



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

Division of Market Oversight

CFTC Letter No. 13-55 (Amended)  
No Action  
September 30, 2013  
Division of Market Oversight

### **Time-Limited No-Action Relief for Temporarily Registered Swap Execution Facilities from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations**

This letter responds to requests received from multiple temporarily registered swap execution facilities ("SEF<sup>1</sup>"), by the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission ("Commission") to provide time-limited no-action relief to extend the date on which a SEF must be in compliance with certain swap data reporting requirements under Parts 43 and 45 of the Commission's regulations.<sup>2</sup>

#### **I. Background**

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")<sup>3</sup> amended the Commodity Exchange Act ("CEA") to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention and reporting of data regarding swap transactions.<sup>4</sup>

---

<sup>1</sup> Part 37 implemented new statutory requirements introduced by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") which, among other things, added a new section 5h to the Commodity Exchange Act ("CEA") concerning the registration and operation of SEFs, and added a new section 2(h)(8) to the CEA concerning the execution of swaps on SEFs.

<sup>2</sup> This letter responds to, but, for the reasons set forth herein, does not fully grant all no-action relief requested in, the following: (1) Letter from WMBAA, Request for Time-Limited No-Action Relief from Certain Swaps Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations; Request for Time-Limited No-Action Relief from Part 37 of the Commission's Regulations (Sept. 19, 2013) (the "WMBAA Letter"); and (2) Letter from Bloomberg SEF, LLC, Request for No-Action Relief and Interpretive Guidance to Facilitate SEF Registration (Sept. 24, 2013) (the "Bloomberg Letter"); Letter from Thomson Reuters SEF LLC, Request under Rule 140.99 for Time-Limited No-Action Relief for Swap Execution Facilities to Comply with Commission Regulations §§ 37.6(b); 37.201(b); 37.202; 37.205(a); 43.3(b); and 45.3(a) (Sept. 25, 2013) (the "Thomson Reuters Letter").

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> See, e.g., Section 2(a)(13), which establishes requirements for the real-time reporting and public availability of swap transaction data; Section 21(b), which directs the Commission to prescribe standards for swap data

Pursuant to these newly added provisions to the CEA, the Commission promulgated the Part 43 rules governing<sup>5</sup> the real-time public reporting of swap transaction data to registered swap data repositories (“SDRs”). Section 43.3 sets forth a SEF’s and designated contract market’s (“DCM”) responsibilities, including transmitting swap transaction and pricing data to an SDR as soon as technologically practicable after a publicly reportable swap transaction has been executed on, or pursuant to, the rules of a registered SEF or DCM.<sup>6</sup> Section 43.4 requires that swap transaction and pricing data be reported to a registered SDR, so the SDR can publicly disseminate swap transaction and pricing data in real-time in accordance with Part 43.<sup>7</sup>

The Commission also promulgated Part 45, which, among other requirements, sets forth obligations for SEF and DCMs to report for each swap executed on, or pursuant to, the rules of a SEF or DCM, required swap creation data<sup>8</sup> (“creation data”), including primary economic term (“PET”) data and confirmation data, to SDRs as soon as technologically practicable after execution of the swap.<sup>9</sup> Section 45.4 requires registered entities and swap counterparties to report swap continuation data electronically to an SDR.<sup>10</sup> For SEF-executed swap transactions, SEFs are also required to (1) generate and assign a unique swap identifier at, or as soon as technologically practicable following, the time of execution of the swap, and prior to the reporting of required swap creation data;<sup>11</sup> and (2) transmit the unique swap identifier electronically, at, or as soon as technologically practicable following, the time of execution of the swap, to an SDR, to each counterparty to the swap, and to a DCO if applicable.<sup>12</sup>

## **II. Time-Limited No-Action Relief Requested from SEFs from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission’s Regulations**

The Division has received requests from multiple temporarily registered SEFs that the Division provide time-limited no-action relief for SEFs from certain swap data reporting obligations provided in Parts 43 and 45 of the Commission’s regulations. Specifically, the SEFs request that

---

recordkeeping and reporting; and Sections 4r and 2(h)(5), which, among other things, establish reporting requirements for historical swaps.

