



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Division of Market Oversight

CFTC Letter No. 15-38  
No-Action  
June 12, 2015  
Division of Market Oversight

### **Re: Further Extension of 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)**

On December 17, 2012, the Division of Market Oversight (“DMO” or “Division”) of the Commodity Futures Trading Commission (the “Commission”) granted time-limited no-action relief from certain requirements of section 45.4 of the Commission’s regulations to Swap Dealers (“SDs”) and Major Swap Participants (“MSPs”) acting as reporting counterparties for swap transactions.<sup>1</sup> In particular, DMO granted a request from the International Swaps and Derivatives Association, Inc. (“ISDA”),<sup>2</sup> on behalf of its members that intend to register as SDs or MSPs, and other similarly situated persons, for no-action relief from enforcement action against SDs and MSPs acting as reporting counterparties for cleared swaps that fail to comply with the regulation 45.4(b)(2)(ii) valuation data reporting requirements. The initial no-action relief was scheduled to expire on June 30, 2013. Subsequently, the Division extended the initial period of relief to June 30, 2014<sup>3</sup> and then further extended the relief to June 30, 2015.<sup>4</sup> This letter further extends the no-action relief period to June 30, 2016.

#### Applicable Regulatory Requirements

The Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>5</sup> (the “Dodd-Frank Act”) added to the Commodity Exchange Act<sup>6</sup> (the “CEA”) provisions requiring the retention

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<sup>1</sup> CFTC Letter No. 12-55 (December 17, 2012).

<sup>2</sup> ISDA submitted its request for no-action relief pursuant to Commission regulation 140.99 by letter on December 13, 2012.

<sup>3</sup> CFTC Letter No. 13-34 (June 26, 2013).

<sup>4</sup> CFTC Letter No. 14-90 (June 30, 2014).

<sup>5</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>6</sup> 7 U.S.C. §§ 1, *et seq.*

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 swap data repository (“SDR”). New section 21(b) 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.<sup>7</sup> 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.<sup>8</sup>

Regulations 45.4(b)(2)(i) and (ii) require that swap valuation data for any particular cleared swap be reported to the SDR by both the 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).

#### Further Extension of Time-Limited No-Action Relief

SDs and MSPs continue to raise concerns about the burden of obtaining connectivity to all SDRs to which they would need to report valuation data as set forth in regulation 45.4(b)(2)(ii). ISDA argues in its request to extend the relief granted in letters 12-55, 13-34, and 14-90<sup>9</sup> that connecting to SDRs to which SDs and MSPs are not currently reporting, including necessary onboarding, development, and testing, represents a significant expenditure of time and resources for SDs and MSPs.<sup>10</sup> ISDA further argues that the associated cost for SDs and MSPs of obtaining connectivity to report valuations should be considered against the tangible value of this additional reporting and that the increased expenditures by SDs and MSPs is not justified, because DCOs already provide valuation data for the same cleared swaps for which the SDs and MSPs are required to report valuation data pursuant to 45.4(b)(2)(ii).<sup>11</sup> The Division is aware of these issues and is working toward achieving a more permanent resolution for issues related to valuation data reporting for cleared swaps. In the interim, the Division advises that the relief provided in letters 12-55, 13-34, and 14-90 continue to apply to all Commission-registered SDs and MSPs.

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<sup>7</sup> 76 Fed. Reg. 2197 (Jan. 13, 2012).

<sup>8</sup> 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.

<sup>9</sup> ISDA Letter “Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Valuation Data Reporting for Cleared Swaps (Part 45.4(b)(2)(ii))” (May 15, 2015).

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Id.*

Based on SD and MSP concerns, the representations ISDA made in its initial request for no-action relief, and ISDA's request for extension, the Division will not recommend that the Commission take enforcement action against an SD or MSP for the 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 45.8, for the purposes of 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, 2016**.

The position taken herein concerns DMO 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.<sup>12</sup> 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 Benjamin DeMaria, Special Counsel, Division of Market Oversight at (202) 418-5988 or [bdemaria@cftc.gov](mailto:bdemaria@cftc.gov).

Sincerely,

Vincent McGonagle  
Director  
Division of Market Oversight

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<sup>12</sup> 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.