

February 12, 2014
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: Valuation Data Reporting for Cleared Swaps (Part 45.4(b)(2)(ii))

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc. (“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. However, challenges remain, and therefore, ISDA, on behalf of its members that are “reporting counterparties” under Part 45¹ (collectively, “Reporting Parties”), hereby request relief from certain requirements under the Reporting Rules, as explained below.

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 62 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.

I. Background

On December 13, 2012, ISDA submitted a request to staff of the CFTC’s Division of Market Oversight (“DMO”) requesting no-action relief on behalf of its members, and other similarly situated market participants, from the requirements of Part 45.4(b)(2)(ii) of the Reporting Rules.

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.”

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In response to ISDA's request, DMO issued CFTC Letter No.12-55² which granted conditional relief to Swap Dealers and Major Swap Participants from their obligations under Part 45.4(b)(2)(ii) until June 30, 2013. Subsequently, DMO extended such relief until June 30, 2014 under CFTC Letter No. 13-34³ ("NAL 13-34").

ISDA and its members are grateful for the relief granted by Commission staff with respect to Part 45.4(b)(2)(ii). Unfortunately, the conditions that prompted the original request for relief, and the subsequent extension, remain. Reporting Parties require certainty as to (i) their obligations with respect to valuation data reporting for cleared swaps and (ii) whether any such reporting of valuation data for cleared swaps may be sent to the Swap Data Repository ("SDR") of their choice or may be required to be sent to the SDR selected by the Derivatives Clearing Organization ("DCO").

Certainty on these points is essential before Reporting Parties can commence (i) reporting valuation data to an SDR to which they are already connected or (ii) onboarding, development and testing necessary to submit valuation data to an SDR to which they are not already connected and live with reporting. Such work may be significant, especially in the event reporting to multiple additional SDRs is required. With three provisionally registered SDRs and two further applicants, parties may need to connect to as many as four additional repositories, thus multiplying the time and effort required to prepare.

Although the relief extended under NAL 13-34 is still in effect until June 30, 2014, there is no clear indication that a resolution of the outstanding legal uncertainty with respect to reporting of valuation data for cleared swaps by Reporting Parties is imminent. Depending on the outcome, Reporting Parties believe they might need at least six months to complete the necessary onboarding, development and testing. Therefore, on their behalf, ISDA is proactively seeking an extension of NAL 13-34.

II. Relief request

In consideration of the conditions described above, ISDA respectfully requests that DMO further extend the relief granted pursuant to NAL 13-34 and thereby recommend that enforcement action not be taken against a Reporting Party which does not report valuation data for cleared swaps as required by Part 45.4(b)(2)(ii) of the Reporting Rules. We request an extension of such relief until January 31, 2015 with the understanding that further relief may be necessary depending on when unambiguous clarification is made available to market participants regarding the obligations of Reporting Parties with respect to Part 45.4(b)(2)(ii) and any corresponding requirements pertaining to the selection of SDR for purposes of reporting valuation data for cleared swaps.

² <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-55>

³ <http://www.cftc.gov/LawRegulation/CFTCStaffLetters/13-34>

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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 cursive script that reads "Robert A. Pickel".

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

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 February 12, 2014 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 A. Pickel".

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