



## U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Swap Dealer and  
Intermediary Oversight

Division of Market Oversight

CFTC Letter No. 12-32  
No-Action  
November 19, 2012  
Division of Swap Dealer and Intermediary Oversight  
Division of Market Oversight

### **Time-Limited No-Action Relief for Swap Dealers from Certain Swap Data Reporting Requirements of Part 43, Part 45 and Part 46 of the Commission's Regulations**

Ladies and Gentlemen:

This letter responds to requests received from multiple parties, by the Division of Swap Dealer and Intermediary Oversight (“DSIO”) of the Commodity Futures Trading Commission (“Commission”), and by the Commission’s Division of Market Oversight (“DMO”), to provide no-action relief from certain requirements of the Commission’s swap data reporting rules, in order to allow for a common monthly compliance date for swap dealers newly falling within the scope of those rules, and to extend the compliance date for reporting historical swap transaction data pursuant to Part 46 of the Commission’s regulations.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)<sup>1</sup> added to the Commodity Exchange Act (the “CEA”)<sup>2</sup> provisions requiring the retention and reporting of data relating to swap transactions. Section 727 of the Dodd-Frank Act added CEA Section 2(a)(13), which establishes requirements for the real-time reporting and public availability of swap transaction data, and requires that all swaps, both cleared and uncleared, be reported to a registered swap data repository (“SDR”). Section 728 of the Dodd-Frank Act added CEA Section 21(b), which directs the Commission to prescribe standards for swap data recordkeeping and reporting. Sections 723 and 729 of the Dodd-Frank Act added CEA Sections 2(h)(5) and 4r, respectively, which, among other things, establish reporting requirements for swaps in effect as of the enactment of the Dodd-Frank Act, as well as swaps entered into after such enactment but prior to the effective date for compliance with the Commission’s final swap data recordkeeping and reporting rules.

Pursuant to these newly added provisions of the CEA, the Commission has added to its regulations Part 43,<sup>3</sup> which sets forth rules for the real-time public reporting of swap transaction

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 7 U.S.C. 1, *et seq.*

<sup>3</sup> 77 Fed. Reg. 1182 (January 9, 2012).

data; Part 45,<sup>4</sup> which establishes swap data recordkeeping and SDR reporting requirements; and Part 46,<sup>5</sup> which establishes swap data recordkeeping and SDR reporting requirements for pre-enactment swaps<sup>6</sup> and transition swaps<sup>7</sup> (collectively, “historical swaps”). Swap dealers have reporting obligations under each of Part 43, Part 45 and Part 46 (referred to collectively herein as the “swap data reporting rules”).

Recent Commission staff guidance has clarified the effect of Commission Regulation 1.3(ggg)(4) (the “de minimis exception”)<sup>8</sup> on when an entity must apply for registration as a swap dealer.<sup>9</sup> Specifically, once an entity’s swap dealing activities have exceeded, in the aggregate, one of two prescribed gross notional amount thresholds (the “notional thresholds”),<sup>10</sup> the entity must apply for registration as a swap dealer no later than the date that is two months after the end of the month in which the notional threshold is exceeded (the “swap dealer registration deadline”). The entity could elect, however, to apply for registration as a swap dealer at an earlier date.

For the first year after the regulatory framework for swaps and swap dealers comes into effect, the swap positions that will be relevant in determining whether an entity’s swap dealing activities have exceeded one of the notional thresholds will be the swap positions entered into by the entity – and by any entity controlling, controlled by or under common control with the entity – after October 12, 2012.<sup>11</sup> As a result, the earliest date on which an entity could have exceeded one of the notional thresholds was October 13, 2012. Such an entity will be required to apply for registration as a swap dealer by December 31, 2012 – the entity’s swap dealer registration deadline – although the entity could elect to apply for registration, and thereby become a swap dealer, at an earlier date.

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<sup>4</sup> 77 Fed. Reg. 2136 (January 13, 2012).