<sup>5</sup> Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1,182 (Jan. 9, 2012).

<sup>6</sup> Section 43.3(b)(1).

<sup>7</sup> Section 43.4.

<sup>8</sup> Section 45.1.

<sup>9</sup> Section 45.3(a).

<sup>10</sup> Section 45.4.

<sup>11</sup> Section 45.5(a)(1).

<sup>12</sup> Section 45.5(a)(2).

the Division provide time-limited no-action relief from the reporting of certain Part 43 and Part 45 creation data to SDRs as required in appendix A to Part 43 and Appendix 1 to Part 45.<sup>13</sup>

A SEF's reporting obligations to report swap transaction data to an SDR for all swaps executed on, or pursuant to, the rules of the SEF commences at 12:01 Eastern Standard Time on October 2, 2013. Staff anticipates that, during this initial period of transition from reporting of swap transaction data by the counterparties to SEF reporting, the SEF may report directly to an SDR or arrange with another entity or counterparty to report on its behalf. However, even with the assistance of third-party reporting services or swap counterparties, the SEFs represent that they may be unable to fully meet their obligation to report certain Part 43 and Part 45 creation data.

The requesting SEFs contend that, absent time-limited no-action relief, transaction data reported to SDRs within the Relevant Asset Classes risks being reported by multiple parties, leading to duplicative reporting to either the same SDR or multiple SDRs.<sup>14</sup> Currently, swap counterparties are required to report swap transaction data. However, as SEFs are required to begin reporting creation data for swaps executed on, or pursuant to, the rules of the SEF, the counterparties must modify existing data flow to account for SEF reporting of SEF transactions. The SEFs and counterparties have indicated to staff that some counterparties are currently unable to suppress their existing data flows, creating likely duplicative reporting of SEF transactions.

Based on the SEFs' representations, the Division believes that providing SEFs with a transitional period, after they are required to be in compliance with their reporting obligations under Part 43 and Part 45, to more fully build their reporting capabilities for certain transactions within the foreign exchange ("FX"), other commodity and equity asset classes ("Relevant Asset Classes")<sup>15</sup>, will help to ensure the smooth commencement of reporting by SEFs under the swap data reporting rules.<sup>16</sup>

Accordingly, the Division will not recommend that the Commission commence an enforcement action against a SEF that does not report swap Part 43 and Part 45 creation<sup>17</sup> data pursuant to

---

<sup>13</sup> See Bloomberg Letter at p.3 ("The Division will not recommend that the Commission commence an enforcement action against a SEF for failure to report Specified Part 43 Data Fields...or Specified Part 45 Data Fields...to SDRs.); see also Bloomberg Letter at p. 3 which requests that the SEF only report "the minimum set of static data fields that is necessary for an SDR to accept a report."

<sup>14</sup> The requesting SEFs have further represented during the course of a series of telephone conversations with Division staff that they have more fully developed the reporting processes necessary to report swap transactions in the interest rate and credit asset classes.

<sup>15</sup> The Relevant Asset Classes for purposes of this letter exclude the interest rate and credit asset classes. Therefore, no reporting relief for swap transactions executed on, or pursuant to, the rules of a SEF, is provided herein.

<sup>16</sup> Unless a counterparty to a swap transaction is reporting Part 43 and Part 45 creation data to an SDR on a SEF's behalf, pursuant to an agreement with the SEF, the counterparty must identify each such submission as a "voluntary supplemental report" to the SDR, as set forth in § 45.12.<sup>16</sup>

<sup>17</sup> Any relief provided herein with respect to a SEF's obligation to report "required swap creation data" or "creation data" as defined in § 45.1, is limited to the SEF's obligation to report such data to an SDR and is not intended, and should not be interpreted, as relief of a SEF's obligation pursuant to § 37.6(b) to "provide each counterparty to a

Parts 43 and 45 of the Commission's regulations, until 12:01 a.m. eastern time on **October 30, 2013** for swaps executed in the FX asset class, and until 12:01 a.m. eastern time on **December 2, 2013** for swaps executed in the equities and other commodity asset classes.

