

September 23, 2013

Mr. David Van Wagner, Chief Counsel  
Ms. Nancy Markowitz, Deputy 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 Swaps executed on a Swap Execution Facility**

Dear Mr. Van Wagner and Ms. Markowitz:

On July 24, 2013, the International Swaps and Derivatives Association, Inc. (“ISDA”) submitted a request to the staff of the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) requesting relief with respect to certain obligations of its members under the CFTC’s Part 43 and Part 45 regulations (the “Reporting Rules”) with respect to swaps executed on or pursuant to a swap execution facility (“SEF”). As we have not yet received a response to our request, we wanted to take the opportunity to provide additional details and clarifications in support of our original request that we are able to further articulate based on the experiences of our members as they have progressed in their efforts to plan and implement changes to comply with their reporting obligations for swaps executed on or pursuant to the rule of a SEF beginning October 2, 2013 (the “Compliance Date”).

ISDA and its members recognize the importance of the Reporting Rules of the Commission and strongly support initiatives to increase regulatory transparency. We also appreciate the efforts of Commission staff to date to provide direction and clarification where possible as our members continue preparations for complying with the Reporting Rules. However, challenges remain, and therefore, ISDA, on behalf of its members that are “reporting parties” under Part 43<sup>1</sup> and “reporting counterparties” under Part 45<sup>2</sup> (collectively, “Reporting Parties”), hereby request relief from certain requirements under the Reporting Rules, as explained below.

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<sup>1</sup> 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].”

<sup>2</sup> 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.”

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.

## **I. Discussion**

### **A. Background**

On June 4, 2013, the Commission published 17 CFR Part 37, Core Principles and Other Requirements for Swap Execution; Final Rule (the "Final Rule"). In connection to the Final Rule, footnote 7 of CFTC Letter No. 13-28<sup>3</sup> issued by staff from the Commission's Division of Market Oversight ("DMO") on June 17, 2013 (the "No Action Letter") provides that "if temporary SEF registration status is requested and granted on or before October 2, 2013, the facility must immediately come into full compliance with all applicable SEF rules and regulations upon the effective date of its temporary registration status and can no longer operate pursuant to the no-action relief provided herein".

At such time, the obligations of the SEF under the Reporting Rules will commence and the obligations of the Reporting Party will be altered accordingly, effectively transferring certain responsibilities for swaps executed on the SEF. Such responsibilities include reporting of publicly reportable swap transaction data under Part 43 and creation data, including primary economic terms and confirmation data, under Part 45, as well as creation and transmission of the Unique Swap Identifier ("USI"). In order to ensure continuity, avoid either gaps or duplications in reporting, and to facilitate reporting of all swap data to a single swap data repository ("SDR") in accordance with Part 45.10, such transition must be well-coordinated between SEFs, Reporting Parties, Derivatives Clearing Organizations ("DCOs") and infrastructure providers such as middleware platforms which currently play a role in communicating or reporting swaps. The coordination, build and testing of new flows of reporting data is complex and will take time to accomplish in a manner that preserves data quality and allows Reporting Parties to fully and accurately comply with their reporting obligations. Following is a non-exhaustive description of some primary factors which will impact the success of this transition.

### **B. Suppression of Creation Data**

The development necessary for Reporting Parties to alter their current reporting infrastructure to comply with SEF executed swaps in accordance with the Reporting Rules includes suppressing their publicly reportable swap transaction data and creation data messaging for the relevant swaps for each SEF which is granted temporary registration with whom they transact. Although Reporting Parties intend to suppress reporting of creation data for swaps executed on or pursuant to a SEF, operational challenges are expected to impact the completeness and accuracy of such changes. Onboarding and connectivity to SEFs is only just beginning and new SEFs are applying for or being granted temporary registration with increased frequency. Proper testing of

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<sup>3</sup> Staff No-Action Relief: Extension of the Regulatory Status Quo Established with Respect to Certain Transactions by the Commission's Second Amendment to the July 14, 2011 Order for Swap Regulation

the data flows between Reporting Counterparties and SEFs is essential prior the transition of reporting responsibilities. The pressure to expedite on-boarding and a lack of ability and readiness of SEFs to test these flows, means Reporting Parties are left with a great deal of uncertainty as to whether and how the SEFs are ready to meet their creation data reporting obligations. Since the Reporting Party is directly dependent on the SEF to transmit key pieces of data as part of their reporting process, the extent to which a SEF is able to meet its obligations directly impacts the ability for the Reporting Party to meet its continuation data reporting requirements. Thus, the respective reporting obligations of Reporting Parties and SEFs cannot be considered in isolation. The following sections provide additional examples of this reliance and the relevant impact.

