

January 27, 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: Revised request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Reporting Requirements for Block Trade Indicator

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc. (“ISDA”) and its members recognize the importance of the Part 43 and Part 45 regulations (the “Reporting Rules”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) and strongly support initiatives to increase regulatory transparency. We also appreciate the assistance of Commission staff to date to provide direction and clarification where possible as our members continue efforts to comply with the Reporting Rules. However, challenges remain, and therefore, ISDA, on behalf of its members that are “reporting parties” under Part 43¹ and “reporting counterparties” under Part 45² (collectively, “Reporting Parties”), hereby request relief from certain requirements under the Reporting Rules, as explained below.

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 62 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.

On October 29, 2013, ISDA submitted a revised request to the staff of the CFTC’s Division of Market Oversight (“DMO”) requesting relief pertaining to certain obligations of its members under the Reporting Rules with respect to the determination and reporting of the block trade indicator for Part 45. This request updated the request filed on July 24, 2013. As challenges still

¹ 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].”

² 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.”

remain with respect to meeting these obligations, we are submitting this revised request based on the current circumstances in order to renew our request for relief.

I. Background

On May 31, 2013, the Commission published 17 CFR Part 43, Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades; Final Rule (the “Final Rule”)³. Upon review of the Final Rule, ISDA, on behalf of its members that are Reporting Parties, raised questions to Commission staff in order to obtain guidance with respect to certain aspects of the Final Rule necessary to determine whether the swaps in the credit and interest rates asset classes can be treated as a block trade or large notional off-facility swap (a “block trade”). ISDA is extremely grateful for clarifications provided by staff affirming both in which aspects our proposals were within the meaning of the Final Rule and where such proposals do not align with the meaning of the Final Rule. These clarifications included treatment of (i) spread group for credit, including options (ii) cross-currency swaps for interest rates (iii) tenor for spot-starting swaps and forward-starting swaps for interest rates and (iv) tenor for options for both asset classes (each a “covered swap”).

As a result of those discussions and clarifications pertaining to the meaning of aspects of the Final Rule, technological changes have been made in order to accurately apply a block trade indicator for purposes of Real-time reporting under Part 43 for relevant covered swaps. However, determination of the block trade indicator for primary economic terms (“PET”) reporting presents its own challenges, as it is not entirely clear how to treat the effect of various lifecycle events in reporting PET data as they relate to the block trade indicator.

Although multiple events related to a particular swap may be individually analyzed at points of execution to determine whether the minimum block size for each event has been met according to the Final Rule for the purpose of Real-time reporting, there is ambiguity with respect to whether and how each lifecycle event that is independently reported under Part 43 affects the corresponding PET reporting for the Unique Swap Identifier (“USI”).

For example:

- A swap is executed and reported for Part 43 and Part 45 as a block trade in accordance with Appendix F of the Final Rule.
- Subsequently, a price forming lifecycle event occurs whereby:
 1. The lifecycle event on its own is evaluated as a block trade; and
 2. The remaining position falls below the notional block trade threshold in Appendix F.

In this scenario, it is not clear whether the block trade indicator for the original USI should remain as “yes,” or should be reevaluated due to the subsequent lifecycle event. Reporting parties believe the block trade indicator should not be reassessed since the lifecycle event does

³ 78 Fed. Reg. 32865 (May 31, 2013).

not change whether a delay in public dissemination and/or a notional cap was applied to the original swap.

Verification that this approach meets the expectations of Commission staff has been sought on a number of occasions on behalf of our membership in an effort to ensure the technological changes to determine and report the block trade indicator value for PET data are done in a manner which will ensure the CFTC receives consistent, meaningful data from the Swap Data Repository ("SDR"). In absence of staff's verification, Reporting Parties have proceeded with implementation based on the approach described above.

For firms that utilize an ancillary service to determine the block trade indicator, corresponding changes are required to this service so that the block trade indicator is appropriately carried from Part 43 to Part 45 reporting in accordance with the approach described above for lifecycle events. Many firms that report to DTCC's SDR rely on DTCC's ancillary service to determine the block trade indicator, since doing so ensures consistent determination in accordance with the Final Rule and obviates the need for individual Reporting Parties to build complex logic already developed by the SDR. However, changes to DTCC's ancillary service will not be released before April 18, 2014.

II. Relief request

In consideration of the above-referenced challenges, ISDA respectfully requests that DMO recommend that enforcement action not be taken against Reporting Parties which either (i) persist the value determined for Real-time reporting to PET data reporting in accordance with their current technological build or (ii) do not include the block trade indicator, in each case, in their PET report for a swap in any asset class through and including April 18, 2014.

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: David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC
Nancy Markowitz, Deputy Director, Division of Market Oversight, CFTC
Laurie Gussow, Special Counsel, 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 January 27, 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,

A handwritten signature in black ink, appearing to read "Robert C. Pickel". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Pickel".

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