Further, the Division will not recommend that the Commission commence an enforcement action against a SEF that does not comply with § 43.3(b)(3) ("embargo rule) and discloses swap transaction and pricing data relating to publicly reportable swap transactions if no transmittal of such data to an SDR occurs as a result of the SEF's reliance on Condition 1(a) or 1(b) below.

This relief is limited to the Relevant Asset Classes, as defined herein. Further, this relief does not extend to swap transactions that a SEF is able to report either directly or through reliance on a service provider or counterparty, to an SDR in the time and manner as set forth in Parts 43 and 45.

### **III. Conditions of Relief**

This relief is conditional. In order for a temporarily registered SEF to rely on this Division letter, for transactions within the Relevant Asset Classes for which the SEF is unable to report all Part 43 and Part 45 creation data, in the time and manner as is required by these provisions<sup>18</sup>, a SEF must:

- (1) report all Part 43 and Part 45 creation data within the Relevant Asset Classes as required by Parts 43 and Parts 45, in the time and manner as set forth in the regulations, either
  - a. by the Reporting Counterparty, reporting the data to the SDR to which the SEF is required to report, in the time and manner as the SEF is required to report by Parts 43 and 45; or
  - b. for transactions that cannot be reported using (a) above, the SEF may "backload" (report the required data to the appropriate SDR after such time that it would otherwise be required to report) as soon as the SEF is able to report the complete Part 45 creation data set, provided that the SEF reports such transactions as provided in Condition 6 and/or 7 below;
  
- (2) retain records with respect to all transactions covered by the relief (i.e., all transactions for which the SEF relied upon any reporting relief provided herein) in this response and make such records available to the Commission for inspection and production;

---

transaction that is entered on or pursuant to the rules of the swap execution facility with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as confirmation of the transaction. The confirmation of all terms shall take place at the same time as execution . . .").

<sup>18</sup> Staff reminds SEFs that they may utilize third party service providers to report swap data to an SDR on behalf of the SEF in accordance with the swap data reporting rules.

(3) comply with the applicable recordkeeping requirements of § 45.2<sup>19</sup> and § 37.901 for all swap transactions and make such records available to the Commission for inspection and production immediately upon request;

(4) within 10 days of the issuance of this Division letter, submit to the Division via an email to SEFReporting@cftc.gov providing notice<sup>20</sup> of its intent to rely on the time-limited no-action relief provided herein. The notice must specify, in detail, the SEF's reporting capabilities as it relates to the reporting of Part 43 and Part 45 creation data within the Relevant Asset Classes. The notice must also identify and describe any agreement regarding assistance in reporting of such data (i.e., use of third-party service providers, etc.). The notice must also describe categories of swaps that the SEF is unable to report, as well as the swaps that are included in each category. Categories should be asset class specific and be comprised of groups of swaps with similar characteristics. For each category, the SEF should include the information requested below. The description should include identification of all of the relevant system architecture, software, and connectivity involved in the inability to report.

- a) A description of the category, asset class and swaps in the category;
- b) A detailed description of the circumstances creating the inability to report the swaps in the category to a registered SDR, including any relevant unique characteristics of swaps in the category that result in difficulties reporting the swap to an SDR. If circumstances vary by swaps in a category, the SEF should so state;
- c) A detailed description system architecture and software issues that preclude the SEF from reporting swaps in the category including difficulties:
  - i. Obtaining data from market participants as applicable;
  - ii. Transmitting data elements between internal or external systems (including but not limited to matching or execution systems, middle ware, post-trade services, reporting engines);
  - iii. Reporting the required Part 43 and Part 45 creation data fields to the SDR; and
  - iv. Providing data fields to market participants in an acknowledgment message;
- d) A detailed technical description of the necessary system architecture and/or programming changes, testing, and other operational workflows necessary to report the swaps in the category to a registered SDR; and
- e) An approximate timeframe for completion of the changes necessary for the SEF to report all swaps within the category in full compliance with Parts 43 and 45 creation data reporting.

