

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 Swaps executed on a Swap Execution Facility**

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 43<sup>1</sup> and “reporting counterparties” under Part 45<sup>2</sup> (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 June 4, 2013, the Commission published 17 CFR Part 37, Core Principles and Other Requirements for Swap Execution; Final Rule (the “Final Rule”). In connection to the Final

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<sup>1</sup> 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].”

<sup>2</sup> 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 Swaps executed on a SEF

Rule, footnote 7 of CFTC Letter No. 13-28<sup>3</sup> issued by staff from the Commission's Division of Market Oversight ("DMO") on June 17, 2013 (the "No Action Letter") provides that "if temporary SEF registration status is requested and granted on or before October 2, 2013, the facility must immediately come into full compliance with all applicable SEF rules and regulations upon the effective date of its temporary registration status and can no longer operate pursuant to the no-action relief provided herein". As a result of the Final Rule and corresponding No Action Letter, temporary registration for a Swap Execution Facility ("SEF") may be effective as soon as August 5, 2013.

At such time, the obligations of the SEF under the Reporting Rules will commence and the obligations of the Reporting Party will be altered accordingly, effectively transferring certain responsibilities for swaps executed on the SEF. Such responsibilities include reporting of publicly reportable swap transaction data under Part 43 and creation data, including primary economic terms and confirmation data, under Part 45, as well as creation and transmission of the Unique Swap Identifier ("USI"). In order to ensure continuity, avoid either gaps or duplications in reporting, and to ensure reporting of all swap data to a single swap data repository ("SDR") in accordance with Part 45.10, such transition must be well-coordinated between SEFs, Reporting Parties, Derivatives Clearing Organizations ("DCOs") and infrastructure providers such as middleware platforms which currently play a role in communicating or reporting swaps. The coordination, build and testing of new flows of reporting data is complex and will take time to fully accomplish, as further explained below.

The development necessary for Reporting Parties to alter their current reporting infrastructure to comply with SEF executed swaps in accordance with the Reporting Rules includes suppressing their publicly reportable swap transaction data and creation data messaging for the relevant swaps on a staggered basis as and when each SEF is granted temporary registration. Suppressing reporting on this basis greatly increases the complexity versus implementing the changes against a singular reporting start date for all SEFs as originally anticipated prior to the issuance of the No Action Letter. Adding to the difficulty is the unlikelihood that Reporting Parties will have sufficient advance notice as to the precise date such temporary registration will be granted by the Commission for each SEF. Suppression of the reporting requires technological changes which cannot be made effective immediately upon notification that registration has been granted and is effective; rather they may require firms to release new development that requires scheduling in order to avoid introducing risk or interruption to the Reporting Party's other obligations pursuant to the Reporting Rules.

Part 45 provides that the SEF must create and transmit the USI for swaps executed on its facility. Reporting Parties need to implement changes to support and test new flows with SEFs, DCOs and other market infrastructure providers in order to suppress generation of their own USIs and instead consume, retain and reuse the USIs provided by the SEFs to further meet their recordkeeping and swap continuation data reporting requirements pursuant to Part 45. These are fundamental changes to the processing of USIs which will require testing between the parties for a variety of flows across asset classes. Such effort is dependent upon parties which intend to

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<sup>3</sup> Staff No-Action Relief: Extension of the Regulatory Status Quo Established with Respect to Certain Transactions by the Commission's Second Amendment to the July 14, 2011 Order for Swap Regulation

register as a SEF communicating their intentions and technical specifications with the relevant parties far enough in advance of their registration to allow an orchestrated implementation.

The greatest challenge for Reporting Parties is the necessity to connect to and build messaging to SDRs which they are not already using in order to meet their continuation data reporting requirements in accordance with 45.10(a)(2). Since under 45.10(a) the SEF is entitled to select the SDR to which it sends swap creation data, it is likely that at least some of the registered SEFs will select an SDR to which all Reporting Parties which utilize that SEF are not connected. It is also likely that Reporting Parties will need to connect to multiple SDRs. Each additional SDR to which the Reporting Party needs to connect will prolong the overall development time. The effort may be further hampered by a bottleneck of Reporting Parties looking to establish connectivity and test with the same SDRs. Establishing connectivity, developing and testing the Reporting Party's ability to submit continuation data to additional SDRs is resource intensive both in terms of time and budget, resulting in the need to reprioritize against other reporting related development in order to accomplish.

However, such efforts cannot commence until Reporting Parties have the relevant information from parties which intend to apply for registration as a SEF, including which SDR(s) they will use, which Required Transactions and Permitted Transactions<sup>4</sup> they will offer, as well as technical specifications and plans for integrated testing. The scope of Permitted Transactions is particularly difficult to plan for considering that these will vary between SEFs and include both cleared and uncleared swaps, thus greatly increasing the number of transactional flows for which reporting obligations will be altered. Although ISDA is facilitating dialogue between Reporting Parties and potential SEFs, all the relevant information to plan, develop and test SEF related flows to either an SDR to which the Reporting Party is already connected or to another SDR(s) is not yet known. Even if such information were available, there is already not enough time for firms to complete all necessary changes and conduct testing amongst the participants in order to seamlessly transition reporting obligations as early as August 5, 2013.

Reporting Parties intend to make all necessary changes as prescribed by the Reporting Rules to the extent they are able to do so to transition the relevant reporting responsibilities as and when each SEF is registered. But to the extent they are unable to do so based on the reasons provided above, Reporting Parties will require additional time in order to complete such efforts in an organized manner that retains the integrity of the reporting process and reported data.

In consideration of the above referenced challenges, ISDA respectfully requests that DMO staff provide no-action relief to Reporting Parties with respect to any duplications or omissions relating to their obligations under the Reporting Rules for swaps executed on a SEF which is granted registration on or prior to October 2, 2013 until the earlier of such time as the Reporting Counterparty can implement the relevant changes and corrections or until (i) October 28, 2013 for swaps subject to reporting to an SDR to which the Reporting Counterparty is already connected and fully functional and (ii) until June 30, 2014 for swaps subject to reporting to an SDR to which the Reporting Party is not connected and fully functional with reporting capability at such time as the swap is executed on the relevant SEF.

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<sup>4</sup> As defined in the Final Rule

**Request for No-Action Relief for Swaps executed on a SEF**

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' and 'P'.

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 cursive script that reads "Robert C. Pickel".

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