



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of
Market Oversight

CFTC Letter No. 12-66
No-Action
December 21, 2012
Division of Market Oversight

Walt Lukken
President & Chief Executive Officer
The Futures Industry Association

Sarah A. Miller
Chief Executive Officer
Institute of International Bankers

Kenneth E. Bentsen, Jr.
Executive Vice President
Public Policy and Advocacy
Securities Industry and Financial Markets Association

Dear Mr. Lukken, Ms. Miller, and Mr. Bentsen,

This letter is in response to a request by the Futures Industry Association (“FIA”), the Institute of International Bankers (“IIB”), and the Securities Industry and Financial Markets Association (“SIFMA”) (collectively, the “Petitioners”) dated December 6, 2012 (“Letter”) and supplemented by your December 12, 2012 letter (“Supplemental Letter”), to the Division of Market Oversight (“DMO” or “Division”) of the Commodity Futures Trading Commission (“CFTC” or “Commission”). In the Letter, you request, on behalf of your members and “similarly situated participants in the swap markets”¹ (collectively, “swap dealer” or “swap dealers”) that will be subject to the Commission’s rules regarding the reporting of swap transaction data, temporary no-action relief that DMO will not recommend that the Commission commence enforcement action against swap dealers for failure to comply with certain requirements of the Commodity Exchange Act (“the CEA”) and Parts 43,² 45,³ and 46⁴ of the

¹ In the Supplemental Letter, you state that “similarly situated participants” includes swap dealers that are not members of the requesting organizations.

² Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (January 9, 2012) (“Real-Time Reporting Rule”).

³ Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (January 13, 2012) (“Regulatory Reporting Rule”).

⁴ Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012) (“Historical Swap Reporting Rule”).

Commission's regulations.⁵ Your request extends to swaps in the interest rate and credit asset classes ("Compliance Date 1 Swaps").

You submit that a number of technological issues, discussed below, will prevent swap dealers from complying with specific aspects of the reporting requirements for interest rate and credit swaps on the applicable compliance dates.⁶ DMO has reviewed each specific request and determined to grant relief subject to the conditions set forth below.

I. Delay in Reporting by Branches⁷ Located in Emerging Markets

You state in the Letter that swap dealers need additional time to establish reporting infrastructure in, or migrate trading activity from, certain branches in emerging market jurisdictions.⁸ You request no-action relief for swap dealers from certain reporting requirements under Parts 43, 45 and 46 with respect to swaps executed by those branches until June 30, 2013, provided that: (a) the swap dealer must deliver to DMO staff a list of the market branches subject to the reporting delay no later than December 31, 2012; (b) the swap dealer will make a good faith effort to update its systems at the relevant branches so as to comply, or it will cease transacting with U.S. persons from those branches in any swaps for which it cannot provide timely reports prior to June 30, 2013; (c) the swap dealer will begin reporting the covered swaps (and backloading previously unreported swaps) as soon as technologically practicable, and in no event later than June 30, 2013; and (d) the swap dealer will retain records of all swaps covered by the relief, to be made available to the Commission upon request.

DMO believes that, in light of the above-described technical difficulties, time-limited no-action relief is warranted for swaps executed by a swap dealer's branches located in emerging market jurisdictions for which it is unable to report swap transactions within the time frames set forth under Parts 43, 45 and 46.

A swap dealer must satisfy the following conditions to qualify for no-action relief:

⁵ You also request relief with respect to certain requirements under Part 20. DMO has addressed the Part 20 requests in Staff No-Action Letter No. 12-51 (December 14, 2012).

⁶ The earliest date upon which a swap dealer would be required to report swap transaction data for Compliance Date 1 Swaps, pursuant to Parts 43 and 45, is December 31, 2012 if the swap dealer reached the de minimis swap dealing threshold in October 2012. Staff No-Action Letter No. 12-32 (November 19, 2012) (establishing the reporting compliance deadline for swap dealers under Parts 43 and 45 as the applicable registration deadline, regardless of whether the swap dealer chooses to register prior to that deadline) ("November 19 Letter"). The earliest date upon which the same swap dealer would be required to report historical Compliance Date 1 Swaps under Part 46 is January 30, 2013. Id. (establishing the reporting compliance deadline for historical swaps under Part 46 as 30 days after the date upon which the swap dealer is required to begin reporting swap transaction data pursuant to Parts 43 and 45 for the asset class to which the historical swap belongs). DMO notes that the relief provided in the November 19 Letter applies to swap dealers, meaning that any relief provided in this response is supplemental and therefore should be interpreted in conjunction with the relief already issued.

