



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

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No-Action
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Division of Market Oversight

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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 Due to Effects of Hurricane Sandy

Mr. Pickel and Mr. Kemp:

By letter dated November 16, 2012 to the Division of Market Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"), and pursuant to Section 140.99 of the Commission's regulations, you have requested, on behalf of those members of the International Swaps and Derivatives Association, Inc. and those members of the Global Foreign Exchange Division of the Global Financial Markets Association that will be subject to the Commission's rules regarding the reporting of swap transaction data, and other similarly situated persons, temporary no-action relief to extend the date by which swap dealers must be in compliance with their swap data reporting obligations with respect to equity swaps, foreign exchange swaps and other commodity swaps (collectively, "Compliance Date 2 Swaps"), in order to account for certain disruptions to the testing and development of reporting systems caused by Hurricane Sandy.

The Division has determined to extend such temporary relief to all swap dealers. By this letter, the Division provides swap dealers with no-action relief from swap data reporting obligations with respect to Compliance Date 2 Swaps: (i) under Part 43 and Part 45 of the Commission's

regulations, until 12:01 a.m. eastern time on **February 28, 2013**, and (ii) under Part 46 of the Commission's regulations, until 12:01 a.m. eastern time on **March 30, 2013**.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")¹ added to the Commodity Exchange Act (the "CEA")² 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 43,³ which sets forth rules for the real-time public reporting of swap transaction data; Part 45,⁴ which establishes swap data recordkeeping and SDR reporting requirements; and Part 46,⁵ which establishes swap data recordkeeping and SDR reporting requirements for pre-enactment swaps⁶ and transition swaps⁷ (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"). For Compliance Date 2 Swaps, these reporting obligations first become effective on January 10, 2013.⁸

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 7 U.S.C. 1, *et seq.*

³ 77 Fed. Reg. 1182 (January 9, 2012).

⁴ 77 Fed. Reg. 2136 (January 13, 2012).

⁵ 77 Fed. Reg. 35200 (June 12, 2012).

⁶ 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.

⁷ 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, note 5, *supra* at 35227.

⁸ 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.

See also "CFTC Staff Responds to Questions on Timing of Swap Dealer Registration Rules," Commission Press Release 6348-12 (September 10, 2012), available at <http://www.cftc.gov/PressRoom/PressReleases/pr6348-12>, in which Commission staff provides guidance as to when an entity will be deemed to fall within the definition of a "swap dealer" – such that it will be subject to registration and the obligations of a swap dealer under the CEA and

In your letter of November 16, 2012, you state that Hurricane Sandy – which hit New York City on October 29, 2012, creating a storm surge – caused flooding at the lower Manhattan offices of the Depository Trust & Clearing Corporation (“DTCC”). You state that many market participants have been working with DTCC’s SDR affiliate, DTCC Data Repository (U.S.) LLC (“DDR”)⁹, to develop their swap data reporting systems. The flooding caused by Hurricane Sandy temporarily incapacitated DDR’s testing environment for swap data reporting, which is used by market participants to develop and test their reporting systems. You state that this disruption occurred during a crucial period, as member firms that will have reporting obligations with respect to credit swaps and interest rate swaps (collectively, “Compliance Date 1 Swaps”) beginning on December 31, 2012,¹⁰ work to finalize reporting infrastructure to meet that compliance date.

While DDR has confirmed to the Division that its testing environment was restored on November 19, 2012,¹¹ you submit that its lack of availability for several weeks compressed the timeframe available to member firms that plan to report swap transaction data to DDR, and that have reporting obligations with respect to Compliance Date 1 Swaps beginning on December 31, 2012, to finalize their reporting infrastructure to meet a year-end compliance date. You submit that this timeframe will be further compressed by industry code freezes, which are typically put

the Commission’s regulations thereunder, including the reporting obligations of a swap dealer under the swap data reporting rules.

