

June 28, 2013

Mr. Richard Shilts
Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for No-Action Relief – Parts 20, 45 and 46

Dear Mr. Shilts:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”), on behalf of its members with reporting obligations under Part 20, Part 45 or Part 46 of the Regulations (collectively, the “**Reporting Rules**”)¹ of the Commodity Futures Trading Commission (the “**Commission**”) and other similarly situated persons, is writing to request, pursuant to Rule 140.99, an extension of the expiration date for the no-action relief provided under CFTC Letter No. 12-46, as described below.

ISDA’s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

In December 2012, the Commission’s Division of Market Oversight (“**DMO**”) issued CFTC Letter No. 12-46 in response to a request from ISDA expressing concern regarding conflicts between the privacy laws of non-US jurisdictions and the Reporting Rules. CFTC Letter No. 12-46 granted conditional and time-limited no-action relief that permits a reporting party to omit from reports made pursuant to the Reporting Rules the non-reporting party’s LEI, the identity of the non-reporting party in specifically enumerated data fields and certain other terms that the reporting party reasonably believes would identify the non-reporting party (the information that may be omitted, “**Identity Information**”). In addition, the relief permits a reporting party to temporarily withhold reporting of Rule 45.3 confirmation images that include the covered Identity Information and would otherwise need to be manually redacted. The relief granted in CFTC Letter No. 12-46 expires on the earlier of (i) the reporting party’s obtaining counterparty consent or regulatory authorization, as applicable, (ii) the reporting party no longer holding the

¹ The relief requested in this letter also encompasses CFTC Rules 23.204 and 23.205 insofar as the swap entity has complied with the conditions of the no-action relief with respect to the reporting required under such rules.

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requisite reasonable belief regarding the privacy law consequences of reporting or (iii) 12:01 a.m. eastern daylight time on June 30, 2013.

In a letter dated June 21, 2013, ISDA requested an extension of the relief granted in CFTC Letter No. 12-46 with respect to sixteen “Enumerated Jurisdictions”, which ISDA member firms have identified as those for which a standing blanket counterparty consent may be insufficient to overcome local data privacy law conflicts. This letter addresses difficulties faced by member firms under the privacy statutes or regulations of other jurisdictions, which allow counterparty consent to overcome data privacy concerns, or due to lack of counterparty response to consent requests.

In certain jurisdictions, jurisdiction-specific legal issues as to the form or manner of consent have required analysis and resolution because firms have been unable to conclude that industry standard forms of consent to SDR reporting, such as that contained in the ISDA August 2012 DF Protocol or the ISDA 2013 Reporting Protocol,² would be effective. Such heightened consent requirements generally involve forms of consent that must be tailored to an individual jurisdiction’s laws, for example to include disclosure regarding matters such as the recipient of the information, permitted uses of data, persons that will have access to it, the data subject’s rights of access and to control use of data, or the adequacy of data protections under the laws of the recipient’s jurisdiction.

Apart from jurisdiction-specific legal requirements, lack of counterparty responsiveness in providing consent remains a challenge. In some cases, the lack of response may be attributed to the resources demanded to analyze and obtain advice regarding the Reporting Rules and the consequences of consent, and the fact that these burdens can be avoided by shifting trading to dealer counterparties subject to other regulatory regimes. As implementation of trade reporting progresses internationally, a greater portion of non-U.S. person counterparties may be prompted to devote the necessary attention to consent requests. Extension of the expiration date of CFTC Letter No. 12-46 would allow this process to achieve results³ and prevent the Reporting Rules from further biasing the choice of trading counterparty.

Pending developments in the Commission’s cross-border guidance again highlight the difficulties swap dealers face in obtaining counterparty consent in large numbers. Currently, non-U.S. swaps dealers, the parent companies of which are not specified types of U.S. financial entities, are exempt from SDR and Large Trader reporting with respect to transactions with non-U.S. persons under the Commission’s temporary exemptive order,⁴ which expires on July 12, 2013. Uncertainty as to what cross-border reporting requirements will apply after July 12 has required non-U.S. swap dealers to plan for the possible reporting of transactions with non-US persons. These planning efforts involve outreach to a new audience, previously not subject to

² The ISDA 2013 Reporting Protocol was developed with the participation of ISDA’s membership in order to facilitate compliance with applicable reporting obligations while addressing disclosure restrictions which may exist under the laws of particular jurisdictions.

³ We note that for certain counterparties, such as non-responsive, dormant or dissolved entities and those with whom a dealer has terminated its trading relationship, continuing direct efforts to obtain consent are likely to be unavailing, and more permanent relief may be necessary. We look forward to continuing these discussions with DMO staff.

⁴ 78 Fed. Reg. 858.

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CFTC reporting requirements. While such outreach is active, and has been aided by the advancing implementation of reporting internationally, the absence of certainty regarding the application of CFTC reporting requirements to this new audience (including questions such as timing, the recognition of non-CICI LEIs and the possibility of substituted compliance) compounds the challenges swap dealers face in getting their non-U.S. person counterparties to prioritize and complete disclosure consents. Those difficulties are further compounded by the fact that a smaller percentage of non-U.S. person counterparties have matched to non-U.S. swap dealers under the ISDA August 2012 Protocol. Because the “external business conduct standards” of Subpart H to Part 23, which are the primary focus of that Protocol, have been identified as “transaction level” requirements, the Protocol has been perceived as less relevant to entirely non-U.S. trading relationships. ISDA urges the Commission to take these considerations into account in the phasing in of any expansion in the cross-border scope of its reporting requirements, bearing in mind the issues posed by privacy law conflicts and the additional time needed to obtain disclosure consents from relevant counterparties.

For the foregoing reasons, ISDA requests that DMO extend the expiration date for the relief granted under CFTC Letter No. 12-46 until June 30, 2014.⁵

As explained in our prior letter, reporting party behavior in accordance with CFTC Letter No. 12-46 achieves substantially complete compliance with the Reporting Rules. Extension of relief allows additional time to address relevant consent requirements, without interrupting participation of registered swap dealers in the affected markets.

Thank you for your consideration of these concerns. Please contact me or ISDA staff if you have any questions or concerns.

Sincerely,



Robert Pickel

⁵ ISDA member firms have identified technological challenges in the correction of SDR records of expired transactions and may discuss separately with DMO staff the feasibility of performing such corrections within the timeframe of the extended relief.

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Certification Pursuant to Commission Regulation 140.99(c)(3)

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated June 28, 2013 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

A handwritten signature in cursive script that reads "Robert C. Pickel".

Robert Pickel