---

<sup>19</sup> Section 45.2 also sets forth recordkeeping requirements for counterparties to the swap and other registered entities, in addition to the recordkeeping requirements of the SEF. The limited reporting relief provided to SEFs herein does not extend to recordkeeping requirements of the SEF, counterparties to the swap, the DCO or the SDR.

<sup>20</sup> Notice or notification made pursuant to this letter does not relieve a SEF from any system disruption or change notification obligations under the requirements of § 37.1401, System Safeguards.

If any information provided in the notice changes subsequent to submission, the SEF must submit an amended notice reflecting such changes as soon as technologically practicable after such changes;

(5) possess a valid CFTC Interim Compliant Identifier (“CICI”) for the SEF, and utilize the CICI for all reporting and recordkeeping requirements;<sup>21</sup>

(6) with respect to swaps within the FX asset class that are not reported to an SDR, as a result of the SEF’s reliance upon the relief provided herein, the SEF must backload and report to an SDR all required Part 45 creation data, for the period from October 2, 2013, to October 29, 2013, that the SEF would have been required to report pursuant to Parts 43 and 45 in the absence of this no-action relief no later than December 2, 2013;<sup>22</sup> and

(7) with respect to swaps within the equity and other commodity asset classes that are not reported to an SDR, as a result of the SEF’s reliance upon the relief provided herein, the SEF must backload and report to an SDR all required Part 45 creation data, for the period from October 2, 2013, to December 1, 2013, that the SEF would have been required to report pursuant to Parts 43 and 45 in the absence of this no-action relief no later than January 2, 2014.

#### **IV. Conclusion**

This letter, and the no-action positions taken herein, represent the views of the Division only, and do not necessarily represent the positions 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 Commodity Exchange Act or the Commission’s regulations thereunder. 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.<sup>23</sup> No-action relief letters are covered by collection 3038-0049. In addition Part 45 recordkeeping and reporting obligations are covered by collections 3038-0088 and 3038-0096.

The no-action positions taken by the Division herein in no way affect the recordkeeping obligations of SEF under the swap data reporting rules. Swap transaction data records regarding any swap executed on, or pursuant to, the rules of a SEF on or after 12:01 a.m. on October 2, 2013, must be maintained by such SEF in accordance with Part 43 and Part 45 of the Commission’s regulations. In order to comply with the recordkeeping requirements of Part 45, registered entities, including SEFs must obtain a valid CICI.<sup>24</sup>

---

<sup>21</sup> Section 45.6

<sup>22</sup> Section 45.10.

<sup>23</sup> 44 U.S.C. §§ 3501 *et. seq.*

<sup>24</sup> See Regulatory Reporting Rule at 2204. See also Division of Market Oversight and Office of Data and Technology Advisory Regarding Upcoming Legal Entity Identifier Deadline (March 15, 2013), available at

If you have any questions concerning this correspondence, please contact Nancy Markowitz, Deputy Director, Division of Market Oversight, at (202) 418-5453 or [nmarkowitz@cftc.gov](mailto:nmarkowitz@cftc.gov); or Laurie Gussow, Special Counsel, at (202) 418-7623 or [lgussow@cftc.gov](mailto:lgussow@cftc.gov).

Sincerely,

David Van Wagner  
Chief Counsel  
Division of Market Oversight

Nancy Markowitz  
Deputy Director  
Division of Market Oversight

---

[http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmo\\_odtadvisory.pdf](http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/dmo_odtadvisory.pdf); and Division Q & A – On Start of Swap Data Reporting (October 9, 2012), available at [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).

A CICI may be obtained through the CICI Utility web portal available at [www.ciciutility.org](http://www.ciciutility.org).