### C. Unique Swap Identifiers

Part 45 provides that the SEF must create and transmit the USI for swaps executed on its facility. Reporting Parties need to implement changes to support and test new flows with SEFs, DCOs and other market infrastructure providers in order to suppress generation of their own USIs and instead consume, retain and reuse the USIs provided by the SEFs to further meet their recordkeeping and swap continuation data reporting requirements pursuant to Part 45. These are fundamental changes to the processing of USIs which will require testing between the parties for a variety of flows across asset classes. Such effort is dependent upon SEF applicants communicating their intentions and technical specifications with the relevant parties far enough in advance of their registration to allow an orchestrated implementation. With the Compliance Date nearing, Reporting Parties are of the understanding that some temporarily registered SEFs will not be in a position to both create and timely transmit the USI to the parties. Without this value, the Reporting Party cannot meet its continuation data reporting requirements unless they generate their own USI, thus resulting in multiple USIs for a swap and impacting the completeness and quality of the reported data.

### D. Reporting Counterparty determination

Under Part 45.8, the SEF is required to determine the reporting counterparty to the swap in order to report all swap creation data. As Reporting Parties have begun reviewing the rulebooks provided by SEF applicants, it has become apparent that not all SEFs plan to follow the reporting party logic which has been agreed by the industry<sup>4</sup> in cases where the parties are of the same classification and therefore a reporting counterparty cannot be determined solely in accordance with 45.8. This industry standard logic was established via broad input of Reporting Parties and is currently in use in multiple jurisdictions by both Reporting Parties and a variety of market infrastructure providers (i.e. middleware and electronic confirmation platforms) to meet current reporting obligations. If SEFs have not adopted the industry logic, in some cases they will make a determination that contradicts it. This will negatively impact the quality of the data reported to an SDR for the swap as in some cases it will result in either both parties sending continuation data or neither.

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<sup>4</sup> [http://www2.isda.org/attachment/NTc0Nw==/Reporting%20Party%20Requirements\\_15July13.pdf](http://www2.isda.org/attachment/NTc0Nw==/Reporting%20Party%20Requirements_15July13.pdf)

To better illustrate this point, it helps to understand that Reporting Parties are split as to how they will determine whether they have the continuation data reporting requirement with respect to a swap. In some cases, Reporting Parties intend to determine the reporting counterparty in accordance with the industry standard logic they have already implemented and are currently using to determine when they have reporting responsibilities. In other cases, Reporting Parties intend to consume and follow the value determined by the SEF. As such, in the event the SEF determines the reporting counterparty (“RCP”) contrary to industry standard, both parties will not agree with the SEF’s determination and either a gap or duplication in continuation data reporting will result.

Example 1:

- Party A has built to use SEF RCP value; Party B follows industry agreed logic.
- SEF determines the RCP as Party A contrary to industry standard.
- As a result both Party A and Party B will send in continuation data reporting.

Example 2:

- Party A has built to use SEF RCP value; Party B follows industry agreed logic.
- SEF determines the RCP as Party B contrary to industry standard.
- As a result neither Party A nor Party B will send in continuation data reporting.

It is not clear why some SEFs have included a different proprietary logic for determining the reporting counterparty in their rulebooks and further dialogue is required to resolve. But absent a valid reason, Reporting Parties feel strongly that SEFs should adopt the industry logic which has been established. Provided they do so, the method that Reporting Parties implement to decide when they have continuation data reporting requirements for swaps executed on or pursuant to a SEF will not matter since the determination will be the same.

In addition, Reporting Parties have recently learned that some SEFs do not intend or will not be prepared to communicate their reporting counterparty determination to the parties, leaving Reporting Parties that have built to consume a value from the SEF unable to meet their continuation data reporting requirement unless they make changes to determine this value themselves where one has not been provided. Reporting Parties should be able to rely on receipt of a standard set of data from SEFs instead of having to alter their reporting infrastructure to accommodate for differences.

