



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

Division of Market Oversight

CFTC Letter No. 15-01
No-Action
January 08, 2015
Division of Market Oversight

Karel Engelen
Senior Director, Head of Data & Reporting
International Swaps and Derivatives Association, Inc.
1001 Pennsylvania Avenue, NW Suite 600
Washington, DC 20004

Extension of Time-Limited No-Action Relief Provided in CFTC Letter No. 13-41

Dear Mr. Engelen,

This is in response to your December 2, 2014 letter (“Letter”) to the Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”). By the Letter you requested pursuant to § 140.99 of the Commission’s regulations certain no-action relief for members of the International Swaps and Derivatives Association and other similarly situated persons with reporting obligations under Parts 20, 45 or 46 of the Commission’s regulations. Specifically, you request an extension of the expiration date of the no-action relief provided in CFTC Letter No. 14-89.

The Division notes that it has previously granted no-action relief with respect to certain identifying information in “Enumerated Jurisdictions”¹ specified in your no-action request to the Division dated June 21, 2013. The Division granted time-limited relief via CFTC Letter No. 13-41, issued on June 28, 2013. On June 27, 2014, in CFTC Letter No. 14-89, the Division extended the relief provided in CFTC Letter No. 13-41 until no later than 12:01 a.m. eastern standard time on January 16, 2015.

As noted in the March 2014 report of the OTC Derivatives Regulators Group, there are statutory or regulatory prohibitions that may prevent reporting to trade repositories. In the Letter you present a belief that the current expiration date of January 16, 2015 does not provide adequate time for resolution of the issues addressed in CFTC Letter No. 14-89. Additionally, you request certain modifications to the relief offered under CFTC Letter No. 13-41, the predecessor letter to CFTC Letter No. 14-89.

The Division continues to believe that the relief provided in CFTC Letter No. 13-41 strikes an appropriate balance between addressing concerns regarding non-U.S. privacy, secrecy and blocking laws and the regulatory purposes achieved through the reporting of counterparty identifying

¹ The Enumerated Jurisdictions listed in the Annex to your June 21, 2013 letter are: France, Korea, Luxembourg, People’s Republic of China, Switzerland, Taiwan, Belgium, India, Algeria, Singapore, Bahrain, Argentina, Hungary, Samoa, Austria, and Pakistan.

information pursuant to Parts 20, 45 and 46 of the Commission's regulations. Accordingly, the Division is not modifying the relief provided in CFTC Letter No. 13-41 and associated conditions as requested. However, the Division believes that a further time-limited extension of the existing relief in CFTC Letter No. 13-41 is appropriate so that relevant jurisdictions and parties with reporting obligations may continue their efforts to resolve issues raised in the no-action letter.

In light of the foregoing, the Division is extending the expiration of the relief provided in CFTC Letter No. 13-41 until the earlier of: (i) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting; or (ii) 12:01 a.m. eastern standard time on January 16, 2016. CFTC Letter No. 13-41 is attached hereto as Appendix 1.

The Division is also replacing the definition of "Part 20 Identifying Information" found in section I.(F) of CFTC Letter No. 13-41 by adding certain data elements to account for New Form 102S.² All other terms and conditions in CFTC Letter No. 13-41 continue to apply. The replacement of the definition of "Part 20 Identifying Information" will be effective upon the expiration of no-action relief provided by the Division with respect to use of New Form 102S. Specifically, the Division is replacing the definition of "Part 20 Identifying Information" with the following:

(F) **"Part 20 Identifying Information"** means the following Privacy Law Counterparty information:

- (1) The counterparty name field in § 20.4 submissions; and
- (2) Consolidated Account Owner(s) and/or Consolidated Account Controller(s) information included in a 102S filing pursuant to § 20.5:
 - (i) Name
 - (ii) Address (except that the country of the Consolidated Account Owner(s) and/or Consolidated Account Controller(s) shall be provided)
 - (iii) Phone Number
 - (iv) Email Address
 - (v) Contact Name
 - (vi) Contact Job Title
 - (vii) Contact Phone Number
 - (viii) Contact Email Address
 - (ix) Website (if any)
 - (x) NFA ID (if any)
 - (xi) Legal Entity Identifier (if any)

² Commission, Ownership and Control Reports, Forms 102/102S; Final Rule, 78 FR 69178 (November 18, 2013).

