

June 15, 2015

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 Pursuant to CFTC Regulation 140.99: Reporting Requirements for International Swaps (Part 45.3(h))

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc.¹ (“ISDA”) and its members recognize the importance of the Part 45 regulations (the “Reporting Rules”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) and strongly support initiatives to increase regulatory transparency. ISDA previously submitted a letter² to staff of the Division of Market Oversight (“DMO”) requesting relief from the international swaps reporting requirements of §45.3(h) of the Reporting Rules. As discussed in our previous letter on this topic and in ISDA’s response to the CFTC’s Request for Comment on Part 45³, §45.3(h) cannot be complied with efficiently or consistently, and this data requirement contradicts industry and regulatory efforts to harmonize and aggregate data by means of global standards, including use of a global Unique Trade Identifier (“UTI”). Therefore, ISDA, on behalf of its members that are “reporting counterparties” under Part 45⁴ (collectively, “Reporting Parties”), hereby renew our request for relief from the requirements in §45.3(h) until such time as the provisions are revised or removed in order to facilitate alignment with globally standard practices and initiatives to aggregate data.

¹ 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 68 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.

² [http://www2.isda.org/attachment/NjY4Mg==/Request%20for%20NAR%20for%20International%20Swaps%20\(Part%2045%203\(h\)\)_11Feb14_FINAL.pdf](http://www2.isda.org/attachment/NjY4Mg==/Request%20for%20NAR%20for%20International%20Swaps%20(Part%2045%203(h))_11Feb14_FINAL.pdf)

³ http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf, pg. 37

⁴ 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.”

I. Background

Part 45.3(h) requires that with respect to each international swap⁵, the Reporting Party shall report (i) the identity of the non-U.S. trade repository not registered with the Commission to which the swap was also reported and (ii) the swap identifier used to identify such swap. It further provides that if necessary, this information must be obtained from the non-reporting party.⁶

We understand that the purpose of Part 45.3(h) is to provide a mechanism for the Commission and foreign regulators to identify international swaps reported to multiple repositories so that swaps are not double-counted by regulators⁷. We further acknowledge that by including the international swap reporting requirement in the Reporting Rules, the Commission has aligned with the direction of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) to consult and coordinate with foreign regulatory authorities regarding establishment of a consistent international standard for the regulation of swaps⁸. Keeping these objectives in mind, we believe that existing industry standards for global trade identification and an anticipated trade identification standard recommended by global regulatory authorities should be adopted by the Commission to effectively meet the aims of the international swaps reporting requirement, as further described below.

Evolution of the UTI global standard

ISDA is committed to developing and promoting data standards that facilitate consistent, efficient methods for Reporting Parties to agree, implement and maintain values suitable for use in regulatory reporting. For instance, ISDA promoted the *Unique Swap Identifier (USI) Data Standard* issued by the CFTC’s Office of Data and Technology⁹, and worked with industry participants to build a best practice to supplement the USI requirements under the Reporting Rules. ISDA published the results of this collaboration as an industry best practice, *Unique Swap Identifier (USI): An Overview Document*¹⁰ (the “USI standard”), which established standard process flows for treatment of USI and a convention for determining which party should generate the USI. The USI standard has been implemented by Reporting Parties for use in meeting their CFTC reporting requirements and has proven successful.

⁵ 77 Fed. Reg. 2197 (January 13, 2012). Sec. 45.1 *International swap* means a swap required by U.S. law and the law of another jurisdiction to be reported both to a swap data repository and to a different trade repository registered with the other jurisdiction.

⁶ We note that with respect to information relating to reporting of international swaps by non-reporting parties under non-U.S. laws, Reporting Parties are dependent on non-reporting parties providing the relevant information to the Reporting Party (as may be required under relevant agreements among the parties).

⁷ 77 Fed. Reg. 2151 (January 13, 2012)

⁸ Ibid.

⁹ <http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/usidatastandards100112.pdf>

¹⁰ <http://www2.isda.org/attachment/NjE0MQ==/ISDA%20USI%20Overview%20Paper%20updated%202013%20Nov%2018%20v8%20clean.pdf>

In developing an approach for global reporting, ISDA leveraged the USI standard to develop a standard to generate and exchange UTIs in a way that allows one trade identifier globally. Like USI, the goal of the UTI is to have a single trade identifier known by both parties. As the commencement of reporting to Trade Repositories (“TRs”) in foreign jurisdictions has expanded globally in jurisdictions like the European Union, Canada, Singapore, Australia and Hong Kong, many trades are or will be required to be reported to multiple jurisdictions. Rather than the parties to a trade agreeing, maintaining and reporting a distinct USI or UTI value for each jurisdiction to which the trade may be reportable, it is both efficient and prudent to leverage the technological builds developed by Swap Data Repositories (“SDRs”) and Reporting Parties for CFTC reporting to allow submission of a single report with a single UTI to satisfy multiple jurisdictions’ requirements¹¹.

