

April 4, 2014

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

Re: Request for Division of Market Oversight Staff No-Action Letter and Interpretive Letter Pursuant to CFTC Regulation 140.99: Impact of Swap Dealer and Major Swap Participant Registration Status Changes on Counterparties' Obligations under Reporting Requirements

Dear Mr. McGonagle,

Changes to a registered person's status as a Swap Dealer ("SD") or Major Swap Participant ("MSP"), in particular deregistration and limited purpose designation¹, impact the operational ability of its counterparties to comply with their obligations as SDs or MSPs, including, but not limited to, Part 43 and Part 45 regulations (the "Reporting Rules") of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), external business conduct, clearing, and confirmation, portfolio reconciliation and portfolio compression requirements. The current process for granting such changes to registration does not consider these implications in a manner that allows for a consistent and coordinated approach to changes or transfer of obligations, which imposes compliance challenges and, with respect to the Reporting Rules, may impact the quality of reported data and the ability for parties to comply with their obligations.

The International Swaps and Derivatives Association, Inc. ("ISDA") and its members recognize the importance of the Reporting Rules and other CFTC regulations and strongly support initiatives to increase regulatory transparency. In order to address the challenges noted above, ISDA, on behalf of its members that are "reporting parties" under Part 43² and "reporting counterparties" under Part 45³ (collectively, "Reporting Parties"), hereby request relief from certain requirements under the Reporting Rules and interpretive guidance with respect to other requirements under the Reporting Rules as set forth in Sections III and IV and explained below.

¹ Though not an aspect of their registration with the Commission, we note that a change to a party's status as a guaranteed affiliate or conduit affiliate (as defined in the CFTC's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations: Rule) will create similar challenges.

² 17 CFR Part 43 Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012). CFTC regulation 43.2 defines the term "reporting party" to mean "the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this [Part 43] and section 2(a)(13)(F) of the [CEA]."

³ 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan 13, 2012). CFTC regulation 45.1 defines the term "reporting counterparty" to mean "the counterparty required to report swap data pursuant to this [Part 45], selected as provided in §45.8."

Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 64 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

I. Background

Registration Withdrawal or Termination (“Deregistration”)

A SD may submit an application to the Commission to withdraw its registration⁴ if it has been a SD for at least 12 months provided it qualifies for the *de minimus* exception⁵. Approval of such a withdrawal request from a SD (the “applicant”) may be effective 30 days after receipt⁶, even though the applicant’s counterparties may be unaware of the request during this time in order to prepare. A MSP may also qualify for a termination of its status⁷ (also, an “applicant”) if subsequent to its registration it does not exceed any of the applicable daily average thresholds for four consecutive fiscal quarters. Though not privy to a request for withdrawal or a qualification for termination, as applicable, a SD or MSP which faces the applicant will become responsible for certain obligations under the Reporting Rules for their mutual swaps. Insufficient notification by the Commission of its intention to approve a withdrawal or termination means the change in registration may take effect before Reporting Counterparties have made the requisite changes to their static data for application to swaps entered into on or after the applicable effective date, resulting in gaps in reporting and exceptional effort to identify and correct any errors or omissions.

Limited Designation (“LD”)

Under a “limited purpose designation” or “limited designation”, a person can be designated by the Commission as a SD for one type, class or category of swap or activities without being considered a SD for other types, classes, categories or activities⁸. A MSP may be designated by the Commission as a MSP for one or more categories of swaps without being a MSP for all classes of swaps⁹.

Though the person which requested a LD (also, the “applicant”) is expected to demonstrate full compliance with respect to the requirements that apply to the type, class or category of swap or activity that fall within its limited designation, the rule does not contemplate the need for its counterparty to implement technical capabilities to consider which swaps fall inside and outside of that scope. In the case of determining the Reporting Party in accordance with Part 45.8, such clarity is necessary in order

⁴ 17 C.F.R. 1.33(ggg)(4)(iv).

⁵ 17 C.F.R. 1.33(ggg)(4)(i).

⁶ 17 C.F.R. 3.33(f).

⁷ 17 C.F.R. 1.33(hhh)(5).

⁸ 17 C.F.R. 1.33(ggg)(3).

⁹ 17 C.F.R. 1.33(hhh)(2).

