

July 24, 2013

Mr. Richard Shilts
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 Block Trade Indicator

Dear Mr. Shilts:

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 efforts of Commission staff over the past several months 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 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 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 obtain clarification with

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.”

Request for No-Action Relief for Block Trade Indicator

respect to certain aspects of the meaning 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 recent discussions and clarifications pertaining to the meaning of aspects of the Final Rule, technological changes will need to be made in order to apply a block trade indicator accurately for purposes of Real-time reporting under Part 43 for relevant covered swaps. It is the intention of Reporting Parties to fully comply with the Final Rule and the Reporting Rules; however, due to the timing of pertinent clarifications, Reporting Parties will be unable to implement the necessary changes for all covered swaps by July 30, 2013, the Effective Date of the Final Rule.

To the extent firms are unable to accurately report whether a publicly reportable swap transaction is a block trade for covered swaps as provided above, such determination may carry over to the corresponding Primary Economic Terms data (“PET”) under Part 45. Further, as Reporting Parties have been working to comply with this PET reporting requirement for all asset classes, it has become apparent that reporting the block trade indicator field under Part 45 is more complex than anticipated. More specifically, Reporting Parties believe the block trade indicator in the PET data should be treated as static data related to the creation data; however there is not always a one-to-one pairing of Part 43 and Part 45 reporting such that the value can simply be carried over. In some cases a trade is not a publicly reportable swap transaction so there is no predetermined value. In other cases, the publicly reportable swap transaction may have been a pre-allocation trade, and it is unclear how and whether the value from the Part 43 report should translate to the corresponding post-allocation PET data. The impact of various lifecycle events on the block trade indicator for PET data is also under discussion. The industry needs time to both agree on a best practice and build the reporting logic to 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 staff from the Commission’s Division of Market Oversight (“DMO”) recommend that enforcement action not be taken against Reporting Parties which treat a covered swap as a block trade in Real-time reporting in accordance with their current technical capabilities until the earlier of such time as a Reporting Party can implement the relevant changes and corrections or until October 28, 2013.

In addition, 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 of a covered swap in accordance with their current technological limitations or (ii) do not include the block trade indicator, in each case, in their PET report for a swap in any asset class until the earlier of such time as the Reporting Party can implement the relevant changes or until October 28, 2013.

Request for No-Action Relief for Block Trade Indicator

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

Sincerely,

A handwritten signature in black ink that reads "Robert C. Pickel". The signature is written in a cursive style with a large, prominent 'R' at the beginning.

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

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 July 24, 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, prominent 'R' and 'P'.

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