



## U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 13-35  
No-Action  
June 27, 2013  
Division of Market Oversight

### **Additional Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations**

Dear Mr. Pickel:

This letter is in response to your request dated June 21, 2013 (the "Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("Commission") on behalf of your members that are "reporting parties"<sup>1</sup> or "reporting counterparties"<sup>2</sup> as defined in Parts 43<sup>3</sup> and 45<sup>4</sup> of the Commission's regulations, respectively (collectively, "Reporting Parties"), in which you request no-action relief for bespoke or complex products from certain reporting requirements of Parts 43 and 45. In the Letter, you assert that there are certain operational constraints that will prevent Reporting Parties from submitting, for bespoke or complex products, specific data elements required by Appendix A to Part 43 and Appendix 1 to Part 45. The relief sought in the Letter would effectively extend a number of elements of relief granted in CFTC Letter No. 12-39<sup>5</sup>, issued by the Division on November 20, 2012.

For the purposes of this DMO letter, as defined in CFTC Letter No. 12-39, "bespoke or complex" swaps are swaps that meet all of the following characteristics: (a) not listed for trading on a designated contract market; (b) not available to be traded on a swap execution facility; (c) not eligible to be cleared by a derivatives clearing organization; (d) not eligible to be confirmed through an electronic matching confirmation system; and (e) not represented in Financial products Markup Language ("FpML").<sup>6</sup>

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<sup>1</sup>Section 43.2 defines the term "reporting party" as "the party to a swap with the duty to report a publicly reportable swap transaction in accordance with [Part 43] and section 2(a)(13)(F) of the [Commodity Exchange Act]."

<sup>2</sup>Section 45.1 defines the term "reporting counterparty" as "the counterparty required to report swap data pursuant to [Part 45], selected as provided in § 45.8."

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

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

<sup>5</sup>CFTC Letter No. 12-39, which was issued by the Division on November 30 2013, ends in all respects on or before June 30, 2013. That letter provided no-action relief from certain reporting obligations under Part 43 and Part 45 of the Commission's regulations.

<sup>6</sup>If a swap that currently qualifies as bespoke or complex fails to meet one of the enumerated requirements in the future, that swap would cease to be bespoke or complex for purposes of the relief conferred herein.

From your assertions, many Reporting Parties are prepared to report data to SDRs under Part 43 and 45 using FpML, a data standardization language. As you have represented, FpML does not currently support bespoke or complex products for all fields required in Parts 43 and 45. Reporting Parties who use FpML are therefore currently unable to report these unrepresented fields for bespoke or complex products.

#### 1. Relief for Reporting the Specified Fields Described in Tables 1 and 2

You represent in the Letter that the upcoming version of FpML, version 5.5, will improve upon the existing version of FpML. In particular, you state that FpML version 5.5 has been extended to add the Part 43 data fields listed in Table 1 (“Table 1 Fields”) for bespoke or complex products.<sup>7</sup> In addition, you state that FpML version 5.5 has been extended to add the Part 45 data fields listed in Table 2 (“Table 2 Fields”) for bespoke or complex products.<sup>8</sup> You state that FpML version 5.5 was released as a Recommendation<sup>9</sup> to the industry at the end of May 2013. You further represent that the industry has indicated that it will implement version 5.5 of FpML by September 30, 2013. You request relief until the earlier of such time that the relevant data elements can be reported to an appropriate SDR or September 30, 2013.

The Letter also contains representations concerning future versions of FpML. You state that ISDA and its members are in the process of developing a roadmap to streamline the continued standardization of products in futures versions of FpML. You also state that the first step in this process is for the industry to assist the CFTC by using publicly available SDR data to determine the most frequently traded or systematically significant bespoke or complex swaps in each asset class and then, once identified, to incorporate them into the standardization roadmap so that such data fields can be included in a future version of FpML. You assert in the Letter that this process will continue to reduce the number of bespoke or complex products by identifying any such products that may have sufficient activity or other characteristics to become standardized. You represent that, going forward, ISDA will provide the Division and the Commission with the roadmap to standardization of products, including the factors that will be considered in identifying such products for standardization. In addition, ISDA will keep the Division apprised of updates to the roadmap and progress towards standardization.