⁷ For purposes of this letter, a "branch" in an emerging market includes all locations and offices that are located in the same jurisdiction.

⁸ For purposes of this letter, you define an "emerging market jurisdiction" as any country except the United States, members of the European Union, Switzerland, Canada, Japan, Hong Kong, Singapore and Australia.

- (1) The swap dealer's chief information officer ("CIO") (or equivalent) must document and, immediately upon Commission request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with the swap reporting requirements of Parts 43, 45 and 46 by the relevant compliance deadlines for each branch in an emerging market jurisdiction for which relief is sought;
- (2) The swap dealer must update its technological systems at the subject branches to begin reporting in full compliance with Parts 43, 45 and 46 as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or **April 30, 2013**, whichever occurs first, or otherwise cease to execute swap transactions at those branches;
- (3) The swap dealer must begin reporting swaps covered by the relief as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **April 30, 2013**, whichever occurs first;⁹
- (4) The swap dealer must backload and report previously unreported swaps as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **May 30, 2013**, whichever occurs first; and
- (5) During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, the swap dealer must retain records for each branch with respect to all transactions covered by the relief in this response and, immediately upon Commission request, make such records available for production and inspection.

Subject to the conditions above, for Compliance Date 1 swaps, DMO will not recommend that the Commission commence an enforcement action against a swap dealer for failure to report swaps executed by branches in the emerging market jurisdictions that you have identified in accordance with its reporting obligations under Parts 43, 45 and 46. The Division will extend this relief until the earlier of: 1) the resolution of the technological issues preventing timely compliance, at which time the swap dealer must begin reporting as soon as technologically practicable; or 2) 12:01 a.m. eastern daylight time on **April 30, 2013**.¹⁰ DMO

⁹ Upon resolving a technological issue(s) that has prevented timely compliance with a particular reporting requirement during the relief period, the swap dealer must begin to comply, absent delay, with those reporting requirements. For example, if the swap dealer becomes technically able to comply with the applicable reporting requirements under Part 45 at a certain point during the relief period (but not yet Parts 43 or 46), then it must begin to report swap data pursuant to Part 45.

¹⁰ Consistent with other DMO no-action relief letters extending reporting deadlines for Compliance Date 1 Swaps by four months, all relief expires on April 30, 2013. DMO notes that the relief provided in this letter is independent of the relief provided in the November 19 Letter and supplements that relief. Further, it is noted that the no-action relief provided in this letter differs from relief previously provided in certain no-action relief letters provided to individual swap dealers and, in such cases, the relief provided herein does not impact or limit in any way the relief previously provided to those individual swap dealers.

believes that a four-month timeframe should be sufficient for swap dealers to update their technology as needed to fulfill the reporting requirements under Parts 43, 45, and 46.

II. Delay of Reporting for Exotic/Multi-Leg Swap Transactions

In the Letter, you state that the reporting of certain exotic and multi-leg swap transactions on a composite basis within the timeframes specified by Regulations 43.3 and 45.3 is technologically impracticable for swap dealers at this time. In the Supplemental Letter, you define a “exotic/multi-leg swap transaction” to be any transaction which involves a single executed swap having compound swap features that, by convention or for technological or operational reasons, cannot be entered directly into the swap dealer’s trade capture interface for reporting purposes as a single swap, but is disaggregable into two or more swaps or other products that can be individually entered by the swap dealer into its trade capture system(s) for reporting purposes. You note that in many, but not all, cases, such transactions involve swaps with more than one underlying price reference. For example, a swap dealer might enter into a swap payable in Euro that is based on the U.S. dollar price appreciation of oil. If the swap dealer has separate systems for monitoring foreign exchange risk, on the one hand, and commodities risk, on the other hand, the swap dealer might enter the transaction into its systems as a U.S. dollar-Euro foreign exchange forward and a U.S. dollar denominated oil swap.

An exotic/multi-leg swap transaction could also include a transaction that has multiple economic components belonging to the same asset class. For instance, a swap dealer might enter into a Bermuda swaption, which is an option that gives the holder the right to enter into an interest rate swap on any one of a number of predetermined dates. If the swap dealer does not have an existing template in its trade capture system for Bermuda swaptions, it might instead enter the transaction as a bullet swap (*i.e.*, a swap with a constant notional principal reflecting a constant risk-offset requirement with full repayment of principal at maturity) and a call option. You understand that these transactions comprise less than 3% of the swaps reportable under Parts 43 and 45.