#### E. Shape of swap

Since comprehensive information from SEFs about the way in which they will represent and report the swaps they intend to offer is neither broadly available nor tested, there will be cases in which the shape of a swap does not align between the SEF and Reporting Party (e.g. one knows a straddle; the other each of a put and a call). If the SEF submits creation data reporting for a composite swap in different shapes than is booked by the Reporting Party, then the Reporting

Party will be unable to submit continuation data reporting that aligns with the number of USIs created by the SEF and the corresponding data that has been reported. These standards are expected to be sorted over time, but the extent to which they may impact the ability to report and the quality of the corresponding data is not yet known and may not be fully addressed prior to the point it becomes necessary for the parties to transact via a SEF.

**F. Reporting to SDR chosen by SEF**

Another major challenge for Reporting Parties is the necessity to connect to and build messaging to SDRs which they are not already using in order to meet their continuation data reporting requirements in accordance with 45.10(a)(2). Since under 45.10(a) the SEF is entitled to select the SDR to which it sends swap creation data, it is likely that at least some of the registered SEFs will select an SDR to which not all Reporting Parties are connected. It is also likely that Reporting Parties will need to connect to multiple SDRs. Each additional SDR to which the Reporting Party needs to connect will prolong the overall development time. The effort may be further hampered by a bottleneck of Reporting Parties looking to establish connectivity and test with the same SDRs. Establishing connectivity, developing and testing the Reporting Party's ability to submit continuation data to additional SDRs is resource intensive both in terms of time and budget, resulting in the need to reprioritize against other reporting related development in order to accomplish.

However, such efforts cannot commence until Reporting Parties have the relevant information from SEF applicants, including which SDR(s) they will use, which Required Transactions and Permitted Transactions<sup>5</sup> they will offer, as well as technical specifications and plans for integrated testing. The scope of Permitted Transactions is particularly difficult to plan for considering that these will vary between SEFs and include both cleared and uncleared swaps, thus greatly increasing the number of transactional flows for which reporting obligations will be altered. Although ISDA is facilitating dialogue between Reporting Parties and potential SEFs, all the relevant information to plan, develop and test SEF related flows to either an SDR to which the Reporting Party is already connected or to another SDR(s) is not yet known. Even if such information were available, the time remaining until the Compliance Date is not sufficient for firms to complete all necessary changes and conduct testing amongst the participants in order to seamlessly transition reporting obligations.

In terms of conveying impact on data quality, it is worth noting that if a SEF does not send creation data to any SDR or if a Reporting Party sends their continuation data to a different SDR than the SEF sent the creation data, the continuation data sent by the Reporting Party may appear as though it is unsuppressed creation data since it can only be submitted as new data rather than as a modification to the creation data since the USI was not previously established at that SDR.

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<sup>5</sup> As defined in the Final Rule

## II. Request for Relief

To the extent possible, Reporting Parties will make all necessary changes as prescribed by the Reporting Rules to transition the relevant reporting responsibilities as and when they begin transacting with each SEF which is granted temporary registration. But to the extent they are unable to do so based on the reasons provided above, Reporting Parties will require additional time in order to complete such efforts with the cooperation of the SEFs in an organized manner that retains the integrity of the reporting process and reported data. Such time period is dependent on SEF preparedness to report all relevant data and which entails providing finalized technical specifications including details on transmission of relevant data to the Reporting Party (e.g. USI, RCP, etc.), the availability of a user acceptance testing (“UAT”) environment and identification of the SDR to which it is connected (altogether, “SEF Preparedness”).

In consideration of the above referenced challenges, ISDA respectfully requests that DMO staff provide no-action relief to Reporting Parties with respect to any duplications or omissions relating to their obligations under the Reporting Rules for swaps executed on or pursuant to a SEF until:

- (i) 45 days after the point at which SEF Preparedness is met with respect to reporting to an SDR to which the Reporting Party is connected and fully functional; and
- (ii) June 30, 2014 with respect to reporting to an SDR to which the Reporting Party is not connected and fully functional provided SEF Preparedness has been met no later than December 31, 2013, otherwise no later than six months after SEF Preparedness has occurred.

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: Hon. Gary Gensler, Chairman, CFTC  
Hon. Bart Chilton, Commissioner, CFTC  
Hon. Scott O’Malia, Commissioner, CFTC  
Hon. Mark Wetjen, Commissioner, 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 September 23, 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  
Chief Executive Officer  
International Swaps and Derivatives Association, Inc.