

October 9, 2013

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

Re: Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Reporting Requirements for Bespoke or Complex Products

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc. (“ISDA”), on behalf of its members that are “reporting counterparties” under Part 45¹ of the regulations of the Commodity Futures Trading Commission (the “Commission” or “CFTC”), hereby requests relief from certain reporting requirements under Part 45 of the Commission’s regulations in connection with certain requirements.

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.

ISDA recognizes the importance of Part 45 of the Commission’s regulations and strongly supports initiatives to increase regulatory transparency. We also greatly appreciate the relief that the Division of Market Oversight (the “Division”) provided to reporting counterparties in CFTC Letter No. 13-35² and the efforts of the CFTC staff over the past several months to work with the industry to provide direction and clarification where possible to members that are reporting counterparties as they began complying with Part 45. ISDA is concerned, however, that despite the ongoing and extensive compliance efforts of our members, ISDA members that are reporting counterparties will be unable to comply with certain aspects of Part 45 that require the reporting of bespoke or complex products. ISDA respectfully requests, pursuant to CFTC regulation

¹ 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.”

² Additional Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission’s Regulations, CFTC Letter No. 13-35 (June 27, 2013); *See* Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission’s Regulations, CFTC Letter No. 12-39 (Nov. 30, 2012).

140.99, that the Division staff provide a staff no-action letter to confirm that the Division will not recommend to the Division of Enforcement that the Commission commence enforcement action against reporting counterparties for failure to comply with certain reporting requirements of Part 45 of the Commission's regulations for bespoke or complex products, as described herein. ISDA requests relief from such reporting requirements starting on the expiration of the no-action relief provided under CFTC Letter No. 13-35 for each reporting counterparty and for a period of time thereafter as explained below.

On June 20, 2013, ISDA requested Division staff no-action relief from specific provisions of Parts 43 and 45 for reporting counterparties with respect to the reporting of certain enumerated data fields for bespoke or complex products. The Division responded to the request by issuing CFTC Letter No. 13-35 on June 27, 2013 which granted time-limited no-action relief for bespoke or complex swaps from certain of the requirements under Parts 43 and 45.³ Specifically, CFTC Letter No. 13-35 provides no-action relief from certain provisions of Part 45 for "bespoke or complex" swaps⁴ until September 30, 2013.

In our June 20, 2013 request, we explained that the industry was working to implement version 5.5 of FpML,⁵ which adds the Part 43 and Part 45 data fields listed in Appendix A to this request, by September 30, 2013. We are pleased to report that since the issuance of CFTC Letter No. 13-35, market participants have worked to implement version 5.5 of FpML and, as a result, going forward all data fields specified in Appendix A to this request are capable of being reported pursuant to the CFTC's regulations. We also note that FpML version 5.5 includes extensions for FX digital options, barrier options, callable forwards and enhancements for non-dollar NDFs. Accordingly, the percentage of complex or bespoke FX trades, currently around 7% of the overall FX trade volume, is expected to fall to close to 1% as a result of the implementation of FpML version 5.5.

³ The CFTC and Securities and Exchange Commission highlighted the problem of electronically representing bespoke or complex swaps in their April 7, 2011 study entitled, *Joint Study on the Feasibility of Mandating Algorithmic Descriptions for Derivatives*. The CFTC Technology Advisory Committee (TAC) brought out recommendations to the Commission in December 2012. Additionally, ISDA raised the issue with the Commission in a July 3, 2012 letter to Chairman Gensler that discussed compliance challenges with CFTC reporting rules. See ISDA letter to Chairman Gary Gensler regarding "CFTC Reporting Rule – Compliance Challenges," July 3, 2012.

⁴ For purposes of this request, "bespoke or complex" will be defined the same as the Division's definition in CFTC Letter No. 13-35. CFTC Letter No. 13-35 defines "bespoke or complex" swaps to be swaps that meet all of the following characteristics: (a) not listed for trading on a designated contract market; (b) not available to be traded on a swap execution facility; (c) not eligible to be cleared by a derivatives clearing organization; (d) not eligible to be confirmed through an electronic matching confirmation system; and (e) not represented in Financial products Markup Language ("FpML"). The Division noted that if a swap that currently qualifies as "bespoke or complex" fails to meet one of the enumerated requirements in the future would cease to be bespoke or complex for purposes of the relief conferred in CFTC Letter No. 13-35.