In the Supplemental Letter, you state that because swap dealers’ reporting systems are often triggered by the entry of transactions into their trade capture systems, it is anticipated that the real-time and primary economic terms (“PET”) data for these exotic/multi-leg transactions would be reported by swap dealers under Parts 43 and 45, respectively, by reporting each component of the transaction separately. You further state, however, that because the pricing for the components is determined on an aggregate basis through the negotiation of a single, integral transaction, the price reported for each component would be “off market” relative to other swaps that were not components of an exotic/multi-leg swap transaction.

You state that swap dealers have not developed the technological ability to report the composite multi-leg trade executed at a single price within the time frames specified in Regulations 43.3 and 45.3, and are only capable at this time of reporting each “leg” of the transaction independently within that time frame. In the Supplemental Letter, you request no-action relief to permit a swap dealer to report real-time and PET data for each component of exotic/multi-leg swap transactions pursuant to Regulations 43.3 and 43.5 with an “indicator of other price affecting term” until June 30, 2013, provided that: (a) the swap dealer will make a

good faith effort to update its systems to enable it to report the aggregate pricing applicable to the complete exotic/multi-leg swap transaction in accordance with those regulations prior to June 30, 2013; and (b) the swap dealer will backload corrections to previously reported swaps as soon as technologically practicable, and in no event later than June 30, 2013.

DMO believes that, in light of the above-described technical difficulties and the limited number of swaps at issue, time-limited no-action relief is warranted for these exotic/multi-leg swap transactions and that a swap dealer may report the real-time and PET data for each component of exotic/multi-leg transaction pursuant to Regulations 43.3 and 43.5.

A swap dealer must satisfy the following conditions to qualify for no-action relief:

- (1) The swap dealer's CIO (or equivalent) must document and, immediately upon Commission request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with the swap reporting requirements under Regulations 43.3 and 45.3 by the relevant compliance deadlines;
- (2) The swap dealer must report real-time and PET data for each component of an exotic/multi-leg swap transaction pursuant to Regulations 43.3 and 45.3;
- (3) The swap dealer must update its technological systems to enable it to report the exotic/multi-leg swap transaction on a composite basis in full compliance with Regulations 43.3 and 45.3 as soon as technologically practicable upon resolution of the technical issues preventing timely compliance, or by **April 30, 2013**, whichever occurs first;
- (4) The swap dealer must begin reporting the aggregate pricing applicable to the composite exotic/multi-leg swap transaction as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **April 30, 2013**, whichever occurs first;
- (5) The swap dealer must backload and report any corrections necessary to the applicable SDR(s) for previously unreported or misreported data as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **May 30, 2013**, whichever occurs first; and
- (6) During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, the swap dealer must retain records with respect to all transactions covered by the relief in this response and, immediately upon Commission request, make such records available for production and inspection.

Subject to the conditions above, for such Compliance Date 1 Swaps, DMO will not recommend that the Commission commence an enforcement action against a swap dealer for failure to fulfill its reporting obligations with respect to exotic/multi-leg swap transactions within the timeframes specified in Regulation 43.3 and 45.3. The Division will extend this relief until

the earlier of: 1) the resolution of the technological issues preventing timely compliance, at which time the swap dealer must begin reporting as soon as technologically practicable; or 2) 12:01 a.m. eastern daylight time on **April 30, 2013**. DMO believes that a four-month timeframe should be sufficient for swap dealers to update their technology as needed to fulfill the reporting requirements under Regulation 43.3 and 45.3.

III. Delay in Linking the Unique Swap Identifier (“USI”) of Certain Subsequent Transactions to the USI of the Previously Reported Initial Swap

In the Letter, you state that the systems of some swap dealers are unable to link the report made for subsequent trades, including swaps resulting from post-trade allocation of a bunched trade¹¹ (“post-trade allocations”), compressions,¹² or novations,¹³ to the USI of the original trade that was previously reported by it. You request no-action relief and seek additional time to comply with Part 45 reporting requirements until June 30, 2013 with regard to requirements associated with the linkage of USI data for such trades provided that: (a) the swap dealer will maintain internal records of the prior USIs to be made available to the Commission upon request; (b) the swap dealer will use good faith efforts to update its systems to enable it to report prior USIs in compliance with Part 45 prior to June 30, 2013; (c) the swap dealer will begin reporting prior USIs as soon as it is technologically practicable for it to do so; and (d) the swap dealer will submit amended reports reflecting the USI of the prior trade as soon as technologically practicable, and in no event later than June 30, 2013, provided that the swap shall not have expired prior to that time.