Based on your representations, the Division believes that time-limited no-action relief is warranted for certain Part 43 reporting obligations. For bespoke or complex swaps, the Division will not recommend that the Commission commence an enforcement action against a reporting party for failure to report the Table 1 Fields to SDRs as required by sections 43.3(a)(3),<sup>10</sup> 43.4(a)<sup>11</sup> and Appendix A to Part 43<sup>12</sup> until **September 30, 2013**.<sup>13</sup>

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<sup>7</sup> Table 1 is located at the conclusion of this letter.

<sup>8</sup> Table 2 is located at the conclusion of this letter.

<sup>9</sup> You represent that a Recommendation is the final step in the release of an FpML standard.

<sup>10</sup> Section 43.3(a)(3) designates which party to off-facility swaps has the obligation to report for publicly reportable swap transactions.

<sup>11</sup> Section 43.4(a) requires that swap transaction and pricing information be reported to SDRs for RTPR.

<sup>12</sup> Appendix A to Part 43 sets forth data fields for public dissemination.

<sup>13</sup> Nothing in this letter should be interpreted as altering the responsibility of SDRs to disseminate swap transaction and pricing data in real-time pursuant to section 43.4(b). That section requires SDRs to disseminate the information

In addition, based on your representations, the Division believes that time-limited no-action relief is warranted for certain Part 45 reporting obligations. For bespoke or complex swaps, the Division will not recommend that the Commission commence an enforcement action against a reporting counterparty for (A) failure to report the Table 2 Fields in PET data to SDRs as required by sections 45.3(b)(1),<sup>14</sup> 45.3(c)(1)(i),<sup>15</sup> 45.3(c)(2)(i),<sup>16</sup> 45.3(d)(1)<sup>17</sup> and Appendix 1 to Part 45<sup>18</sup> or (B) failure to report the Table 2 Fields in swap continuation data for uncleared swaps to SDRs pursuant to section 45.4(c)<sup>19</sup> until **September 30, 2013**.

## 2. Relief for Reporting of the “Any other term(s) . . .” Data Field for Bespoke or Complex Swaps

You make a number of representations in the Letter regarding the creation of a web-based portal for bespoke or complex products. In particular, you state that at ISDA’s request, an SDR has developed a prototype of a tool that would allow Commission staff to search and analyze data across the “any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap” field (the “any other term(s)” field) and the remainder of the data fields enumerated under Appendix A to Part 43 and Appendix 1 to Part 45. You have communicated that given sufficient time, reporting parties and service providers would be able to implement such a searchable document solution.

With respect to the “any other term(s)” field, the Division believes that time limited no-action relief is also warranted for certain Part 45 reporting obligations. Specifically, for bespoke or complex swaps, the Division will not recommend that the Commission commence an enforcement action against a reporting counterparty for (A) failure to report the “any other term(s)” field for all asset classes in PET data as required by sections 45.3(b)(1), 45.3(c)(1)(i), 45.3(c)(2)(i), 45.3(d)(1), and Appendix 1 to Part 45 or (B) failure to report the “any other term(s)” field for all asset classes in swap continuation data for uncleared swaps to SDRs pursuant to section 45.4(c) until **September 30, 2013**. The Division expects continued engagement with ISDA and Reporting Parties regarding achieving full compliance with the reporting requirements specified in this paragraph.

## 3. Relief for Reporting of Certain Confirmation Data for Bespoke or Complex Swaps that are Uncleared Inter-Affiliate Swaps

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described in Appendix A to Part 43, as applicable. If, pursuant to the relief granted in this letter, a reporting party does not report the Unrepresented Part 43 Fields to an SDR, the SDR would not be required to disseminate those specific fields pursuant to section 43.4(b).

<sup>14</sup> Section 45.3(b)(1) sets forth reporting counterparty PET reporting obligations, for off-facility swaps subject to mandatory clearing.

<sup>15</sup> Section 45.3(c)(1)(i) sets forth reporting counterparty PET reporting obligations, for off-facility swaps not subject to mandatory clearing, with a swap dealer (“SD”) or major swap participant (“MSP”) reporting counterparty, for credit, equity, foreign exchange, and interest rate swaps.

<sup>16</sup> Section 45.3(c)(2)(i) sets forth reporting counterparty PET reporting obligations, for off-facility swaps not subject to mandatory clearing, with an SD or MSP reporting counterparty, for other commodity swaps.

