

October 29, 2013
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.

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.

On July 24, 2013, ISDA submitted a 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. Since that time, our members have implemented changes to meet the requirements outlined in our prior request relating to reporting under Part 43, but still face challenges with respect to reporting under Part 45. As we have not yet received a response to our prior request, we are

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.”

submitting this revised request to update and narrow the scope of reporting obligations from which we are seeking relief.

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

Verification that this proposed approach meets the expectations of Commission staff is essential for the continuation and completion of technological changes to determine and report the block

Revised request for No-Action Relief for Block Trade Indicator

trade indicator value for PET data in a manner which will ensure the CFTC receives consistent, meaningful SDR data. We look forward to working with Commission staff to confirm a solution that aligns with the intent and practical application of the Reporting Rules.

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 the later of (i) January 6, 2014 or (ii) if the guidance provide by DMO staff with respect to impact of lifecycle events on the block trade indicator for PET reporting does not align with the proposal referenced herein, 60 days after the receipt of such guidance.

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
Sebastian Pujol Schott, Associate Director, Division of Market Oversight, CFTC
Stuart Armstrong, Attorney-Advisor, 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 October 29, 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 black ink that reads "Robert C. Pickel". The signature is written in a cursive style with a large initial 'R' and a distinct 'C'.

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