<sup>5</sup> 77 Fed. Reg. 35200 (June 12, 2012).

<sup>6</sup> A “pre-enactment swap” is a swap entered into prior to the enactment of the Dodd-Frank Act (July 21, 2010), the terms of which have not expired as of the date of enactment of the Dodd-Frank Act. *See also* Commission Regulation 46.1, *id.* at 35226.

<sup>7</sup> A “transition swap” is a swap entered into on or after the enactment of the Dodd-Frank Act (July 21, 2010), and prior to the compliance date for reporting historical swaps of the asset class to which the swap belongs, pursuant to Part 46. *See also* Commission Regulation 46.1, *supra* note 5 at 35227.

<sup>8</sup> 77 Fed. Reg. 30596, 30744-45 (May 23, 2012).

<sup>9</sup> “CFTC Staff Responds to Questions on Timing of Swap Dealer Registration Rules,” Commission Press Release 6348-12 (September 10, 2012).

<sup>10</sup> As of October 12, 2012, the notional thresholds are: (1) \$8 billion (which is a phase-in level that will subsequently be adjusted in accordance with Commission Regulation 1.3(ggg)(4)); and (2) \$25 million with regard to swaps in which the counterparty is a “special entity” as defined in CEA Section 4s(h)(2)(C) and Commission Regulation 23.401(c). These thresholds consider all swap positions connected with the swap dealing activities of the entity, or any other entity controlling, controlled by or under common control with such entity. *See* note 8, *supra*. With regard to the “special entity” notional threshold, DSIO issued a staff no-action letter on October 12, 2012 that provided relief from such notional threshold for certain transactions in utility commodity swaps by certain non-financial entities. *See* CFTC Letter No. 12-18 (October 12, 2012).

<sup>11</sup> *See* note 8, *supra*.

In an October, 2012, release entitled “Q & A – On Start of Swap Data Reporting,”<sup>12</sup> DMO staff confirmed that the date upon which an entity is required to be in compliance with the reporting obligations of a swap dealer under Part 45 and Part 46 is the earlier of: (i) the date upon which the entity applies to be registered as a swap dealer, or (ii) the entity’s swap dealer registration deadline. The date for compliance with the reporting obligations of a swap dealer under Part 43 would be determined in the same manner.

Concerns have been expressed, by market participants and other interested parties, regarding the potential for differing compliance dates for swap dealer reporting under the swap data reporting rules, in the event that one or more entities apply to register as swap dealers before their swap dealer registration deadline. With respect to those entities whose swap dealing activities exceeded one of the notional thresholds in the month of October, 2012, and that will therefore be among the initial group of swap dealers required to comply with the swap data reporting rules, it has been noted that the first such entity to apply to register as a swap dealer will also be the first – and potentially, for some period of time, the only – entity to have its swap transaction and pricing data publicly disseminated pursuant to Part 43. The public dissemination of data reported by one, or even a few, early registrants may facilitate the identification of parties to the swaps for which data has been reported, raising concerns under Commission Regulation 43.4(d)(1).<sup>13</sup>

In addition, DSIO and DMO have been advised that, in at least some instances, market participants have designed their swap data reporting infrastructure on the understanding that all swap dealers would be required to begin reporting on the same day. DSIO and DMO have been advised that, in order to accommodate differing compliance dates, costly last-minute modifications to such infrastructure would be required in order to avoid reporting errors.

In light of the foregoing concerns, multiple parties have requested that a common monthly compliance date be established for swap dealers newly falling within the scope of the swap data reporting rules.