The Division further emphasizes that:

- (1) With respect to requesting and obtaining formal responses from relevant non-U.S. regulators or governing authorities, Reporting Counterparties and Reporting Entities³ may rely on this extension of relief only to the extent that they previously satisfied all terms and conditions enumerated in CFTC Letter No. 13-41, and only with respect to Enumerated Jurisdictions where Reporting Counterparties and Reporting Entities previously obtained formal responses from the relevant non-U.S. regulators or governing authorities that such Reporting Counterparties and Reporting Entities believe satisfied the conditions in II.(iii) and III.(iii) of CFTC Letter No. 13-41 and were submitted in accordance with the conditions in II.i. and III.i. of CFTC Letter No. 13-41.
- (2) Reporting Counterparties and Reporting Entities remain subject to the back loading conditions found in conditions II.iii. and III.iii. of CFTC Letter No. 13-41, based on the new expiration date of this extended relief, the earlier of: (1) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting; or (2) 12:01 a.m. eastern standard time on January 16, 2016.

The Division's letter reflects the views of the Division only, and not necessarily 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, the Division retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein

If you have any questions concerning this correspondence, please contact Sebastian Pujol Schott, Associate Director, Division of Market Oversight, at (202) 418-5641, or Stuart Armstrong, Special Counsel, Division of Market Oversight, at (202) 418-5095.

Sincerely,

Vincent McGonagle
Director
Division of Market Oversight

³ "Reporting Counterparty" and "Reporting Entity" continue to have the same meaning here that they did in CFTC Letter No. 13-41.



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Division of Market Oversight

CFTC Letter No. 13-41
No-Action
June 28, 2013
Division of Market Oversight

APPENDIX 1 to CFTC Letter No. 15-01

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 Permitting Part 45 and Part 46 Reporting Counterparties to Mask Legal Entity Identifiers, Other Enumerated Identifiers and Other Identifying Terms and Permitting Part 20 Reporting Entities to Mask Identifying Information, with respect to certain Enumerated Jurisdictions.

Dear Mr. Pickel:

This is in response to your June 21, 2013 letter (the “Letter”) to the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By the Letter, you requested, pursuant to § 140.99 of the Commission’s regulations, on behalf of your members with reporting obligations under Parts 20, 45 or 46 of the Commission’s regulations (collectively, the “Reporting Rules”),¹ and other similarly situated persons, an extension of the expiration date for the no-action relief provided under CFTC Letter No. 12-46.

You request that the Division extend the expiration date of the relief granted under CFTC Letter No. 12-46 with respect to reportable transactions for which the reporting of Identity Information² is subject to statutory or regulatory prohibitions of one of the non-U.S. jurisdictions listed in the Annex to your Letter (each, an “Enumerated Jurisdiction”)³ until the earlier of: (i) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting; and (ii) 12:01 a.m. eastern daylight time on June 30, 2014.

¹ You note that the relief requested in the Letter also encompasses § 23.204 and § 23.205 of the Commission’s regulations.

² You define “Identity Information” as “information that would otherwise be required to appear in one of the fields specified in Annex B [of your December 3, 2012 request letter] and that identifies or would intrinsically reveal the identity of the counterparty or its affiliated group.”

³ The Enumerated Jurisdictions listed in the Annex to your June 21, 2013 letter are: France, Korea, Luxembourg, People’s Republic of China, Switzerland, Taiwan, Belgium, India, Algeria, Singapore, Bahrain, Argentina, Hungary, Samoa, Austria, and Pakistan.

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)⁴ amended the Commodity Exchange Act (the “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.⁵ Pursuant to these newly added provisions, the Commission added to its regulations Part 45, which sets forth swap data recordkeeping rules, as well as rules for the reporting of swap transaction data to a registered swap data repository (“SDR”),⁶ and Part 46, which sets forth swap data recordkeeping and reporting rules for pre-enactment swaps and transition swaps (collectively, “historical swaps”).⁷ Part 20 of the Commission’s regulations sets forth large trader reporting rules for physical commodity swaps and requires routine swaps position reports from clearing organizations, clearing members and swap dealers, and establishes certain non-routine reporting requirements for large swaps traders.⁸ Each of Parts 45, 46 and 20 require the Reporting Counterparty⁹ or Reporting Entity¹⁰ (as applicable) to disclose identifying information.¹¹

I. Defined Terms

For the purposes of the no-action relief provided herein, the Division will use the following defined terms:

(A) **“Privacy Law Counterparty”**¹² means a non-Reporting Counterparty or a Reporting Entity’s counterparty that meets all of the following criteria:

- (1) The counterparty is not a Commission registered swap dealer (“SD”) or major swap participant (“MSP”);

⁴ Pub. L. 111-203, 124 Stat. 1376 (2010).