⁵ ISDA oversees the FpML standard. See FpML information: <http://www.fpml.org/about/factsheet.html>. FpML is the freely licensed business information exchange standard for electronic dealing and processing of privately negotiated derivatives and structured products. It establishes the industry protocol for sharing information on, and dealing in, financial derivatives and structured products over the Internet. It is based on XML (Extensible Markup Language), the standard meta-language for describing data shared between applications.

However, as we have discussed in our previous requests, the requirement to report “Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap” continues to represent a significant challenge in the context of non-standard products. Through discussions and meetings with Division staff and our submissions, we have proposed a solution that consists of reporting such terms via a searchable document with the respective swap data repositories (“SDRs”) providing tools that allow regulators to search and analyze data across the two data sets: normalized fields and non-normalized searchable documents.⁶ As part of this dialogue, on ISDA’s request, an SDR has developed a prototype of a tool that would allow regulators to search and analyze data across both normalized fields and non-normalized searchable documents. ISDA has demonstrated a prototype version of this search tool to Commission staff to obtain feedback from staff to understand if such solution, in connection with process for continued standardization of bespoke or complex swap data fields, is acceptable. To date, we have not received guidance or feedback from Commission staff on the proposed approach for reporting non-normalized data fields (i.e., the “any other term(s) ...” data field) for Part 45. We note that implementation of the proposed searchable document solution will cause reporting counterparties to incur costs to implement the appropriate technology for compliance. Further, reporting counterparties and service providers will need significant time to change their current market practices and internal processes and operations to implement such a searchable document solution. We have requested further guidance from the Division and the Commission on this proposed solution prior to industry-wide implementation.

Accordingly, we respectfully request that the Division staff provide no-action relief to reporting counterparties from the PET data reporting requirements of Part 45 for bespoke or complex swaps (including both swaps with third parties and inter-affiliate swaps) for the reporting of the “any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap” data field for all asset classes until 90 days after reporting counterparties receive guidance from Commission staff that the solution described above is acceptable, so that they can implement such solution.⁷ Reporting counterparties are committed to reporting the “any other terms ...” data field “as soon as technologically practicable” and are committed to implementing a solution in an appropriate timeframe, once Commission staff agrees on the industry approach.⁸ Within these limitations, the specific regulations from which we are requesting no-action relief include CFTC regulations 45.3(b)(1), 45.3(c)(1)(i), 45.3(c)(2)(i), 45.3(d)(1), 45.4(c) and Appendix 1 to Part 45.

In addition we respectfully request that the Division staff extends the relief previously granted in CFTC letter no 13-35, for swaps between affiliates that are not submitted for clearing

⁶ Normalized data fields include those enumerated data fields under Appendix A to Part 43 and Appendix 1 to Part 45, whereas non-normalized data would include the “any other term(s) ...” data field and confirmation data required to be reported under Part 45.

⁷ Further discussions need to be had with the SDRs on their timeline to make the tools available to the CFTC.

⁸ Guidance substantially diverging from the industry proposed solution described above might require a longer implementation time.

(“uncleared inter-affiliate swaps”) and for which paper confirmations are not generated, for the same period of time.

ISDA and its members continue to work to develop a roadmap that will aim to streamline the continued standardization of products in future versions of FpML. This process will continue to reduce the number of bespoke or complex products by identifying any such products that may have sufficient activity or other characteristics to become standardized. As discussed in our previous request, ISDA will provide the Division and the Commission with the roadmap to standardization of products, including the factors that will be considered in identifying such products for standardization and keep the Division apprised of updates to the roadmap and progress towards standardization.

