



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

CFTC Letter No. 12-55
No-Action
December 17, 2012
Division of Market Oversight

Mr. Robert G. Pickel
Chief Executive Officer
International Swaps and Derivatives Association, Inc.
1101 Pennsylvania Avenue, NW, Suite 600
Washington, DC 20004

Re: Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants From Compliance With Reporting Obligations Under 17 CFR § 45.4(b)(2)(ii)

Dear Mr. Pickel,

This is in response to the International Swaps and Derivatives Association, Inc.'s ("ISDA") letter dated December 13, 2012 ("Letter"), to the Division of Market Oversight ("Division") of the Commodity Futures Trading Commission ("Commission"). In the Letter, ISDA, on behalf of its members that intend to register as Swap Dealers ("SDs") and Major Swap Participants ("MSPs"), and other similarly situated persons, requests that the Division confirm that it will not recommend that the Commission take enforcement action against SDs and MSPs that have reporting obligations under regulation 45.4(b)(2)(ii)(valuation reporting for cleared swaps) of the Commission's regulations, for failing to report certain continuation data to the extent that such reporting must be made to a swap data repository ("SDR") for which data connectivity is not tested and consistently available.

Under its proposed relief, SDs and MSPs would not be required to report valuation data, as required under regulation 45.4(b)(2)(ii), for cleared swaps in which the SD or MSP is the reporting counterparty. ISDA requests that such relief be effective until July 1, 2013.

Applicable Regulatory Requirements

The Dodd-Frank Wall Street Reform and Consumer Protection Act¹ (the "Dodd-Frank Act") added to the Commodity Exchange Act² (the "CEA") provisions requiring the retention and reporting of data related to swap transactions. New section 2(a)(13)(G) of the CEA requires that all swaps, both cleared and uncleared, be reported to a registered SDR. New section 21(b)

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

² 7 U.S.C. §§ 1, *et seq.*

of the CEA directs the Commission to prescribe standards for swap data recordkeeping and reporting.

The Commission published final rules under part 45 of the Commission's regulations on January 13, 2012.³ The rules implement the provisions of the CEA pertaining to swap data recordkeeping and reporting obligations. Among other requirements, the final part 45 regulations call for electronic reporting to an SDR of swap data from each of two relevant stages of the existence of a swap: the creation of the swap, and the continuation of the swap over its existence until its final termination or expiration.⁴

As relevant to this request, regulations 45.4(b)(2)(i) and (ii) require that swap valuation data be reported to the SDR by both the relevant derivatives clearing organization ("DCO") that clears the swap and the reporting counterparty to the cleared swap, if the reporting counterparty is an SD or MSP. The obligation of the DCO to provide valuation data for the cleared swap under regulation 45.4(b)(2)(i) is independent of the obligation of the SD or MSP to provide valuation data for the same cleared swap under regulation 45.4(b)(2)(ii). Absent relief, the initial compliance date applicable to SDs and MSPs for reporting under Part 45 is December 31, 2012, and for MSPs, February 28, 2013.⁵

Summary of Request for Relief

ISDA has more than 800 members, representing a broad range of OTC derivatives market participants including, among others, international and regional banks, asset managers, energy commodities firms, government and supranational entities, insurers and diversified financial institutions, exchanges, clearinghouses and other service providers. ISDA requests no-action relief pursuant to regulation 140.99 of the Commission's regulations on behalf of its members and similarly situated persons with obligations under Part 45, with regard to the compliance date of regulation 45.4(b)(2)(ii).

In its Letter, ISDA notes that in order to report data to an SDR, a reporting counterparty must have data connections with the SDR. ISDA states that while many potential SDs and MSPs have established connections with The Depository Trust and Clearing Corporation's ("DTCC") SDR, they do not have data connections with other organizations that are or are willing to become SDRs. Accordingly, ISDA requests relief from the obligations of SDs and MSPs that are reporting counterparties under regulation 45.4(b)(2)(ii) to report valuation data to a SDR with which the reporting counterparty does not have the required data connections to support such reporting.

³ 76 Fed. Reg. 2197 (Jan. 13, 2012).

⁴ Required swap creation data means all primary economic terms ("PET") data and all confirmation data for a swap. Required swap continuation data means all changes to PET data and all valuation data. See 17 C.F.R. § 45.1.

⁵ Part 45 became effective on March 13, 2012. The applicable compliance date is as described in the Federal Register release issuing the Part 45 rules, subject to any additional no-action letter or other guidance provided by the Division or the Commission.

Grant of Time-Limited No-Action Relief

The Division accepts, without independent analysis that SDs or MSPs may have the obligation to report valuation data under regulation 45.4(b)(2)(ii), but at present, do not have the necessary data connections to report valuation data to an SDR other than DTCC. The Division advises that this relief will apply to all market participants that intend to register as SDs or MSPs.

Based on the facts presented and the representations ISDA has made in its Letter, the Division will not recommend that the Commission take enforcement action against an SD or MSP for failure of such SD or MSP to comply with the requirements of regulation 45.4(b)(2)(ii) to report valuation data, subject to the following conditions:

- (1) The no-action relief applies to SDs and MSPs that are reporting counterparties under regulation 45.4(b)(2)(ii).
- (2) The no-action relief applies to cleared swaps for which the reporting counterparty has the obligation to report valuation data under regulation 45.4(b)(2)(ii).
- (3) The no-action relief shall expire on June 30, 2013.

The position taken herein concerns staff recommendation of enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the CEA or the Commission's regulations. The no-action position taken herein does not excuse the recipients of this relief from compliance with any other applicable requirements of the Commodity Exchange Act or the regulations thereunder. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this no-action 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 relief provided herein, in its discretion.

If you have any questions concerning the content of this staff no-action letter, please contact Nadia Zakir, Associate Director, at (202) 418-5720.

Sincerely,

Richard Shilts
Director