Separately, and on behalf of those of its members that will be subject to the swap data reporting rules, the International Swaps and Derivatives Association, Inc. (“ISDA”) has expressed concern that reporting obligations with respect to historical swaps, under Part 46, will become effective at the same time as reporting obligations under Part 43 and Part 45. ISDA has highlighted the large volume of historical swaps data that will need to be reported by its members pursuant to Part 46,

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<sup>12</sup> “Q & A – On Start of Swap Data Reporting” (October 9, 2012), issued by DMO staff. *See* [http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/startreporting\\_qa\\_final.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/startreporting_qa_final.pdf)

<sup>13</sup> Commission Regulation 43.4(d)(1) provides that swap transaction and pricing data that is publicly disseminated in real time shall not disclose the identities of the parties to the swap or otherwise facilitate the identification of a party to a swap, and that a registered SDR that accepts and publicly disseminates swap transaction and pricing data in real time shall not publicly disseminate such data in a manner that discloses or otherwise facilitates the identification of a party to a swap. *See* note 3, *supra* at 1246.

and submits that it will be a significant technological and operational challenge to ensure that all of this data is reported by the same date on which compliant daily reporting must begin under Part 43 and Part 45. ISDA has therefore requested, on behalf of its members, a period of transitional relief from the reporting requirements of Part 46, running from the date on which reporting obligations under Part 43 and Part 45 become effective. ISDA submits that such a transitional relief period will enable its members to gradually report historical swaps data over the course of the relief period, thereby reducing the potential impact of Part 46 reporting on members' ability to come into compliance with their daily reporting obligations under Part 43 and Part 45.

DSIO and DMO believe that, to address all of the foregoing concerns, limited relief for swap dealers from the compliance timeline contemplated by the swap data reporting rules is warranted. Accordingly, for any swap asset class in respect of which swap dealer reporting obligations are then in effect under the swap data reporting rules, DSIO and DMO will not recommend that the Commission take enforcement action against a swap dealer for failing to report swap transaction data pursuant to Part 43 or Part 45 of the Commission's regulations, until the earlier of: (i) 12:01 a.m. eastern time on the swap dealer registration deadline applicable to that swap dealer, notwithstanding that the swap dealer may have applied to register as a swap dealer before its applicable swap dealer registration deadline, or (ii) 12:01 a.m. eastern time on April 10, 2013.

Further, DSIO and DMO will not recommend that the Commission take enforcement action against a swap dealer for failing to report historical swaps data pursuant to Part 46 of the Commission's regulations, until the earlier of: (i) 12:01 a.m. eastern time on the date that is 30 days after the date (as extended by the no-action relief provided herein) on which the swap dealer is required to begin reporting swap transaction data pursuant to Part 43 and Part 45 for the asset class to which the historical swap belongs, or (ii) 12:01 a.m. eastern time on April 10, 2013. DSIO and DMO believe that a 30 day relief period makes available an adequate amount of time, after a swap dealer is required to come into compliance with its reporting obligations under Part 43 and Part 45, for the swap dealer to complete its reporting of historical swaps data pursuant to Part 46. DSIO and DMO note that any swap dealer that anticipates needing more than 30 days to complete its reporting of historical swaps data has the option of starting to report such data before the 30 day relief period begins.

The no-action relief provided herein is time-limited, and ends in all respects at 12:01 a.m. eastern time on April 10, 2013 – which is the date by which any swap counterparty that is not a swap dealer or a major swap participant is required to be in full compliance with the swap data reporting rules.<sup>14</sup> Since all swap counterparties are required to be in full compliance with the swap data reporting rules by April 10, 2013, regardless of whether they fall within the definition of a swap dealer, DSIO and DMO do not believe that it is appropriate to extend the no-action relief provided herein beyond that date. On and after April 10, 2013, all swap counterparties –

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<sup>14</sup> With respect to Part 43, *see* note 3, *supra* at 1228; with respect to Part 45, *see* note 4, *supra* at 2197; and with respect to Part 46, *see* note 5, *supra* at 35226.

including entities that anticipate falling within the definition of a swap dealer, but have not yet fallen within such definition – must be in full compliance with all of their reporting obligations under the swap data reporting rules.