Therefore, our members, through the ISDA Reference Data & Workflow Working Group, developed a standard (the “global UTI standard”) for generating and exchanging a single UTI for purposes of global trade reporting. ISDA published such standards as best practices in the paper *Unique Trade Identifiers (UTI): Generation, Communication and Matching*¹². The CFTC’s required use of a USI Namespace as the prefix for the USI renders the value jurisdiction-specific, and so in order to facilitate a single trade identifier for global reporting, one of the key principles provides that “If a trade requires a Unique Swap Identifier (USI), this should be used at the UTI.”¹³ To date, global regulators, including the European Securities and Markets Authority (“ESMA”), the Hong Kong Monetary Authority (“HKMA”) and the Ontario Securities Commission (“OSC”), have specifically agreed to accept the USI as the UTI for reporting in their jurisdictions. Reporting Parties are using or intend to use ISDA’s global UTI standard best practice to meet their reporting requirements under the rules of the Australian Securities and Investments Commission, HKMA, the Monetary Authority of Singapore, OSC, Manitoba Securities Commission and the Canadian Autorité des Marchés Financiers. ISDA continues to work broadly with foreign regulators and market participants, including non-ISDA members, to enhance and promote the best practice standards to address both cross-jurisdictional reporting and jurisdiction-specific considerations.

Regulatory adoption of a global standard

Despite broad use and acceptance of ISDA’s UTI standard, a single UTI value (to which USI may be a subset), may not be used in all cases by both parties to a transaction as the trade identifier for all their global reporting requirements for a particular transaction since it is not required by the reporting regulations of any jurisdiction that the parties must use a globally uniform UTI.

Global regulators, including the CFTC, have been working diligently to address data quality issues that negatively impact their ability to understand and utilize reported data. Data quality

¹¹ We note that in some foreign jurisdictions, parties are allowed to report directly to the regulator rather than to a TR. In such scenarios, Part 45.3(h) will not apply.

¹² <http://www2.isda.org/attachment/NjE4Ng==/2013%20Dec%2010%20UTI%20Workflow%20v8%207%208%20cl%20an.pdf>

¹³ Id at p. 4.

issues, including the use of a single UTI in all cases, are an impediment to global data aggregation. These issues are being addressed by global regulators through the CPMI-IOSCO Data Harmonization Working Group, which intends to issue recommendations regarding the adoption of global data standards for reporting, including for UTI. Once such recommendations are issued, have been adopted by global regulators into their respective reporting requirements and market participants have had an opportunity to implement any necessary changes to their UTI generation and communication architectures, the use of a single UTI for global reporting should vastly improve the ability for regulators to identify duplicative reporting and aggregate data in an accurate manner.

Meeting the objective of Part 45.3(h)

The use of a single global UTI created in accordance with the uniform requirements of global regulators would meet the Commission's objective to identify international swaps reported to multiple repositories so that swaps are not double-counted and thereby negate the need for the international swaps data reporting requirement of §45.3(h). In the meantime, the same result can be achieved by use of ISDA's global UTI standard. Where the global UTI standard is followed, the swap identifier used to report to the non-U.S. TR as required by Part 45.3(h) will be a global UTI. Because the UTI reported to the TR is the same as the USI reported to the SDR, there would be no need for the Reporting Party to provide an alternate trade identifier value and the identity of the relevant foreign TR. Rather, the CFTC would be able to identify duplicate reporting for an international swap by comparing the USI to the UTI reported to TRs authorized by foreign regulators.

Neither Reporting Parties nor the Commission could have foreseen the precise evolution of a global UTI standard when Part 45 was promulgated. But in consideration of the efficiency of this method for identifying a transaction in reporting to an SDR or TR, we believe that the aim of Part 45.3(h) is or will be substantively met by Reporting Parties by use of a global UTI as reporting requirements in foreign jurisdictions are fulfilled. We further believe that the global UTI standard is currently the best way for global regulators to effectively aggregate global swap data, and that its use provides a consistent international standard for regulating swaps that effectively facilitates data aggregation and allows for information-sharing arrangements among regulators in accordance with the Dodd Frank Act¹⁴.

¹⁴ Dodd-Frank Act. SEC.752. International Harmonization. <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

II. Relief request

In consideration of the development, broad use and acceptance of ISDA's global UTI standard and the efforts of global regulators and the CPMI-IOSCO Data Harmonization Working Group to recommend and adopt a globally endorsed UTI standard, ISDA respectfully requests that DMO recommend that enforcement action not be taken against a Reporting Party which does not provide the "swap identifier" or the "identity of the non-U.S. trade repository" as required by Part 45.3(h) if (i) the Reporting Party has used the USI as the UTI when reporting an international swap to a non-U.S. trade repository not registered with the Commission or (ii) in the case where the non-reporting counterparty reports the international swap to a non-U.S. trade repository not registered with the Commission, the regulator which authorized the TR or its TR accepts the USI as the UTI in the trade report.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Tara Kruse".

Tara Kruse
Director, Co-Head of Data, Reporting and FpML
International Swaps and Derivatives Association, Inc.

cc: Dan Bucsa, 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 June 15, 2015 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 "Tara Kruse". The signature is fluid and cursive, with the first name "Tara" written in a larger, more prominent script than the last name "Kruse".

Tara Kruse
Director, Co-Head of Data, Reporting and FpML
International Swaps and Derivatives Association, Inc.