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to designate a single Reporting Party for the swap. The parameters (i.e., specific activities or specified categories) under which a LD may be granted under CFTC rules may differ from case-to-case, which means that it may not be possible for static data and reporting logic to accommodate the demarcation between the LD and the applicant's other swap activities and, in any event, Reporting Parties are unlikely to anticipate all possibilities in order to proactively build static data and reporting logic that is flexible enough to accommodate all undetermined parameters. As a result, they require lead time in each case of a LD to assess their ability to adjust their static data and reporting logic, and then, when necessary and practicable, develop and test necessary changes. Even if their systems are capable of accommodating the conditions of the LD, Reporting Counterparties will still require advance notice to make the necessary static data changes concurrent with the relevant effective date.

We further note that Reporting Parties will not have insight into whether a SD or MSP with LD has met and continues to comply with the conditions, if any, prescribed by the CFTC in the relevant Order of Limited Purpose Designation (the "LD Order"), either in general or with respect to a particular swap. Significantly, Reporting Parties may not be able to ascertain whether a particular swap is within or outside the LD due to its conditions (e.g., that the swap be a "non-dealing" swap of the LD entity).

To date, the Commission has granted two LDs and one deregistration¹⁰:

1. Cargill, Incorporated¹¹ ("Cargill"), effective October 29, 2013 (the "Cargill LD")
2. State Street Bank and Trust Company¹² ("State Street"), effective December 19, 2013 (the "State Street LD")
3. The Hong Kong & Shanghai Banking Corporation Limited ("HBAP"), effective January 16, 2014 (the "HBAP deregistration")

II. Impact statements

We request that the Commission and DMO staff consider the following impact statements and recommendations in order to (i) clarify its expectations with respect to swaps subject to the approved changes in registration listed above and (ii) establish a standard for future changes in registration approved by the Commission to ensure an orderly implementation and facilitate continuity for Reporting Parties to comply with their obligations under the Reporting Rules which prevents gaps or duplications in reporting that may impact data quality.

Notification

As a result of a change to a SD or MSP's registration status, the obligations of its counterparties will be altered with respect to new swaps, and may be altered with respect to previously reported swaps. Reporting Parties house internal static data sourced from or validated against the National Future Association's ("NFA") SD/MSP registry¹³ (the "Registry") to determine which party will be the

¹⁰ We understand that a limited designation granted to Cargill Financial Services International, Inc. is not in effect since this affiliate was not registered as a Swap Dealer by November 30, 2013 in accordance with the conditions of the LD.

¹¹ <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cargillorder102913.pdf>

¹² <http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ssbtorder121913.pdf>

¹³ <http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML>

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Reporting Counterparty in accordance with Part 45.8. Most parties track SD or MSP status at the party legal entity level (e.g. via its Legal Entity Identifier). Likewise, the Registry is currently only capable of providing SD/MSP registrant status on those grounds.

ISDA requested of staff at the NFA that changes to the Registry be implemented to include the additional data elements pertaining to a deregistration or a LD. NFA staff has advised they will enhance the Registry to include the following:

1. Deregistered firms with the date of deregistration; and
2. An indication of Limited Designation as applicable.

The target date for implementation is April 30, 2014.

However, as the NFA does not currently maintain in electronic format the effective date of a LD nor the key parameters, they are unable to provide these as part of the Registry. Both of these data elements are essential for Reporting Counterparties to determine whether specific trades fall within the scope of the LD, and therefore which party will report. Issuing conditions for a LD in terms that can be managed systematically is essential to parties' ability to comply accurately and consistently in accordance with an LD Order. Therefore we request that the Commission work with the NFA to make the effective date, parameters and conditions of a LD Order available on the Registry.

With respect to a change in registration status, parties expect that changes would apply to new swaps on a going forward basis from the effective date of the corresponding order. However, advance notice is still required to implement a change to static data for the relevant effective date. In the case of the HBAP deregistration no notice was issued by the Commission that this withdrawal from registration was approved. Rather, on the day the change in registration was effective, HBAP was removed from the Registry without explanation or an audit trail. Advance notification is essential for Reporting Parties to update their static data in a cohesive manner that prevents gaps or duplications in reporting. Such notice should not be left solely to the party seeking deregistration, but rather should be made publicly available by the Commission in order to facilitate an industry coordinated approach to requisite operational changes.

Further, Reporting Parties may also be dependent on communication and action by the applicant to facilitate a transition in reporting obligations. For instance, the applicant may need to correct its set-up with (i) third party service providers (e.g. Markitwire or DSMatch) which determine the Reporting Counterparty on behalf of the parties which use their electronic confirmation platforms or (ii) swap execution facilities. Also, additional communication on the part of the applicant may be necessary for Reporting Parties to understand how to determine which trades fall within the scope of the relevant business unit or activity for which a LD was granted.