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

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

⁷ 77 Fed. Reg. 35200 (June 12, 2012).

⁸ 76 Fed. Reg. 43851 (July 22, 2011).

⁹ For the purposes of this Division letter, Reporting Counterparty has the meanings assigned in § 45.1 and § 46.1 of the Commission’s regulations respectively, as applicable.

¹⁰ For the purposes of this Division letter, Reporting Entity has the meaning assigned in § 20.1 of the Commission’s regulations.

¹¹ For all swaps subject to the jurisdiction of the Commission, each counterparty must be identified by means of a single legal entity identifier (“LEI”) in all swap data reporting pursuant to Part 45 and Part 46. See note 6, *supra* at 2204 and note 7 *supra* at 35228. See also ORDER DETERMINING THE AVAILABILITY OF A LEGAL ENTITY IDENTIFIER MEETING THE REQUIREMENTS OF COMMISSION REGULATIONS, AND DESIGNATING THE PROVIDER OF LEGAL ENTITY IDENTIFIERS TO BE USED IN RECORDKEEPING AND SWAP DATA REPORTING PURSUANT TO THE COMMISSION’S REGULATIONS (CFTC Order of July 24, 2012). Part 20 of the Commission’s regulations requires, among other things, that a Reporting Entity disclose the identity of the counterparty in respect of which positional information is being reported in large swap trader reports and associated filings. See note 8, *supra* at 43863-4.

¹² For the avoidance of doubt, nothing in this Division letter should be interpreted as providing relief from requirements to report the Opposite LEI, Other Enumerated Identifiers, Other Identifying terms and Part 20 Identifying information with respect to a swap counterparty that is: (1) a registered SD or MSP; (2) a U.S. person; (3) guaranteed by, or an affiliate conduit of a U.S. person; or (4) not located in an Enumerated Jurisdiction.

- (2) The counterparty is a non-U.S. person;¹³
 - (3) The counterparty is not guaranteed by,¹⁴ or an affiliate conduit of,¹⁵ a U.S. person;¹⁶ and
 - (4) **The counterparty is located in an Enumerated Jurisdiction.**¹⁷
- (B) **“Opposite LEI”** means the LEI¹⁸ of a Privacy Law Counterparty to a swap.
 - (C) **“Privacy Law Identifier”** is a unique identifier, which is not an LEI, and is used to identify a Privacy Law Counterparty pursuant to this Division letter. Each Reporting Counterparty shall use a consistent and static Privacy Law Identifier for a Privacy Law

¹³ For purposes of this Division letter the term “U.S. person” has the meaning set forth in the Final Exemptive Order Regarding Compliance With Certain Swap Regulations (“January Order”) (*See* 78 Fed. Reg. 858 (January 7, 2013)) until the effective date of the Commission’s Final Interpretive Guidance and Policy Statement regarding the cross-border application of the swaps provisions of the Commodity Exchange Act (“Final Guidance”), upon which effective date the term “U.S. person” shall have the meaning set forth in the Final Guidance. For purposes of this Division letter, any person that is not a U.S. person is a “non-U.S. person.” Nothing in this Division letter should be interpreted as altering or superseding any Orders or Guidance issued by the Commission.

¹⁴ The term “guaranteed by” is used for the purposes of this Division letter. The Commission explained that when a swap counterparty typically uses a guarantee as credit support for its swap obligations, the guarantor’s resources are added to the analysis of the swap because “the market will not trade with that counterparty at the same price, on the same terms, or at all without the guarantee.” The Commission stated that it viewed a guarantee as, generally, “a collateral promise by a guarantor to answer for the debt or obligation of a counterparty obligor under a swap.” *See* 77 Fed. Reg. 48225-48226 (Aug. 13, 2012).