Thus, for example, any entity whose swap dealing activities exceeded either of the notional thresholds during the month of October, 2012, will be required to begin reporting swap transaction data for the interest rate swaps and credit swaps to which it is a counterparty, pursuant to Part 43 and Part 45, by 12:01 a.m. eastern time on December 31, 2012 – the swap dealer registration deadline for that entity – regardless of whether such entity applied to register as a swap dealer prior to December 31, 2012. Such entity will be required to report historical swaps data for the interest rate swaps and credit swaps to which it is (or was) a counterparty, pursuant to Part 46, by 12:01 a.m. eastern time on January 30, 2013 – the date that is 30 days after the date (as extended by the no-action relief provided herein) on which the entity was required to begin reporting data for interest rate swaps and credit swaps pursuant to Part 43 and Part 45. Any interest rate swap or credit swap entered into by such entity after 12:01 a.m. eastern time on December 31, 2012 would be reportable pursuant to Part 43 and Part 45, and would not be reportable as a historical swap pursuant to Part 46.

Reporting obligations under the swap data reporting rules with respect to equity swaps, foreign exchange swaps and other commodity swaps are not yet in effect; pursuant to the compliance timeline set forth in the swap data reporting rules, such reporting obligations come into effect for swap dealers on January 10, 2013.<sup>15</sup> For purposes of Part 43 and Part 45, the no-action position taken herein does not affect this compliance date. Any entity whose swap dealing activities exceeded either of the notional thresholds during the month of October, 2012, will be required to begin reporting swap transaction data for the equity swaps, foreign exchange swaps and other commodity swaps to which it is a counterparty, pursuant to Part 43 and Part 45, by 12:01 a.m. eastern time on January 10, 2013. Such entity will be required to report historical swaps data for the equity swaps, foreign exchange swaps and other commodity swaps to which it is (or was) a counterparty, pursuant to Part 46, by 12:01 a.m. eastern time on February 9, 2013. Any equity swap, foreign exchange swap or other commodity swap entered into by such entity after 12:01 a.m. eastern time on January 10, 2013 would be reportable pursuant to Part 43 and Part 45, and would not be reportable as a historical swap pursuant to Part 46.

As further examples, any entity whose swap dealing activities exceed either of the notional thresholds during the month of November, 2012, will be required to begin reporting swap transaction data for all categories of swaps to which it is a counterparty, pursuant to Part 43 and Part 45, by 12:01 a.m. eastern time on January 31, 2013, and will be required to report historical swaps data for all categories of swaps to which it is (or was) a counterparty, pursuant to Part 46, by 12:01 a.m. eastern time on March 2, 2013. Any entity whose swap dealing activities exceed either of the notional thresholds during the month of January, 2013, will be required to begin reporting swap transaction data for all categories of swaps to which it is a counterparty, pursuant

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<sup>15</sup> *Id.*

to Part 43 and Part 45, by 12:01 a.m. eastern time on March 31, 2013. Since the no-action relief provided herein ends in all respects at 12:01 a.m. eastern time on April 10, 2013, such entity will be required to report historical swaps data for all categories of swaps to which it is (or was) a counterparty, pursuant to Part 46, by 12:01 a.m. eastern time on April 10, 2013. Any entity whose swap dealing activities exceed either of the notional thresholds during the month of February, 2013, will be required to begin reporting swap transaction data for all categories of swaps to which is a counterparty, pursuant to Part 43 and Part 45, and will also be required to report historical swaps data for all categories of swaps to which it is (or was) a counterparty, pursuant to Part 46, by 12:01 a.m. eastern time on April 10, 2013.

This letter, and the no-action position taken herein, represent the views of DSIO and 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 the regulations thereunder. As with all no-action letters, DSIO and DMO retain the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, in their discretion.

If you have any questions concerning this correspondence, please contact Ward Griffin, Associate Chief Counsel, DSIO, at (202) 418-5425, or Nora Flood, Attorney Advisor, DMO, at (202) 418-5354.

Very truly yours,

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Gary Barnett  
Director, DSIO

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Rick Shilts  
Acting Director, DMO