In order to allow time to operationally facilitate the transition, we request that the Commission issue a publicly available notice with respect to its decision to approve an application for deregistration or LD a minimum of 30 days prior to the effective date of a deregistration and 60 days prior for a LD, especially in the event the conditions are unprecedented. Such notice will allow Reporting Parties to assess the impact, plan for any requisite technological changes and static data updates for the effective date of the LD or deregistration. Despite advance notice, in some cases this suggested notification

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period may be insufficient depending on the difficulty of any technological changes, as further described below.

Technological Requirements

The Cargill LD and State Street LDs require parties to distinguish SD status at a business unit level and asset class level, respectively. The rules even contemplate a LD which may “split the desk” and apply solely to activity involving swaps not entered into for the purposes of hedging a physical position¹⁴. A SD or MSP which is granted such LD must be able to make such a distinction, but all of its counterparties may not be equally privy to activity-level considerations. Most parties’ static data systems are currently not designed to track an SD/MSP registration at a level more granular than the legal entity. Reliance on a pre-trade notification from the counterparty for each single swap transaction as to which swaps fall within the scope of the LD, may not be a feasible or the most prudent solution as it would mainly involve front office personnel and manual processes. The need to report as soon as technologically practicable means that any such logic must be automated to the largest extent possible, in order to ensure timely and accurate reporting. Therefore, if the determination of the Reporting Party is to hinge on whether a transaction is within or outside the scope of the LD, it is essential that Reporting Parties are able to build robust static data and reporting logic that is capable of assessing whether the swap meets the parameters of the LD and hence whether their counterparty is considered a SD or MSP for the swap. In order to ensure they remain in compliance with Commissions rules, Reporting Parties need to have the system capability in place ahead of time, rather than addressing issues and impact after a change in registration has already occurred.¹⁵

In order to allow for consistent global reporting, Reporting Parties are reliant on robust static data that can be used for multi-jurisdictional reporting. Static data distinctions at a business unit, asset class or activity level complicate static data infrastructure and may impact global reporting and so need to be implemented carefully to maintain the quality and accuracy of global reporting. We request that the Commission take into consideration the technological impact on Reporting Parties to ensure that the conditions for a LD are discernible by the counterparties to the SD/MSP with LD.

Reporting Party Responsibility

Based on the LD and deregistrations approved by the Commission to date, it has become apparent that the industry requires guidance from DMO staff with respect to how these changes impact reporting of (i) swaps entered into during any period of no action relief granted to the applicant in advance of the approval and effectiveness of its change in registration status and (ii) swaps entered into prior to the effective date of the change in registration for which the applicant was previously determined to be the Reporting Counterparty and for which continuation data reporting obligations remain.

We note for your consideration that a change to the Reporting Party for a previously reported swap poses operational challenges for both Reporting Parties and market infrastructure providers who have built logic that maintains a Reporting Party determination for the life of the Unique Swap Identifier (“USI”). Consequently, an alternate approach will require technological changes and/or manual overrides.

¹⁴ Fed Reg. 77 at 30646

¹⁵ In the case of the Reporting Rules, any errors or omissions can be corrected, but in the case of other Commission regulations, such as the business conduct rules, it may be too late to remedy.

Summary

We acknowledge that some of the above referenced issues have impact and oversight beyond DMO, and therefore we request that DMO consult inter-divisionally within the Commission to consider these dependencies while reviewing future requests from applicants for changes in their registration status. Building in adequate notification time to market participants in advance of the effective date of the relevant change will allow Reporting Parties and market infrastructure providers, if applicable, to make the necessary changes.

We request that DMO staff consider the operational limitations of the counterparties to the applicant when a request for a change in registration is under consideration by the Commission in order to proactively issue no action relief that allows time for the remaining registrant to development and test any necessary changes to their internal static data source and reporting logic. We are happy to provide input on a case by case basis to help determine what, if any, period of time is needed. Ideally such relief should be provided in advance of the effective date of the LD or deregistration to prevent any gaps or duplications in reporting during the period of relief and to eliminate the need for either party to correct prior errors or omissions, which could be manual in nature.

III. Request for Relief

We acknowledge that Cargill and State Street have made an extraordinary effort to communicate their expectations, plans and actions with their counterparties in order to facilitate the transition of reporting obligations. However, parties may still face technological challenges and interpretive questions persist, potentially impacting the quality of reporting.