¹⁵ For the purposes of this Division Letter, an affiliate conduit encompasses those entities that function as a conduit or vehicle for U.S. persons conducting swaps transactions with third-party counterparties. Certain factors are relevant to considering whether a non-U.S. person is an “affiliate conduit” including: (i) the non-U.S. person is a majority-owned affiliate of a U.S. person; (ii) the non-U.S. person is controlling, controlled by or under common control with the U.S. person; (iii) the financial results of the non-U.S. person are included in the consolidated financial statements of the U.S. person; and (iv) the non-U.S. person, in the regular course of business, engages in swaps with non-U.S. third-party(ies) for the purpose of hedging or mitigating risks faced by, or to take positions on behalf of, its U.S. affiliate(s), and enters into offsetting swaps or other arrangements with its U.S. affiliate(s) in order to transfer the risks and benefits of such swaps with third-party(ies) to its U.S. affiliates. Other facts and circumstances also may be relevant.

The term “majority-owned affiliates” is defined in Rule 1.3(ggg)(6)(i) as follows:

counterparties to a swap are majority-owned affiliates if one counterparty directly or indirectly owns a majority interest in the other, or if a third party directly or indirectly owns a majority interest in both counterparties to the swap, where ‘majority interest’ is the right to vote or direct the vote of a majority of a class of voting securities of an entity, the power to sell or direct the sale of a majority of a class of voting securities of an entity, or the right to receive upon dissolution or the contribution of a majority of the capital of a partnership.

Rule 1.3(ggg)(4)(i) refers to an “entity controlling, controlled by or under common control with the person.” Footnotes 437 and 438 of the Final Entities Rule elaborated on this provision, saying:

[437] For these purposes, we interpret control to mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. This is consistent with the definition of ‘control’ and “affiliate” in connection with Exchange Act rules regarding registration statements. *See* Exchange Act rule 12b-2.

¹⁶ *See* note 13, *supra*.

¹⁷ *See* note 3, *supra*.

¹⁸ LEI is defined in § 45.6 of the Commission’s regulations. The current LEI designated by the Commission is known as a CFTC Interim Compliant Identifier (“CICI”), but is hereinafter referred to as an (“LEI”) for ease of reference. *See* note 11, *supra*.

Counterparty in each instance that it would use the Opposite LEI and Other Enumerated Identifiers.

(D) **“Other Enumerated Identifiers”** are:

- (1) the identity of the counterparty electing the clearing requirement exception in CEA Section 2(h)(7) for all asset classes;
- (2) an indication of the counterparty purchasing protection or an indication of the counterparty selling protection (but not both) in the credit and equity asset classes;
- (3) the buyer or seller (but not both) in the commodity asset class; and
- (4) for all asset classes, the internal identifier used by an SDR for a non-Reporting Counterparty, exclusively in those cases where such internal identifier directly identifies the non-Reporting Counterparty (*e.g.*, the internal identifier used by an SDR is the name of the non-Reporting Counterparty).

(E) **“Other Identifying Term”** means a term of a swap that a Reporting Counterparty reasonably believes would identify a Privacy Law Counterparty if disclosed, and is required to be reported pursuant to the following Part 45 data fields:¹⁹

- (1) For swaps in the Foreign Exchange asset class (other than cross-currency swaps), the “Any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade” data field required by Appendix 1 to Part 45, Exhibit B; and
- (2) For swaps in the Interest Rate (including cross-currency swaps) and Other Commodity asset classes, the “Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap” data field required by Appendix 1 to Part 45, Exhibits C and D.

(F) **“Part 20 Identifying Information”** means the following Privacy Law Counterparty information:

- (1) The counterparty name field in § 20.4 submissions; and
- (2) The following counterparty information included in a 102S filing pursuant to § 20.5:
 - (i) Name
 - (ii) Address (except that the country of the counterparty shall be provided)
 - (iii) Contact Name
 - (iv) Contact Job Title
 - (v) Contact Phone
 - (vi) Contact Email

II. Masking of Opposite LEIs, Other Enumerated Identifiers and Other Identifying Terms Required by Part 45 and Part 46 of the Commission’s Regulations.²⁰

¹⁹ The relief provided in this Division letter also permits Reporting Counterparties to temporarily withhold reporting of images reported pursuant to § 45.3 in cases where they would include LEIs, Other Enumerated Identifiers, and Other Identifying Terms (as defined in section I of this Division letter) that would otherwise require manual redaction. The relief provided in this Division letter in no way limits the obligation of a Reporting Counterparty to otherwise comply with § 45.3, including the provision of “confirmation data normalized in data fields” as required by Commission regulations.