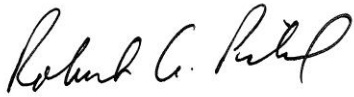
In summary, the industry continues to make great strides to standardize and electronically represent bespoke or complex swaps. However, additional time is needed for reporting counterparties to develop and implement the searchable document solution once additional guidance is provided by the Division and Commission. Without relief from Division staff, reporting counterparties will be placed in the difficult position of having to abstain from important risk management transactions or being unable to meet certain of the particular reporting requirements in respect of such transactions. Such a result would likely push business for bespoke or complex swaps offshore, beyond the CFTC’s jurisdiction. Further, market participants, such as commercial end-users, may not have the ability to enter into customized swaps to hedge or mitigate their commercial risk and may therefore be forced to hedge using more costly alternatives.

ISDA is committed to continue working with Division staff and the Commission to further develop and implement an industry-wide solution to provide of information in relation to bespoke or complex swaps in an electronic, searchable manner. The industry looks forward to continued discussions of the solutions with staff. Pursuant to Commission regulation 140.99(c)(7), ISDA also asks that if no-action relief under this request is denied in whole or in part, the Division staff consider granting alternative relief for reporting counterparties, under the facts and circumstances described in this request. If, prior to the issuance of a letter, any material representation made in this request ceases to be true and complete, ISDA will promptly inform the Commission staff in writing of all materially changed facts and circumstances. Further, if a change in material facts or circumstances described in this request occurs subsequent to the Division’s issuance of a letter, ISDA will promptly inform the Commission staff.⁹

⁹ An authorized representative of ISDA will undertake to provide these notifications as required under Commission regulation 140.99(c)(3)(ii).

Thank you for your consideration of these very important issues to market participants.
Please contact ISDA staff if you have any questions or concerns.

Yours sincerely,



Robert Pickel
Chief Executive Officer
ISDA

cc: David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC
Nancy Markowitz, Deputy Director, Division of Market Oversight, CFTC
Sebastian Pujol Schott, Associate Director, Division of Market Oversight, CFTC
Laurie Gussow, Special Counsel, Division of Market Oversight, CFTC
Brian Robinson, Attorney-Advisor, Division of Market Oversight, CFTC
Stuart Armstrong, Attorney-Advisor, Division of Market Oversight, CFTC
George Pullen, Economist, Division of Market Oversight, CFTC

APPENDIX A

Part 43 data fields

- (1) day count convention
- (2) unique product identifier (“UPI”)¹⁰
- (3) payment frequency
- (4) reset frequency
- (5) option strike price
- (6) option family
- (7) option lockout period

Part 45 data fields

Credit and equity swaps

- (1) UPI
- (2) payment frequency of the reporting counterparty
- (3) payment frequency of the non-reporting counterparty

Foreign exchange transactions (other than cross-currency swaps)

- (1) UPI
- (2) delivery type

Interest rate swaps (including cross-currency swaps)

- (1) UPI
- (2) day count convention
- (3) payer (fixed rate)
- (4) payer (floating rate leg 1)
- (5) payer (floating rate leg 2)
- (6) direction
- (7) fixed day count fraction
- (8) floating rate payment frequency
- (9) floating rate reset frequency

Other commodity swaps

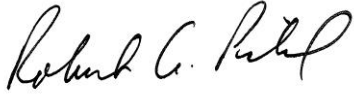
- (1) UPI
- (2) quantity
- (3) quantity frequency
- (4) total quantity
- (5) settlement method
- (6) buyer pay index
- (7) buyer pay averaging method
- (8) seller pay index
- (9) seller pay averaging method

¹⁰ We note that the UPI data field, which is required in Parts 43 and 45, is supported by FpML version 5.5; however, at this time no UPI methodology has been defined so it is not reportable across all asset classes. When the UPI methodology is defined, the UPI fields will be reported pursuant to Part 43 and Part 45.

- (10) option style
- (11) hours from through
- (12) hours from through time zone
- (13) days of week
- (14) load type

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required pursuant to Commission regulation 140.99(c)(3), I hereby certify that the material facts set forth in the attached letter dated October 1, 2013 are true and complete to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Robert G. Pickel". The signature is written in a cursive style with a large initial 'R'.

Robert Pickel
Chief Executive Officer
ISDA