As explained above, most Reporting Parties do not currently have the technological capabilities to distinguish a Swap Dealer at the business unit level and/or asset class level in accordance with the conditions for the Cargill LD and State Street LD, respectively. As a result, they may be assigning themselves as the Reporting Party for all swaps between themselves and these counterparties, resulting in duplicate reporting in cases where either Cargill or State Street, as applicable, has assumed the Reporting Party obligation. Alternatively, the LD entity and its SD counterparty may be assigning the Reporting Party obligation in accordance with industry best practice¹⁶, resulting in cases where neither party is reporting the swap. Reporting Parties require time to clarify which trades fall within the scope of the relevant LD and develop and test the necessary changes to their static data infrastructure and reporting logic in order to determine the Reporting Party in accordance with the stated scope of each of the Cargill LD and State Street LD.

Further, there may be uncertainty in these cases as to which party was responsible for:

- (i) reporting new swaps entered into prior to the effective date of the applicable LD (but during the time that the Commission may have granted no-action relief while the application was under consideration); and
- (ii) reporting swaps entered into prior to the effective date of the applicable LD for which continuation data reporting obligations remain.

¹⁶ http://www2.isda.org/attachment/NjE3Ng==/Reporting%20Party%20Requirements_16Dec13_Final.pdf

Therefore, there may be cases where either both or neither party has reported the swap or the most recent events on the swap or a Reporting Party may have incorrectly reported whether the non-reporting party is a SD with respect to the swap. In either case, time is needed for corrective action once it is clear which party is responsible for any duplications or omissions, as applicable.

As a result of the conditions described, ISDA respectfully requests that DMO recommend that enforcement action not be taken against a Reporting Party which either over or under reports, or incorrectly reports the Swap Dealer status with respect to its swaps with Cargill or State Street until June 30, 2014. Such date assumes a timely response to the request for interpretive guidance below.¹⁷

IV. Request for Interpretive Guidance

We request that DMO issue an interpretive letter which provides guidance with respect to the parties' respective obligations under the Reporting Rules in the event of a LD or deregistration, as follows:

- a. The Reporting Counterparty is determined at point of execution and remains throughout the life of the swap and its USI. Therefore any change in registration status does not impact the Reporting Party for swaps entered into prior to the effective date of a LD or deregistration with respect to either Part 43 or Part 45 reporting requirements.
- b. The original Reporting Party for the swap remains responsible for the continuation data requirements under Part 45 for the remaining life of the USI for a swap entered into prior to the effective date of the change in registration. In the event of a lifecycle event which changes the parties to the swap (e.g., a novation), or otherwise results in the assignment of a new USI, the parties would reassess the Reporting Party in accordance with Part 45.8¹⁸ and issue a new USI based on the then current respective registration status of the parties.
- c. The SD/MSP which is granted a change in registration status continues to be treated as a SD/MSP for purposes of meeting any reporting obligations for swaps entered into prior to the effective date of the change in registration status. To the extent such obligations were not met during a period of relief made available to the applicant while the Commission was reviewing the application for LD or deregistration, the applicant would be responsible for resolving any errors or omissions following the effective date of the change in registration.
- d. Absent a notification by the Commission of change in status, and a corresponding update on the Registry, Reporting Parties may assume that a SD or MSP which has been granted a LD has complied and continues to comply with the conditions, if any, set forth in the relevant LD Order. And therefore, the Reporting Party may assume the LD is in effect and applies, as

¹⁷ Additional time may be needed after June 30, 2014 for Reporting Parties to correct in the SDR data which previously has been incorrectly reported by the Reporting Party, as applicable.

¹⁸ Instances where Part 45.8 permits the parties to agree on which of them is the Reporting Party would be unaffected by the requested interpretive letter.

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appropriate, to their mutual swaps. In addition, a Reporting Party may reasonably rely on representations from the LD entity regarding its SD status with respect to a particular swap.

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

Sincerely,



Robert Pickel
Chief Executive Officer
International Swaps and Derivatives Association, Inc.

cc:

Laurie Gussow, Special Counsel, Division of Market Oversight, CFTC
David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC
Nancy Markowitz, Deputy Director, Division of Market Oversight, CFTC

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 April 4, 2014 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,



Robert Pickel
Chief Executive Office
International Swaps and Derivatives Association, Inc.