Based upon your representations,²¹ the Division believes that time-limited relief for Reporting Counterparties from the requirement to report the Opposite LEI, Other Enumerated Identifiers, and Other Identifying Terms pursuant to Parts 45 and 46 is warranted under specific conditions.²² The relief offered in this Division letter does not otherwise impact Reporting Counterparties' continuing obligation to report pursuant to Parts 45 and 46 of the Commission's regulations.

Accordingly, the Division will not recommend that the Commission commence an enforcement action against a Reporting Counterparty for failure to report the Opposite LEI, Other Enumerated Identifiers, and Other Identifying Terms for any swap with a Privacy Law Counterparty for which the Reporting Counterparty has:

- (i) Formed a reasonable belief that statutory or regulatory prohibitions in the non-U.S. jurisdiction preclude the Reporting Counterparty from reporting the Opposite LEI, Other Enumerated Identifiers and Other Identifying Terms with respect to a specific non-Reporting Counterparty to a registered SDR as required by Parts 45 and 46;
- (ii) Submitted a formal written request²³ (the "Request") to the relevant non-U.S. regulator or governing authority²⁴ that:
 - (1) describes the Reporting Counterparty's Part 45 and Part 46 reporting obligations with respect to the swap(s) and non-Reporting Counterparty(ies) at issue in the Request, including the location where the swap(s) will be booked;
 - (2) requests that the non-U.S. regulator or governing authority specifically identify any statutes or regulations that would prohibit the Reporting Counterparty from reporting the Opposite LEI, Other Enumerated Identifier, or Other Identifying Terms for the non-Reporting Counterparty pursuant to Parts 45 and 46;
 - (3) requests that the non-U.S. regulator or governing authority specifically address the applicability of such statutes or regulations under the circumstances listed below or any other circumstances relevant to the Reporting Counterparty:
 - (a) swap transactions where the Reporting Counterparty is located and registered in the jurisdiction;

²⁰ Nothing in this Division letter should be interpreted as altering the requirements of a Reporting Counterparty or Reporting Entity to include its own LEI, Other Enumerated Identifiers, and Part 20 Identifying information in all reporting pursuant to Parts 20, 45 and 46.

²¹ Specifically, the relief provided in this Division letter is premised on the representations made in your June 21, 2013 letter.

²² Section 23.204 of the Commission's regulations 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.

²³ The Division notes that a Reporting Counterparty may submit a request individually or rely on a request made by a group of market participants or an industry association on behalf of similarly situated entities.

²⁴ The Division notes that the relevant regulator or governing authority is one that enforces the regulations or statutes that the Reporting Counterparty or Reporting Entity reasonably believes precludes it from reporting the Opposite LEI, Other Enumerated Identifiers, Other Identifying Terms, or Part 20 Identifying Information with respect to its counterparty. In circumstances where more than one statute or regulation may govern, the Reporting Counterparty or Entity must submit requests to each relevant non-U.S. regulator or governing authority.

- (b) swap transactions where the Reporting Counterparty is located in the jurisdiction as a branch, including as a branch of a U.S. person;²⁵
 - (c) swap transactions where the Reporting Counterparty is located in the United States but the non-Reporting Counterparty is located in the jurisdiction.
- (iii) Obtained a formal response to the Request²⁶ from the relevant non-U.S. regulator or governing authority within **60 days** from the issuance of this Division letter.²⁷ Responses must specifically address items (2) and (3) above. **A Reporting Counterparty may mask Opposite LEIs, Other Enumerated Identifiers, or Other Identifying Terms only to the extent that the non-U.S. regulator or governing authority has specifically indicated that reporting such information pursuant to Parts 45 and 46 of the Commission’s regulations would violate the law of the non-U.S. jurisdiction.**²⁸

The Division will extend this relief until the earlier of: (1) such time that the Reporting Counterparty no longer holds a reasonable belief that a regulatory or statutory prohibition precludes it from reporting the Opposite LEI, Other Enumerated Identifiers and Other Identifying Terms with respect to its non-Reporting Counterparty to a registered SDR as required by Parts 45 and 46; and (2) **11:59 p.m. eastern daylight time June 30, 2014**. Such no-action relief is subject to the following conditions:

