



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

CFTC Letter 16-86
No-Action
December 19, 2016
Division of Market Oversight

Re: Time-Limited No-Action Relief for Derivatives Clearing Organizations from Certain Cleared Swaps Reporting Obligations Under Part 45 of the Commission's Regulations, as Amended

Ladies and Gentlemen:

This letter responds to two no-action relief requests received by the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission") pursuant to Commission Regulation 140.99. The first request, dated November 3, 2016, was submitted by a group of requestors composed of the Chicago Mercantile Exchange, Inc., DTCC Data Repository (U.S.) LLC, Intercontinental Exchange, LCH.Clearnet Ltd. and LCH.Clearnet SA, and Eurex Clearing AG (collectively "SDR/DCO Requestors"). The second request, dated November 4, 2014, was submitted by the International Swaps and Derivatives Association, Inc. ("ISDA"), on behalf of reporting counterparties and derivatives clearing organizations ("DCOs"). The SDR/DCO Requestors and ISDA requested that the Division provide time-limited no-action relief from certain requirements under the recent amendments to Part 45 of the Commission's regulations, relating to the reporting of cleared swap transactions. As set forth below, the Division is granting certain conditional and time-limited no-action relief.¹

I. Background

On June 27, 2016, the Commission published Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (the "Cleared Swap Rule").² The Cleared Swap Rule requires DCOs to (a) report the termination of swaps accepted for clearing by the DCO (defined as "original swaps" in the Cleared Swap Rule and known in the industry as "alpha swaps");³ (b) report creation data and continuation data for swaps to which the DCO is a counterparty (defined as "clearing swaps" in the Cleared Swap Rule and known in the industry

¹ Notwithstanding the scope of relief sought by the SDR/DCO Requestors and ISDA, relief is limited to that provided herein.

² 81 FR 41736 (June 27, 2016).

³ § 45.4(c), as amended.

as “beta and gamma swaps”);⁴ and (c) generate the unique swap identifier (“USI”) for each clearing swap and transmit that USI to the DCO’s counterparty.⁵ Additionally, the Cleared Swap Rule added eight primary economic terms (“PET”) data fields for clearing swaps, added three PET data fields for all swaps, and amended the description of certain other existing PET data fields.⁶

The Commission set the compliance date for provisions amended by the Cleared Swap Rule as 180 days following publication in the Federal Register. Based on the publication date, the compliance date is December 27, 2016.⁷

II. **Requested Relief**

The requesting parties sought time-limited no-action relief from compliance with the Cleared Swap Rule in response to challenges in establishing systems at SDRs and DCOs to effect changes required by the rule. The requesting parties noted that market participants must coordinate their data flows at multiple levels to bring all entities into compliance with requirements of the Cleared Swap Rule: (a) SDRs must provide DCOs with specifications for the original swap termination message and specifications for the new PET data fields; (b) DCOs must build systems to report original swap terminations with required information to the SDRs; (c) DCOs must provide original swap counterparties with specifications on what information the DCOs will need to comply with their reporting obligations; and (d) original swap counterparties must build systems to report required information to DCOs. The requesting parties sought no-action relief until June 26, 2017, in order to provide additional time to build and test necessary changes to reporting systems.

Certain DCOs have represented to Division staff that, to bring their reporting systems into compliance with requirements of the Cleared Swap Rule, the DCOs must first receive final specifications for the original swap termination message from all SDRs to which they must connect and transmit required swap transaction data. Only upon receipt of those final specifications can the DCOs make required changes to reporting systems and fully test those systems, which the SDR/DCO Requestors’ letter represented may take several months. Division staff understands DCOs did not receive final technical specifications for the original swap termination message from all SDRs until early December 2016. Based on the date by which they were in receipt of final technical specifications, the DCOs have represented to Division staff that they would be able to submit original swap termination messages in compliance with the amended rules by June 27, 2017.

Separately, ISDA sought relief for all entities reporting swaps, which may include swap execution facilities, designated contract markets, swap dealers (“SDs”), major swap participants

⁴ § 45.3(e), as amended (creation data for clearing swaps); § 45.4(b), as amended (continuation data for clearing swaps).

⁵ § 45.5(d), as amended.

⁶ See Cleared Swap Rule, 81 FR at 41755-56.

⁷ The compliance date for all provisions amended by the Cleared Swap Rule, except for the removal of reporting obligations for valuation data on clearing swaps, is 180 days following publication of the release, December 24, 2016. However, because December 24, 2016 falls on a Saturday, and the following Monday is the Federal holiday observing Christmas Day, the first business day for compliance is Tuesday, December 27, 2016.

(“MSPs”), non-SD/MSP counterparties, and DCOs (collectively “reporting entities”). ISDA noted that reporting entities need specifications from their SDRs in order to affect the changes to swap data that they are required to report, specifically the “clearing exception or exemption type” PET data field added to Part 45 by the Cleared Swap Rule.

III. **Time Limited of No-Action Relief**

A. Relief to DCOs on Original Swap Terminations

Subject to the conditions set forth below, for a time-limited period the Division will not recommend that the Commission take enforcement action against a DCO for failing to report continuation data on original swaps pursuant to amended § 45.4(c) of the Commission’s regulations. The Division recognizes the complexities and potential data integrity issues that may arise if all DCOs do not begin reporting original swap termination messages to an SDR at the same time. Therefore, the conditions attached to this no-action relief require, *inter alia*, that DCOs coordinate the start of reporting original swap termination messages with each relevant SDR and with each other.

