

UNITED STATES OF AMERICA

Before the

COMMODITY FUTURES TRADING COMMISSION

In the Matter of Determination of the Availability of a Legal Entity Identifier Meeting the Requirements of the Regulations of the Commodity Futures Trading Commission, and Designation of the Provider of Legal Entity Identifiers to Be Used in Recordkeeping and Swap Data Reporting Pursuant to Those Regulations

AMENDED ORDER DESIGNATING THE PROVIDER OF LEGAL ENTITY IDENTIFIERS TO BE USED IN RECORDKEEPING AND SWAP DATA REPORTING PURSUANT TO THE COMMISSION'S REGULATIONS

On July 23, 2012, the Commodity Futures Trading Commission ("Commission") issued an order ("Order") pursuant to § 21(b) of the Commodity Exchange Act ("CEA" or "the Act") and to part 45 of the Commission's regulations, designating DTCC-SWIFT as the provider of Legal Entity Identifiers ("LEIs"), to be known as CFTC Interim Compliant Identifiers ("CICIs") until establishment of the global LEI system or further action by the Commission, to be used in recordkeeping and swap data reporting pursuant to parts 45 and 46 of the Commission's regulations. The Order directed registered entities and swap counterparties subject to the Commission's jurisdiction to use CICIs provided by DTCC-SWIFT to comply with the LEI requirements of parts 45 and 46 of the Commission's regulations.

As stated in the preamble to the Commission's Adopting Release for part 45:

The Commission recognizes that optimum effectiveness of LEIs as a tool for achieving the systemic risk mitigation, transparency, and market protection goals of the Dodd-Frank Act—goals shared by financial regulators world-wide—would come from creation of a global LEI, on an international basis, that is capable of

becoming the single international standard for unique identification of legal entities across the world financial sector.¹

As recognized in the Order and in part 45 of the Commission's regulations, the Commission is participating in an international process to establish a global LEI system. Since the Order was issued, the international process has moved forward significantly, and establishment of the global LEI system has begun. These developments are summarized below.

- Regulatory oversight for the global LEI system is now provided by an international Regulatory Oversight Committee ("ROC"), established in January 2013. The Commission is a charter member of the ROC and of its Executive Committee.
- The ROC has determined that the global LEI system will be federated in nature, and will include a private sector Central Operating Unit ("COU") and multiple Local Operating Units ("LOUs"). Under the auspices of the ROC, a foundation is being established in Switzerland to provide the COU. The COU will coordinate the system's multiple LOUs, which will issue LEIs.
- As part of the establishment of the global LEI system under the auspices of the ROC, seven identifier-issuing utilities or pre-LOUs, including the CICI Utility operated by DTCC-SWIFT and designated in the Order, have each been sponsored to the ROC by a ROC member authority that exercises oversight of the LOU, and have been given an identifier prefix for use in ensuring the uniqueness of all identifiers issued by any LOU or pre-LOU. A pre-LOU located in Germany, operated by WM Datenservice and sponsored to the ROC by Bafin, Germany's Federal Financial Supervisory Authority, has now begun issuing identifiers known as General Entity Identifiers ("GEIs"), which the Commission anticipates will become LEIs in the global LEI system. The Commission anticipates that, in the next few months, other pre-LOUs sponsored to the ROC by a ROC member with oversight authority may also start issuing identifiers that will become LEIs in the global system.
- As stated in the Order, the Commission anticipates that the CICI Utility operated by DTCC-SWIFT and designated in the Order will become one of the LOUs in the global system, and that CICIs will become LEIs in the global system.

The Commission understands that OTC derivatives data reporting in the European Union is scheduled to begin in September 2013, pursuant to reporting requirements under the European

¹ See 77 FR 2136 (Jan. 13, 2012) at 2163.

Market Infrastructure Regulation (“EMIR”) issued by the European Securities and Markets Authority (“ESMA”).

Once swap data reporting is required under both CFTC rules and the rules of another jurisdiction or jurisdictions, as will be the case when ESMA’s rules take effect, cooperation by the authorities in question with respect to the LEIs used in such reporting will be required to preserve the essential Principle of Uniqueness for LEIs, already adopted by the ROC and mandated by § 45.6(b)(1) of the Commission’s regulations. Since the identifiers issued by pre-LOUs recognized by the ROC, including WM Datenservice, the CICI Utility, and eventually others, will become LEIs in the global LEI system, mutual acceptance, by each ROC member that mandates use of LEIs in data reporting, of the identifiers issued by each ROC-certified pre-LOU, is the only way to avoid violation of the Uniqueness Principle resulting from issuance of multiple LEIs to a single entity.

One example of this problem would be the case of a German hedge fund that obtains an identifier from WM Datenservice, and later becomes a counterparty to a swap with a U.S. swap dealer that must be reported to a swap data repository under CFTC rules. If the CFTC does not permit the WM Datenservice identifier of the hedge fund to be reported as part of the primary economic terms data reported for that swap, but requires that a CICI be reported for the hedge fund, it would be necessary for the hedge fund to obtain a CICI in addition to its WM Datenservice identifier.