- i. Within **60 days** of the issuance of this Division letter, the Reporting Counterparty must submit, to PrivacyLawReporting@cftc.gov, copies of formal Request letters submitted by the Reporting Counterparty or on its behalf, as well as responses received from the relevant non-U.S. regulator or governing authority and retain such, as part of its compliance with Commission recordkeeping requirements.²⁹
- ii. The Reporting Counterparty shall include the Privacy Law Identifier with all swap data reported pursuant to Parts 45 or 46 in each instance in which it would otherwise have been required to report an Opposite LEI or Other Enumerated Identifier; and
- iii. Upon the expiration of the relief pursuant to clause (1) or (2) above, the Reporting Counterparty shall correct all Privacy Law Identifiers and Other Identifying Terms,

²⁵ See note 13, *supra*.

²⁶ The Division notes that a Reporting Counterparty or Entity may rely on a formal response letter from a relevant non-U.S. regulator or governing authority that results from a Request made by group of market participants or by an industry association on behalf of similarly situated entities, so long as the content of the formal response letter addresses the facts and circumstances that pertain to the Reporting Counterparty or Entity as it intends to rely on the relief in this Division letter. In circumstances where more than one statute or regulation governs, the Reporting Counterparty or Entity must receive responses from each relevant non-U.S. regulator or governing authority.

²⁷ The non-U.S. regulator’s or governing authority’s formal response must be in English or English translation.

²⁸ For example, if the law of the non-U.S. jurisdiction prohibits reporting only with respect to natural persons, then a Reporting Party may mask information only with respect to non-Reporting Counterparties that are natural persons. Similarly, if the law of the non-U.S. jurisdiction states that reporting is permissible with the consent of the non-Reporting Counterparty, then Reporting Parties would be expected to obtain such consent and report Opposite LEIs, Other Enumerated Identifiers, and Other Identifying Terms pursuant to Parts 45 and 46 of the Commission’s regulations.

²⁹ A Reporting Counterparty or Entity may not continue to rely on the relief provided in this Division letter if a formal response letter outlined in (iii) above is not issued to the Reporting Counterparty or Entity or to a group of market participants or an industry association on its behalf and sent to the Commission in accordance with condition i.

omitted or submitted in a masked form, to an SDR pursuant to this Division letter, with the corresponding Opposite LEIs, Other Enumerated Identifiers and Other Identifying Terms by no later than **30 days** from the date of such expiration. Prior to making such corrections, a Reporting Counterparty shall notify the relevant SDR.

III.Masking of Certain Identifying Information Required by Part 20 of the Commission's Regulations.³⁰

Based upon your representations,³¹ the Division believes that time-limited relief for Reporting Entities from the requirement to report Part 20 Identifying Information pursuant to § 20.4 and § 20.5 of the Commission's regulations is warranted under specific conditions.³² The relief offered in this Division letter does not otherwise impact Reporting Entities' continuing obligation to report pursuant to Part 20 of the Commission's regulations.

Accordingly, the Division will not recommend that the Commission commence an enforcement action against a Reporting Entity for failure to report Part 20 Identifying Information for any § 20.4 or § 20.5 submission with respect to a swap with a Privacy Law Counterparty for which the Reporting Entity has:

- (i) Formed a reasonable belief that statutory or regulatory prohibitions in the non-U.S. jurisdiction preclude the Reporting Entity from reporting Part 20 Identifying Information;
- (ii) Submitted a formal written Request³³ to the relevant non-U.S. regulator or governing authority³⁴ that:
 - (1) describes the Reporting Entity's Part 20 reporting obligations with respect to the swap(s) and its counterparty at issue in the Request;
 - (2) requests that the non-U.S. regulator or governing authority specifically identify any statutes or regulations that would prohibit the Reporting Entity from reporting Part 20 Identifying Information for its counterparty pursuant to Part 20;
 - (3) requests that the non-U.S. regulator or governing authority specifically address the applicability of such statutes or regulations under the circumstances listed below or any other circumstances relevant to the Reporting Entity:
 - (a) swap transactions where the Reporting Entity is located and registered in the jurisdiction;
 - (b) swap transactions where the Reporting Entity is located in the jurisdiction as a branch, including as a branch of a U.S. person;³⁵

³⁰ See note 20, *supra*.

³¹ See note 21, *supra*.

