



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-65
No-Action
December 21, 2012
Division of Market Oversight

Robert Pickel
Chief Executive Officer
International Swaps and Derivatives Association, Inc.
1001 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004

Time-Limited No-Action Relief from the Reporting of Certain Non-Reporting Counterparty Information Pursuant to Parts 45 and 46

Dear Mr. Pickel,

This letter is in response to your letter on behalf of International Swaps and Derivatives Association, Inc. (“ISDA”) dated December 7, 2012 (“Letter”), to the Division of Market Oversight (“DMO” or the “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”). In the Letter, you requested time-limited no-action relief for trade participants¹ with respect to certain reporting requirements promulgated by the Commission pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) under Parts 45² and 46³ of the Commission’s regulations.⁴ Specifically, ISDA identified the reporting, of what ISDA terms “Counterparty Information”⁵ as an area in which full compliance with the Parts 45 and 46 reporting requirements, as they pertain to reporting

¹ In the Letter, ISDA defines trade participants as ISDA members and other similarly situated persons with reporting obligations under Part 45 or Part 46 of the Regulations of the Commission.

² See generally Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012) (“Regulatory Reporting Rule”).

³ See generally Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012) (“Historical Swap Reporting Rule”).

³ Section 23.204 requires swap dealers and major swap participants to comply with Part 45 of the Commission’s regulations. To that extent only, section 23.204 is incorporated by reference into the no-action relief herein.

⁵ “Counterparty Information” refers to information that would otherwise be required to appear in one of the data fields specified in the annex as attached to the Letter, submitted by ISDA.

counterparties, would not be possible as of the relevant compliance deadlines⁶ because some reporting counterparties will be unable to obtain identifying information of non-reporting counterparties in some instances.

The Division has reviewed your request and determined to grant the following relief:

The Division, in light of ISDA's representation that reporting counterparties will be unable to obtain certain identifying information of non-reporting counterparties in some instances, is granting time-limited no-action relief to ISDA members, or similarly situated persons, until **April 10, 2013**, from Parts 45 and 46 for reporting counterparties from reporting the following non-reporting counterparty information, only to the extent that such information is not provided by the non-reporting counterparty and is otherwise unavailable to the reporting counterparty, after a good faith effort to obtain such information:

Part 45

- An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap;
- An indication of whether the non-reporting counterparty is a financial entity as defined in the Commodity Exchange Act ("CEA") section 2(h)(7)(C);
- An indication of whether the non-reporting counterparty is a U.S. person; and
- The identity of the counterparty electing the clearing requirement exception in CEA section (2)(h)(7).

Part 46

- An indication of whether the non-reporting counterparty is a major swap participant with respect to the swap;
- An indication of whether the non-reporting counterparty is a financial entity as defined in the CEA section 2(h)(7)(C); and
- An indication of whether the non-reporting counterparty is a U.S. person.

Finally, the Division believes that, in light of ISDA's representation that reporting counterparties will be unable to obtain identifying information of non-reporting counterparties in

⁶ The earliest date upon which a swap dealer would be required to report swap transaction data for swaps in the interest rate and credit asset classes ("Compliance Date 1 Swaps") pursuant to Parts 43 and 45 is December 31, 2012, if the swap dealer reaches the de minimis swap dealing threshold in October 2012. See generally Staff No-Action Letter No. 12-32 (November 19, 2012) (establishing the reporting compliance deadline for swap dealers under Parts 43 and 45 as the applicable registration deadline, regardless of whether the swap dealer chooses to register prior to that deadline) ("November 19 Letter"). The earliest date upon which the same swap dealer would be required to report historical Compliance Date 1 Swaps under Part 46 is January 30, 2013. See id. (establishing the reporting compliance deadline for historical swaps under Part 46 as 30 days after the date upon which the swap dealer is required to begin reporting swap transaction data pursuant to Parts 43 and 45 for the asset class to which the historical swap belongs). For purposes of the discussion herein, DMO assumes that the ISDA members anticipate having to register as swap dealers by December 31, 2012, and thus begin reporting Compliance Date 1 Swaps under Parts 43 and 45 as of December 31, 2012, and historical Compliance Date 1 Swaps under Part 46 as of January 30, 2013.

some instances, the Division will not recommend that the Commission commence an enforcement action against reporting counterparties for failure to report such identifying information, pursuant to Parts 45 and 46, only to the extent that such information is not provided by the non-reporting counterparty and is otherwise unavailable to the reporting counterparty, until as soon as such previously omitted identifying information becomes available to the reporting counterparty or **April 10, 2013**, whichever occurs first. DMO believes that a three-month timeframe should be sufficient for ISDA members, and other similarly situated persons to come into compliance with the reporting requirements under Parts 45 and 46.⁷

The following conditions apply to each no-action position taken above:

- 1) Despite staff no-action position taken herein expiring upon a certain future date, any reporting counterparty relying upon this relief is required to begin reporting in full compliance with the CEA and Commission's regulations as soon as the previously omitted identifying information becomes available to the reporting counterparty, even if such resolution occurs prior to the applicable no-action position expiration date;
- 2) Should the Commission promulgate additional swap data reporting rules applicable to the subject matter covered herein during the pendency of this no-action relief period, such rules could supersede the no-action relief granted herein;
- 3) During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the applicable SDR(s), the reporting counterparty must retain records with respect to all transactions covered by the relief in this response and make such records available to the Commission for inspection and production immediately upon request;
- 4) Any reporting counterparty relying upon this relief must complete the SDR reporting records with respect to the identifying non-reporting counterparty data not reported pursuant to this no-action position as soon as the previously omitted identifying information becomes available to the reporting counterparty, but in no case later than **April 30, 2013**⁸; and

⁷ The Division is not expressing an opinion on the merits of the relief that was requested but not granted herein.

⁸ The no-action relief for reporting identifying counterparty information provided herein expires no later than April 10, 2013. However, in order to allow the reporting counterparties sufficient time to update their SDR reporting records with respect to the non-reporting counterparty identifying data not reported pursuant to this no-action position, the Commission is allowing for the backloading of the unreported data to the applicable SDR(s) until April 30, 2013.

- 5) If any representation made by ISDA in the Letter ceases to be true or materially changes with respect to any no-action position contained in this response, that no-action position is void.

This letter, and the no-action positions 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 positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or Commission regulations thereunder, and applies only to the ISDA members and similarly situated parties in their capacity as the requestor of this relief. Further, despite each staff no-action position taken herein expiring upon a certain future date, market participants are required to begin reporting in full compliance with the CEA and Commission's regulations as soon as the previously omitted identifying information becomes available to the reporting counterparty, even if such resolution occurs prior to the applicable no-action position expiration date. 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.

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act. Therefore, a control number for the collection must be obtained from the Office of Management and Budget ("OMB"). In accordance with 44 U.S.C. § 3507(d) and 5 C.F.R. §§ 1320.8 and 1320.10, the Division will, by separate action, prepare an information collection request for review and approval by OMB, and will publish in the Federal Register a notice and request for public comments on the collection burdens associated with the no-action relief. If approved, an agent may not rely on the Division's determination not to recommend enforcement action to the Commission unless it provides the information the Division has determined is essential to the provision of no-action relief.

If you have any questions regarding the content of this staff no-action letter, please contact Roger Smith, Attorney-Advisor, at 202-418-5344 or RSmith@CFTC.gov.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight