relief DCO as cleared by a central counterparty for purposes of the technical specifications.

* * *

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 division or office of the Commission's staff. This letter and the no-action position taken herein

are not binding on the Commission or other Commission staff.[21] The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements contained in the Commodity Exchange Act or the regulations thereunder (in particular, the applicable swap reporting requirements and clearing requirements).[22] Further, this letter, and the position taken herein, are based upon the facts and circumstances presented to Division staff. Any different, changed, or omitted material facts or circumstances might render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action position provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Isabella Bergstein, Division of Market Oversight, at (202) 993-1384 or ibergstein@cftc.gov, Paul Chaffin, Division of Market Oversight, at (202) 418-5185 or pchaffin@cftc.gov, or Owen Kopon, Division of Market Oversight, at (202) 418-5360 or okopon@cftc.gov.

Sincerely,

_____

Rahul Varma
Acting Director
Division of Market Oversight

[21] *See* 17 CFR § 140.99(a)(2) ("A no-action letter binds only the issuing Division . . . and not the Commission or other Commission staff.").

[22] The applicable swap reporting requirements are set forth under Parts 43, 45, 46, and 50 of the Commission's regulations, 17 CFR parts 43, 45, 46 and 50, respectively. The applicable clearing requirements are set forth under Commodity Exchange Act section 2(h)(1), 7 U.S.C. § 2(h)(1), and Part 50 of the Commission's regulations.