³² Nothing in this Division letter should be interpreted as altering the responsibility of a Reporting Entity to make reports required by § 20.4 and to make 102S filings pursuant to § 20.5, even if information in such filing is masked pursuant to this Division letter.

³³ See note 23, *supra*.

³⁴ See note 24, *supra*.

³⁵ See note 13, *supra*.

(c) swap transactions where the Reporting Entity is located in the United States but its counterparty is located in the jurisdiction.

(iii) Obtained a formal response to the Request³⁶ from the relevant non-U.S. regulator or governing authority, within **60 days** from the issuance of this Division letter.³⁷ Responses must specifically address items (2) and (3) above. **A Reporting Entity may mask Part 20 Identifying Information only to the extent that the non-U.S. regulator or governing authority has specifically indicated that reporting such information pursuant to Part 20 of the Commission's regulations would violate the law of the non-U.S. jurisdiction.**³⁸

The Division will extend this relief until the earlier of: (1) such time that the Reporting Entity no longer holds a reasonable belief that a regulatory or statutory prohibition precludes it from reporting Part 20 Identifying Information; and (2) **11:59 p.m. eastern daylight time June 30, 2014**. Such no-action relief is subject to the following conditions:

- i. Within **60 days** of the issuance of this Division letter, the Reporting Entity must submit, to PrivacyLawReporting@cftc.gov, copies of formal request letters submitted by the Reporting Entity or on its behalf, as well as responses received from the relevant non-U.S. regulator or governing authority and retain such, as part of its compliance with Commission recordkeeping requirements.³⁹
- ii. The Reporting Entity shall make a Form 102S filing for the Privacy Law Counterparty in accordance with § 20.5, which filing shall include the country of such counterparty and an indication of the Part 20 Identifying Information of the counterparty redacted pursuant to this Division letter;
- iii. The Reporting Entity shall report that information has been withheld due to privacy law for each Part 20 Identifying Information field not reported pursuant to this Division letter; and
- iv. Upon the expiration of the relief pursuant to either clause (1) or (2) above, a Reporting Entity shall make a corrective Part 20 data submission for all Part 20 Identifying Information that was previously withheld or submitted in a masked form pursuant to this Division letter, by no later than **30 days** from the date of such expiration. The Reporting Entity shall contact the Commission's Office of Data and Technology ("ODT") prior to making such corrective Part 20 data submission, and such submission shall be in a form and manner acceptable to ODT.

The no-action relief provided in this Division letter applies to Reporting Counterparties and Reporting Entities, regardless of whether they are members of ISDA. It applies to Opposite LEIs and Other

³⁶ See note 26, *supra*.

³⁷ See note 27, *supra*.

³⁸ For example, if the law of the non-U.S. jurisdiction prohibits reporting only with respect to natural persons, then a Reporting Entity may mask information only with respect to counterparties that are natural persons. Similarly, if the law of the non-U.S. jurisdiction states that reporting is permissible with the consent of the counterparty, then Reporting Entities would be expected to obtain such consent and report Part 20 Identifying Information pursuant to Part 20 of the Commission's regulations.

³⁹ See note 29, *supra*.

Enumerated Identifiers pursuant to Parts 45 and 46, Other Identifying Terms pursuant to Part 45 and Part 20 Identifying Information, with respect to Privacy Law Counterparties only.⁴⁰ Further, the no-action relief provided in this Division letter in no way limits the Commission's authority to request and obtain a Privacy Law Counterparty's Identity Information.

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act.⁴¹ 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 has filed with OMB and obtained an approved collection—3038-0049—entitled "Procedural requirements for requests for interpretative, no-action and exemptive letters." Accordingly, a Reporting Counterparty or Reporting Entity may not rely on the Division's determination not to recommend an enforcement action to the Commission unless it provides the information the Division has determined is essential to the provision of no-action relief.

The Division's letter, and the no-action position taken herein, which is based on your representations, reflects the views of the Division only, and not necessarily 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, the Division retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions concerning this correspondence, please contact Sebastian Pujol Schott, Associate Director, Division of Market Oversight, at (202) 418-5641, or Stuart Armstrong, Attorney Advisor, Division of Market Oversight, at (202) 418-5095.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight

⁴⁰ Should the Commission promulgate additional swap data reporting rules applicable to the subject matter covered herein during the pendency of this no-action relief, such rules could supersede the relief granted herein.

⁴¹ 44 U.S.C. §§ 3501 *et. seq.*