To address this issue, and facilitate the ongoing establishment of the global LEI system, the Chair and Vice Chairs of the ROC have asked the Commission and ESMA to each move as promptly as possible to take whatever action is necessary to provide for mutual acceptance, for use in data reporting required by CFTC rules or ESMA rules, of the pre-LEIs issued by either the

CICI Utility or WM Datenservice. The request notes that the ROC previously has publicly identified, as minimum requirements for global acceptance of pre-LEIs issued by a pre-LOU, both issuance by the pre-LOU of pre-LEIs that comply with ISO Standard 17442 *Legal Entity Identifier*, and compliance by the pre-LOU with the existing principles for the global LEI system and the existing standards for pre-LOUs adopted by the ROC. The Chair and Vice Chairs also informed the Commission that, at the ROC's June 2013 meeting in Mexico City, the ROC anticipates finalizing a framework for global acceptance of pre-LEIs assigned by a pre-LOU that is sponsored by a ROC member who assures the ROC that the pre-LOU meets specified principles regarding compliance with the LEI standard, technical capacity, and agreement to adhere to ROC high level principles for the system. The Commission understands that upon such action by the ROC, such globally accepted pre-LEIs will henceforth be known as LEIs.

Bafin has notified the Commission, and Commission staff have verified, on the basis of a live demonstration provided by WM Datenservice to Commission staff and to other ROC members including Bafin, and of a Memorandum of Understanding adopted by DTCC-SWIFT and WM Datenservice to provide for cooperation and coordination between them with respect to adherence to the principles adopted by the ROC for the global LEI system, that: (1) the GEIs issued by WM Datenservice comply with ISO Standard 17442 *Legal Entity Identifier*; and (2) WM Datenservice complies with the existing principles for the global LEI system and the existing standards for pre-LOUs adopted by the ROC.

The Commission anticipates, on the basis of discussions between members of the ROC including representatives of ESMA and of the Commission, that ESMA will, on a timely basis, take the action necessary to provide for mutual acceptance by ESMA and the CFTC of both the pre-LEIs (now known as CICIs) issued by DTCC-SWIFT and the pre-LEIs (now known as

GEIs) issued by WM Datenservice, for data reporting required under either Commission regulations or ESMA's EMIR regulations.

In light of the foregoing, **IT IS ORDERED**, pursuant to Section 21(b) of the Commodity Exchange Act and § 45.6 of the Commission's regulations, that paragraph 2 of the Order is amended by striking the existing paragraph 2 and inserting the following:

"2. To comply with the legal entity identifier requirements of parts 45 and 46 of the Commission's regulations:

a. Effective immediately upon (1) issuance of this Amended Order, and (2) publication on the Commission's website by the Commission's Chief Information Officer of a notice that ESMA has informed the Commission that LEIs issued by DTCC-SWIFT are accepted for data reporting under ESMA's EMIR regulations, registered entities and swap counterparties subject to the Commission's jurisdiction shall use either LEIs (currently known as CFTC Interim Compliant Identifiers or CICIIs) provided by DTCC-SWIFT, or LEIs (currently known as General Entity Identifiers or GEIs) provided by WM Datenservice. Registered entities and swap counterparties may contact DTCC-SWIFT at <https://www.ciciutility.org>, and may contact WM Datenservice at <https://www.geiportal.org>.

b. Prior to adoption by the ROC of standards for approval of pre-LOUs and the LEIs issued by approved pre-LOUs as globally acceptable, registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by another pre-LOU that has been issued an identifier prefix by the ROC and is sponsored as a pre-LOU by a member of the ROC, in lieu of using LEIs provided by DTCC-SWIFT or WM Datenservice, but may do so only after the Commission's Chief Information Officer publishes on the Commission's website a notice that: (1) Commission staff have verified, on the basis of a demonstration provided to

Commission staff by the pre-LOU, and the ROC member sponsoring the pre-LOU has notified the Commission, that the pre-LOU issues LEIs that are compliant with ISO Standard 17442 *Legal Entity Identifier*, and that the pre-LOU complies with the existing principles for the global LEI system and the existing standards for pre-LOUs adopted by the ROC; and that (2) LEIs issued by DTCC-SWIFT are accepted for data reporting under the law of any jurisdiction that accepts the LEIs issued by the pre-LOU for data reporting.

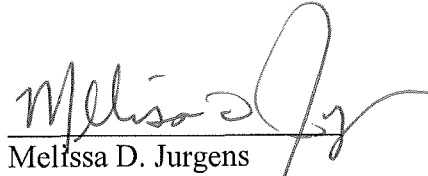
c. After the ROC has adopted standards for approval of pre-LOUs and the LEIs issued by them as globally acceptable, and has also approved DTCC-SWIFT as a globally acceptable pre-LOU and the LEIs issued by DTCC-SWIFT as globally acceptable LEIs, registered entities and swap counterparties subject to the Commission's jurisdiction may use LEIs provided by DTCC-SWIFT, WM Datenservice, or any other pre-LOU approved by the ROC as globally acceptable and as issuing globally acceptable LEIs. Pursuant to this paragraph, use of LEIs from pre-LOUs other than DTCC-SWIFT or WM Datenservice may commence only after the Commission's Chief Information Officer publishes on the Commission's website a notice that such LEIs and such LOUs have been approved by the ROC as globally acceptable.

d. Effective immediately upon ROC approval of the LEIs (currently known as CICIs) issued by DTCC-SWIFT as globally acceptable, the LEIs issued by DTCC-SWIFT shall be known as LEIs and not as CICIs. For this purpose, CICIs previously issued by DTCC-SWIFT shall be named and referred to as LEIs, but shall not be reissued.

e. As provided in § 45.6(b)(1) of the Commission's regulations, registered entities and swap counterparties subject to the Commission's jurisdiction shall be identified in all swap recordkeeping and swap data reporting by a single LEI.

Issued in Washington, D.C. this 7th day of June, 2013.

By the Commission



Melissa D. Jurgens
Secretary of the Commission