See also “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,” Commission Letter No. 12-32 (November 19, 2012), discussed *infra*, in which the Division and the Commission’s Division of Swap Dealer and Intermediary Oversight jointly provided swap dealers with time-limited no-action relief from certain reporting requirements of the 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 swaps data pursuant to Part 46. Taking into account such no-action relief, with respect to Compliance Date 1 Swaps, the earliest that a swap dealer would be required to be in compliance with its reporting obligations under Part 43 and Part 45 would be December 31, 2012, and the earliest that a swap dealer would be required to be in compliance with its reporting obligations under Part 46 would be January 30, 2013. Taking into account such no-action relief, with respect to Compliance Date 2 Swaps, the earliest that a swap dealer would be required to be in compliance with its reporting obligations under Part 43 and Part 45 would be January 10, 2013, and the earliest that a swap dealer would be required to be in compliance with its reporting obligations under Part 46 would be February 9, 2013.

⁹ In your letter of November 16, 2012, you refer to DTCC and its SDR affiliate collectively as “DTCC”. References herein to DTCC’s SDR affiliate, DDR, are intended to correspond to references in your letter to “DTCC”.

¹⁰ *See* note 8, *supra*.

¹¹ Following the flooding caused by Hurricane Sandy, the Division was in communication with DDR to ensure the implementation of system safeguards for DDR’s swap data reporting system itself – including disaster recovery resources, emergency procedures and backup facilities. DDR is required, as a provisionally registered SDR, to establish and maintain such system safeguards in order to enable timely recovery and resumption of its operations and resumption of the ongoing fulfillment of its duties and obligations as an SDR following any disruption of its operations. The no-action relief provided herein is intended to address the lack of availability only of DDR’s testing environment for swap data reporting, which is used by market participants to develop and test their swap data reporting systems.

into effect near the end of the calendar year in order to ensure a stable information technology environment for the closing of books and records, and which will limit the ability to make adjustments to reporting infrastructure during the freeze period.¹²

You state that finalizing reporting infrastructure for Compliance Date 1 Swaps within this compressed timeframe will require increased efforts by affected member firms and DDR. You state that member firms have expressed concern that continuing also to work toward a January 10, 2013 compliance date for reporting Compliance Date 2 Swaps could compromise efforts to meet a year-end compliance date for reporting Compliance Date 1 Swaps.

In light of the foregoing concerns, you request, on behalf of your members that will be subject to the swap data reporting rules and other similarly situated persons, six weeks of relief from swap dealer reporting obligations with respect to Compliance Date 2 Swaps. You submit that this relief period should facilitate the smooth commencement of swap dealer reporting both for Compliance Date 1 Swaps and Compliance Date 2 Swaps, without materially delaying the anticipated benefits of reporting.

The Division believes that to address the foregoing concerns, limited relief for swap dealers from the requirements of the swap data reporting rules, as they pertain to Compliance Date 2 Swaps, is warranted. Accordingly, based on the facts that you have represented, the Division will not recommend that the Commission take enforcement action against a swap dealer for failing to report swap transaction data with respect to Compliance Date 2 Swaps, pursuant to Part 43 or Part 45 of the Commission's regulations, until 12:01 a.m. eastern time on February 28, 2013. Further, the Division will not recommend that the Commission take enforcement action against a swap dealer for failing to report historical swaps data with respect to Compliance Date 2 Swaps, pursuant to Part 46 of the Commission's regulations, until 12:01 a.m. eastern time on March 30, 2013. To maintain consistency in the compliance timeline applicable to swap dealers under the swap data reporting rules, the no-action position taken herein applies to all swap dealers, regardless of whether they plan to fulfill reporting obligations by reporting to DDR, or to another registered SDR.

By letter dated November 19, 2012 (the "November 19th Letter"), the Division and the Commission's Division of Swap Dealer and Intermediary Oversight jointly provided swap dealers with no-action relief from the reporting requirements of Part 43 and Part 45 until the earlier of: (i) 12:01 a.m. eastern time on the date by which a particular swap dealer is required, pursuant to the CEA and the Commission's regulations thereunder, to register as a swap dealer (such date, the swap dealer's "registration deadline"), or (ii) 12:01 a.m. eastern time on April 10, 2013.¹³ This no-action position did not affect the January 10, 2013 effective date of Part 43 and

¹² Such code freezes will therefore also impact the ability, during the freeze period, to work toward finalizing reporting infrastructure for Compliance Date 2 Swaps in order to meet a January 10, 2013 compliance date, after having such finalization impeded by the lack of availability of DDR's testing environment for several weeks.