<sup>17</sup> Section 45.3(d)(1) sets forth reporting counterparty PET reporting obligations, for off-facility swaps not subject to mandatory clearing, with a non-SD/MSP reporting counterparty.

<sup>18</sup> Appendix 1 to Part 45 sets forth tables of minimum PET data that must be reported by swap asset class.

<sup>19</sup> Section 45.4(c) sets forth counterparty continuation data obligations for uncleared swaps.

In addition to the relief provided above, the Division believes it is also appropriate to extend the no-action relief previously granted in CFTC Letter No. 12-39 for bespoke or complex products in swaps between affiliates that are not submitted for clearing (“uncleared inter-affiliate swaps”), and for which paper confirmations are not generated. For such swaps, the Division will not recommend that the Commission commence an enforcement action against a reporting counterparty for failure to report confirmation data as required by sections 45.3(b)(3),<sup>20</sup> 45.3(c)(1)(iii),<sup>21</sup> 45.3(c)(2)(iii)<sup>22</sup> and 45.3(d)(3)<sup>23</sup> until **September 30, 2013**.

#### 4. Clarifications

The no-action relief provided herein is time-limited, and, absent additional no-action relief or other measures approved the Commission, ends in all respects on **September 30, 2013**. It applies only to bespoke or complex swaps and only to the Table 1 Fields, the Table 2 Fields, the “any other term(s)” field, and to confirmation data for uncleared inter-affiliate swaps. In addition, the no-action relief provided herein applies to Reporting Parties, regardless of whether they are members of ISDA.

This Division letter, and the no-action position taken herein, which is based on your representations, expresses the views of DMO only, and does 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, DMO retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

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<sup>20</sup> Section 45.3(b)(3) sets forth reporting counterparty confirmation data reporting obligations, for off-facility swaps subject to mandatory clearing, where the swap is not accepted for clearing.

<sup>21</sup> Section 45.3(c)(1)(iii) sets forth reporting counterparty confirmation data reporting obligations, for off-facility swaps not subject to mandatory clearing, with a SD or MSP reporting counterparty, for credit, equity, foreign exchange, and interest rate swaps, where the swap is not voluntarily submitted for clearing.

<sup>22</sup> Section 45.3(c)(2)(iii) sets forth reporting counterparty confirmation data reporting obligations, for off-facility swaps not subject to mandatory clearing, with a SD or MSP reporting counterparty, for other commodity swaps.

<sup>23</sup> Section 45.3(d)(3) sets forth reporting counterparty confirmation data reporting obligations for off-facility swaps not subject to mandatory clearing, with a non-SD/MSP reporting counterparty, where the swap is not voluntarily submitted for clearing.

If you have any questions concerning this correspondence, please contact Sebastian Pujol Schott, Associate Director, DMO, at (202) 418-5641, or Brian Robinson, Attorney Advisor, DMO, at (202) 418-5385.

Sincerely yours,

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Richard A. Shilts  
Acting Director  
Division of Market Oversight

**Table 1.**

- (1) day count convention
- (2) unique product identifier (“UPI”)
- (3) payment frequency
- (4) reset frequency
- (5) option strike price
- (6) option family
- (7) option lockout period

**Table 2.**

Credit and equity swaps

- (1) UPI
- (2) payment frequency of the reporting counterparty
- (3) payment frequency of the non-reporting counterparty

Foreign exchange transactions (other than cross-currency swaps)

- (1) UPI
- (2) delivery type

Interest rate swaps (including cross-currency swaps)

- (1) UPI
- (2) day count convention
- (3) payer (fixed rate)
- (4) payer (floating rate leg 1)
- (5) payer (floating rate leg 2)
- (6) direction
- (7) fixed day count fraction
- (8) floating rate payment frequency
- (9) floating rate reset frequency

Other commodity swaps

- (1) UPI
- (2) quantity
- (3) quantity frequency
- (4) total quantity
- (5) settlement method
- (6) buyer pay index

- (7) buyer pay averaging method
- (8) seller pay index
- (9) seller pay averaging method
- (10) option style
- (11) hours from through
- (12) hours from through time zone
- (13) days of week
- (14) load type