DMO believes that, in light of the above-described technical difficulties, time-limited no-action relief is warranted from the Part 45 reporting requirement that a report for subsequent post-trade allocations, compressions, or novations must be linked to the USI of the previously reported initial swap. To qualify for no-action relief, a swap dealer must satisfy the following conditions:

- (1) The swap dealer’s CIO (or equivalent) must document and, immediately upon Commission request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with Part 45 by the relevant compliance deadlines with respect to the linkage of a report made for a post-trade allocation, a compression, or a novation to the USI of the previously reported trade;

¹¹ In a December 19, 2012 communication between Colin Lloyd of Cleary Gottlieb Steen & Hamilton LLP and DMO staff (“December 19th communication”), the following definition was given to DMO staff for a “swap resulting from post-trade allocation of a bunched trade”: any swap (i) that is treated as a “post-allocation” swap under Commission Regulation 45.3(e)(ii) and 45.5(d)(2) and the Exhibits to Part 45; and (ii) where the agent informs the reporting counterparty of the identities of its actual counterparties after execution of the initial swap between the reporting counterparty and the agent.

¹² In that December 19th communication, “compression” was defined as either a “bilateral portfolio compression exercise” (as defined by the Commission Regulation 23.500(b)) or a “multilateral portfolio compression exercise” (as defined by Commission Regulation 23.500(h)).

¹³ In the December 19th communication, “novation” was defined to mean a transfer to a third party of one counterparty's rights and obligations under a swap.

- (2) The swap dealer must update its technological systems to enable full compliance with Part 45 with respect to the required linkage as soon as technologically practicable upon resolution of the technical issues preventing timely compliance, or by **April 30, 2013**, whichever occurs first;
- (3) The swap dealer must begin linking the subsequent trades described above to the initial transaction in accordance with Part 45 as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **April 30, 2013**, whichever occurs first;
- (4) The swap dealer must submit amended reports to the applicable SDR(s) reflecting the USI of the prior trade as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **May 30, 2013**, whichever occurs first; and
- (5) During the pendency of the remediation efforts, and prior to completing or correcting all swap transaction data records in the SDR(s), the swap dealer must retain records with respect to all prior USIs and, immediately upon Commission request, make such records available for production and inspection.

Subject to the conditions above, for such Compliance Date 1, DMO will not recommend that the Commission commence an enforcement action against a swap dealer for failure to fulfill its reporting obligations under Part 45 due to reporting a post-trade allocation, a compression, or a novation to the USI of the original trade without appending the USI of the original trade. The Division will extend this relief until the earlier of: 1) the resolution of the technological issues preventing timely compliance, at which time the swap dealer must begin linking the subsequent trades as soon as technologically practicable; or 2) 12:01 a.m. eastern daylight time on **April 30, 2013**, whichever occurs first. DMO believes that a four-month timeframe should be sufficient for swap dealers to update their technology as needed to fulfill the reporting requirements under part 45.

IV. Relief for Withholding Reporting of Certain Life Cycle Events

In the Letter, and as clarified with subsequent discussions with staff, you state that some swap dealers' systems do not support the linkage of the reporting of certain life cycle events (such as partial terminations, terminations, partial exercises, exercises, and credit events) to original trades because they currently treat such events as new trades and/or terminations and create a new USI for that event.

You requested no-action relief from Commission action that may result from a swap dealer's reporting of life cycle events as new trades and/or terminations until June 30, 2013, provided that: (a) the swap dealer will maintain internal records of all USIs to be made available to the Commission upon request; (b) the swap dealer will use good faith efforts to update its systems to enable it to report in compliance with Part 45 prior to June 30, 2013; (c) the swap dealer will begin reporting as soon as it is technologically practicable for it to do so; and (d) the

swap dealer will submit amended reports as soon as technologically practicable, and in no event later than June 30, 2013, provided that the swap shall not have expired prior to that time.