¹³ See "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," note 8, *supra*. With respect to any particular swap

Part 45 reporting requirements with respect to Compliance Date 2 Swaps – with the result that any swap dealer with a registration deadline of December 31, 2012 would still be required to be in compliance with such reporting requirements by January 10, 2013. Further, any swap dealer with a registration deadline of January 31, 2013 would, pursuant to the no-action position taken in the November 19th Letter, be required to be in compliance with Part 43 and Part 45 reporting requirements with respect to Compliance Date 2 Swaps by January 31, 2013.

The Division hereby confirms that, for any swap dealer with a registration deadline of December 31, 2012 or January 31, 2013, the no-action position taken herein extends the compliance date for Part 43 and Part 45 reporting with respect to Compliance Date 2 Swaps until 12:01 a.m. eastern time on February 28, 2013.¹⁴ The no-action position taken herein does not otherwise affect the timeline contemplated in the November 19th Letter for swap dealer compliance with the reporting requirements of Part 43 and Part 45.¹⁵

The November 19th Letter also provided a 30 day relief period, running from the date by which a swap dealer must be in compliance with its Part 43 and Part 45 reporting obligations with respect to a particular swap asset class, for the swap dealer to complete its reporting of historical swaps data for that asset class under Part 46.¹⁶ The additional 30 day relief period that is provided herein to report historical swaps data with respect to Compliance Date 2 Swaps is consistent with the no-action position taken in the November 19th Letter. The Division hereby confirms that, for any swap dealer with a registration deadline of December 31, 2012 or January 31, 2013, the no-action position taken herein extends the compliance date for reporting historical swaps data with respect to Compliance Date 2 Swaps, pursuant to Part 46, until 12:01 a.m. eastern time on March 30, 2013. The no-action position taken herein does not otherwise affect the timeline contemplated in the November 19th Letter for swap dealer compliance with the reporting requirements of Part 46.¹⁷

dealer, this no-action position applies only to swap asset classes in respect of which swap dealer reporting obligations are then in effect.

¹⁴ The Division believes that it is appropriate that its no-action position extends reporting relief with respect to Compliance Date 2 Swaps to swap dealers with a registration deadline of January 31, 2013, since - as is the case with swap dealers with a registration deadline of December 31, 2012 - efforts by such swap dealers to finalize reporting infrastructure may have been impacted by the disruption to DDR's testing environment caused by Hurricane Sandy.

¹⁵ For example, and as further described in the November 19th Letter, a swap dealer with a registration deadline of December 31, 2013 must be in compliance with its Part 43 and Part 45 reporting obligations with respect to Compliance Date 1 Swaps by 12:01 a.m. on December 31, 2012, and a swap dealer with a registration deadline of January 31, 2013 must be in compliance with its Part 43 and Part 45 reporting obligations with respect to Compliance Date 1 Swaps by 12:01 a.m. on January 31, 2013.

¹⁶ Specifically, the November 19th Letter provides swap dealers with no-action relief from the reporting requirements of Part 46 until the earlier of: (i) 12:01 a.m. eastern time on the date that is 30 days after the date by which the swap dealer is required to begin reporting transaction data for the swap asset class in question pursuant to Part 43 and Part 45, or (ii) 12:01 a.m. eastern time on April 10, 2013.

¹⁷ For example, and as further described in the November 19th Letter, a swap dealer with a registration deadline of December 31, 2012 must be in compliance with its Part 46 reporting obligations with respect to Compliance Date 1

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. 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. Further, this letter, and the no-action position taken herein, is based upon the representations contained in your letter of November 16, 2012. Any different or changed material facts or circumstances might render this letter void. 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 relief provided herein, in its discretion.

If you have any questions concerning this correspondence, please contact Nora Flood, Attorney Advisor, at (202) 418-5354.

Very truly yours,

Richard A. Shilts
Acting Director
Division of Market Oversight

Swaps by 12:01 a.m. on January 30, 2013, and a swap dealer with a registration deadline of January 31, 2013 must be in compliance with its Part 46 reporting obligations with respect to Compliance Date 1 Swaps by 12:01 a.m. on March 2, 2013.