This no-action relief is subject to the following conditions:

- a. During the relief period, the DCO must obtain from entities submitting swaps for clearing the USI of the original swap and the legal entity identifier (“LEI”) of the SDR to which the original swap was reported;
- b. During the relief period, the DCO, to the extent that it currently terminates original swaps accepted for clearing, either by reporting the termination directly or through a third-party service provider to the original swap SDR, or by reflecting the termination in SDR data through other arrangements such as by automatically decrementing the original swap, must continue terminating those original swaps;
- c. During the relief period, the DCO must provide Division staff with a .csv format file, by 10:00 am Eastern time on the first business day of the week or such other time as agreed upon by Division staff, of all original swaps accepted for clearing during the prior week.⁸ This file must include, for each original swap, the asset class, the USI, the LEIs of both counterparties to the original swap, and the USIs of all clearing swaps resulting from the novation of that original swap;⁹
- d. The DCO must coordinate the start of original swap termination reporting with all SDRs to which it anticipates reporting, and with all other registered DCOs that will be reporting original swap terminations to those SDRs, to ensure that all DCOs reporting to an individual SDR begin original swap termination reporting on the same date;

⁸ Any DCO taking advantage of this no-action relief must contact Division staff to establish a schedule for the production of this file.

⁹ This condition on DCOs taking advantage of no-action relief would constitute a collection for purposes of the Paperwork Reduction Act (“PRA”). The Office of Management and Budget (“OMB”) has approved collection 3038-0049, which would encompass collections made as part of exemptive or no-action relief from the Commission. The public is not required to respond to a collection of information that does not have a valid OMB control number.

- e. Within twenty business days of the end of the relief period, the DCO must submit original swap termination messages for all original swaps it cleared between December 27, 2016 and the end of the relief period in the form and manner required by the original swap SDR.¹⁰ Submission of a termination message for an original swap will not be required if that original swap has already been terminated with a continuation data message.¹¹

The relief granted in this section will expire on the earlier of (a) 12:01 am on Tuesday, June 27, 2017; or (b) such date that all DCOs that will be reporting original swap termination messages to an SDR have successfully tested the reporting of such termination messages. During the relief period, DCOs are required to comply with all other reporting obligations for which they are responsible under Parts 43, 45, 46, and 50 of the Commission's regulations.

B. Relief to All Reporting Entities on Reporting New PET Data Fields

Subject to the conditions set forth below, for a time-limited period the Division will not recommend that the Commission take enforcement action against a reporting entity for failing to report certain required creation data pursuant to amended § 45.3 of the Commission's regulations, specifically for failure to report the following primary economic terms:

- (a) Asset class;
- (b) An indication of whether the reporting counterparty is a derivatives clearing organization with respect to the swap;
- (c) Clearing exception or exemption type;
- (d) Clearing swap USIs;
- (e) Original swap USI;
- (f) Original swap SDR;
- (g) Clearing member LEI;
- (h) Clearing member client account;
- (i) Origin (house or customer);
- (j) Clearing receipt timestamp; and
- (k) Clearing acceptance timestamp.

This no-action relief is subject to the following condition:

- (a) During the relief period, the reporting entity shall provide, to any DCO to which it submits a swap for clearing, the LEI of the SDR to which the original swap was reported and the USI of the original swap; and¹²

¹⁰ The Division encourages all DCOs that would need to backload original swap termination messages to coordinate such backloading with the SDRs, to ensure that such backloading does not exceed the SDRs' capacity to ingest new messages. The Division encourages SDRs to establish backloading schedules with all relevant DCOs.

¹¹ However, the DCO would still be required to submit a termination message if the original swap was canceled in a manner that does not generate an audit trail message, such as through an auto-decrement function.

¹² This condition on reporting entities taking advantage of no-action relief would constitute a collection for purposes of the PRA. OMB has approved collection 3038-0049, which would encompass collections made as part of exemptive or no-action relief from the Commission. The public is not required to respond to a collection of information that does not have a valid OMB control number.

- (b) Within twenty business days of the end of the relief period, the reporting entity -- if such reporting entity is a swap execution facility, designated contract market, swap dealer, major swap participant, or DCO -- must submit continuation data for all swaps initially reported during the relief period, to report complete and accurate data for fields (a) through (k) as applicable.¹³

The relief granted in this section will expire on the earlier of (a) 12:01 am on Monday, March 27, 2017; or (b) such date that the SDR to which the reporting entity is reporting a particular swap has updated its data standards and is accepting these PET data fields in its production environment. During the relief period, reporting entities are required to comply with all other reporting obligations for which they are responsible under Parts 43, 45, 46, and 50 of the Commission's regulations.

Market participants should be aware that the no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the CEA or the Commission's regulations thereunder, including in particular the applicable swap data reporting requirements and clearing requirements.¹⁴ This letter, and the no-action position 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. 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 this correspondence, please contact Daniel Bucsa, Deputy Director, Division of Market Oversight, at (202) 418-5435 or dbucsa@cftc.gov, or Andrew Ridenour, Special Counsel, Division of Market Oversight, at (202) 418-5438 or aridenour@cftc.gov.

Sincerely,

Vincent A. McGonagle
Director
Division of Market Oversight

¹³ The Division encourages all reporting entities that would need to backload such continuation data to coordinate such backloading with the SDRs, to ensure that such backloading does not exceed the SDRs' capacity to ingest new messages. The Division encourages SDRs to establish backloading schedules with all relevant reporting entities.

¹⁴ The applicable swap data reporting requirements are set forth under parts 43, 45, 46, and 50 of the Commission's regulations. The applicable clearing requirements are set forth under CEA section 2(h)(1) and part 50 of the Commission's regulations.