DMO believes that given the technical difficulties described above, time-limited no-action relief is warranted from Parts 43 and 45 to the extent that a swap dealer treats certain life-cycle events described above as new trades. In addition, time-limited no action relief is warranted to prevent over reporting of publicly disseminated data as required in §43.3 to the extent that a new swap would be reported under the swap dealer's system solely as a result of occurrence of a life cycle event, rather than due to the creation of a new swap.

DMO understands that for some swap dealers, it may not be possible to distinguish life cycle events improperly classified as new swaps from actual new swaps. Therefore, pursuant to the relief, a swap dealer is not required to report any swaps under Parts 43 and 45 to the extent that the swap dealer's system cannot distinguish improperly classified swaps from actual new swaps.

A swap dealer should attempt to withhold reporting of these life cycle events altogether, in which case DMO would not recommend that the Commission commence an enforcement action against the swap dealer for under-reporting of this continuation data. If such a temporary solution were possible, then the swap dealer would be required to update its SDR reporting records as soon as technologically practicable upon resolution of the issue preventing reporting of life-cycle events as part of the initial swap, as required under Parts 43 and 45.

If withholding the reporting of affected life cycle events is technologically impracticable, then DMO will not recommend that the Commission commence an enforcement action against a swap dealer for failure to fulfill its reporting obligations under Parts 43 and 45 by incorrectly reporting certain life cycle events as new swaps under new USIs.

To qualify for no-action relief, a swap dealer must satisfy the following conditions:

- (1) The swap dealer's CIO (or equivalent) must document and, immediately upon Commission request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with Parts 43 and 45 by the relevant compliance deadlines due to life cycle events being reported as new trades;
- (2) The swap dealer must update its technological systems to enable full compliance with Parts 43 and 45 with respect to the covered swaps as soon as technologically practicable upon resolution of the technical issues preventing timely compliance, or by **April 30, 2013**; whichever occurs first;
- (3) For any life cycle events not reported to an SDR pursuant to this no-action position, a swap dealer must report such life cycle events pursuant to the applicable Part 43 and 45 regulations as soon as technologically practicable upon resolution of the technological issues preventing timely compliance after such a determination is made, or by **May 30, 2013**, whichever occurs first;

- (4) For any life cycle events incorrectly reported as new swaps under new USIs, the swap dealer must backload and report any corrections necessary to the applicable SDR(s) for previously misreported data as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by **May 30, 2013**, whichever occurs first; and
- (5) During the pendency of remediation efforts, and prior to reporting all required life cycle events to the applicable SDR(s), the swap dealer must retain records with respect to such events covered by the relief and, immediately upon Commission request, make such records available for production and inspection.

Subject to the conditions above, for such Compliance Date 1 swaps, DMO will not recommend that the Commission commence an enforcement action against a swap dealer for failure to fulfill Parts 43 and Part 45, as a result of error reporting requirements due to a swap dealer's non-reporting of life cycle events or incorrectly reporting life cycle events as new trades. The Division will extend this relief until the earlier of: 1) the resolution of the technological issues preventing timely compliance, at which time the swap dealer must begin reporting as soon as technologically practicable; or 2) 12:01 a.m. eastern daylight time on **April 30, 2013**. DMO believes that a four-month timeframe should be sufficient for swap dealers to update their technology as needed to fulfill the reporting requirements under Part 43s and 45.

This Division letter, and the no-action positions taken herein, represent the views of DMO only, and do not necessarily represent 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 Commission regulations thereunder, and applies only to swap dealers that provide the CIO (or equivalent) determinations as set forth above.¹⁴ Further, despite each staff no-action position taken herein expiring upon a certain future date, swap dealers are required to begin reporting in full compliance with the applicable provisions of the CEA and Commission's regulations as soon as technologically practicable upon resolution of the technological issues preventing timely compliance with such provisions, even if such resolution occurs prior to the applicable no-action position expiration date. As with all no-action letters, DMO 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. 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 will, by separate action, prepare an information collection request for review and approval by OMB, and will publish in the Federal

¹⁴ 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.

Register a notice and request for public comments on the collection burdens associated with the no-action relief. If approved, an agent may not rely on the Division's determination not to recommend enforcement action to the Commission unless it provides the information the Division has determined is essential to the provision of no-action relief.

If you have any questions regarding the content of this staff no-action letter, please contact Nhan Nguyen, Attorney Advisor, DMO at 202-418-5932 or nnguyen@cftc.gov.

Sincerely,

Richard A. Shilts
Acting Director
Division of Market Oversight