

February 11, 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: Reporting Requirements for International Swaps (Part 45.3(h))

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. We also appreciate the assistance of Commission staff to date to provide direction and clarification where possible as our members continue efforts to comply with the Reporting Rules. 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.

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.”

I. Background

Part 45.3(h) of the Commission rules requires that with respect to each international swap², 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.³

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 regulators⁴. 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 swaps⁵. Keeping these objectives in mind, we believe that a better mechanism exists 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 Technology⁶, 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*⁷ (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.

In developing an approach for global reporting, the industry leveraged the USI standard to develop a similar standard to generate and exchange Unique Trade Identifiers (“UTI”) in a way that allows one Trade Identifier globally. Like USI, the goal of the UTI is to have a single trade

² 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.

³ 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).

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

⁵ Ibid.

⁶ <http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/usidatastandards100112.pdf>

⁷ <http://www2.isda.org/attachment/NjE0MQ==/ISDA%20USI%20Overview%20Paper%20updated%202013%20Nov%2018%20v8%20clean.pdf>

identifier known by both parties. As the commencement of reporting to Trade Repositories (“TRs”) in foreign jurisdictions rapidly approaches, certain trades will be required to be reported to multiple jurisdictions. Rather than the parties to a trade agreeing a distinct UTI value for each jurisdiction to which the trade may be reportable, it would seem 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’ requirements⁸.

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*⁹. One of the key principles provides that “If a trade requires a Unique Swap Identifier (USI), this should be used at the UTI.”¹⁰ 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. 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.

Use of this global UTI standard has been implemented by various Reporting Parties for use in EMIR¹¹ reporting and is expected to be implemented by other market participants with reporting obligations under EMIR in due course. Reporting Parties have committed to extending the 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 will continue to engage in proactive dialogue with global regulators as they issue their reporting rules to promote acceptance of the global UTI standard.

Meeting the objective of Part 45.3(h)

A direct benefit of the global UTI standard is the ability for regulators to identify duplication of reported transactions between their jurisdictions and across SDRs and TRs, thus efficiently meeting the objective of Part 45.3(h). 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

⁸ We note that in some foreign jurisdictions, parties are allowed to report directly to the regulator rather to a TR. In such scenarios, Part 45.3(h) will not apply.

⁹ <http://www2.isda.org/attachment/NjE4Ng==/2013%20Dec%2010%20UTI%20Workflow%20v8%207%208%20cle%20an.pdf>

¹⁰ Id at p. 4.

¹¹ European Market Infrastructure Regulation. (Overview of requirements: <http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR>)

international swap by comparing the USI to the UTI reported to TRs authorized by foreign regulators.

We further note that to the best of our knowledge, no other foreign regulators have included a comparable data requirement in their reporting rules mandating reporting of either the identity of a TR authorized by another regulator (including the CFTC) or the relevant trade identifier. Using the global UTI as the international standard for swap data reporting and aggregation reinforces the usefulness of the USI, since foreign regulators otherwise would not know the USI reported by a Reporting Party to an SDR registered with the CFTC.

We acknowledge that further work is necessary to ensure (i) acceptance of the global UTI standard by all regulators that have issued or will issue reporting rules and (ii) implementation of the global UTI standard by all market participants that either have a reporting obligation for a swap in foreign jurisdictions or play a role in meeting the reporting obligation on behalf of such parties (e.g., middleware providers, execution platforms). Therefore there may be cases initially where the USI is not used as the UTI for purposes of reporting to a foreign TR. We believe there will be fewer of these cases over time as reporting obligations commence for additional foreign jurisdictions and as outreach by ISDA and Reporting Parties who support the global UTI standard results in consistent implementation by market participants to reuse the USI as the UTI whenever applicable.

Neither Reporting Parties nor the Commission could have foreseen the evolution of a global UTI standard when Part 45 was promulgated. But in consideration of the efficiency of this alternative method for reporting a unique identifier, we believe that the aim of Part 45.3(h) is or will be substantively met by Reporting Parties by use of the global UTI as reporting requirements in foreign jurisdictions are fulfilled. We further believe that the global UTI standard is 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 Act¹².

II. Relief request

In consideration of the development, broad use and acceptance of the global 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.

¹² Dodd-Frank Act. SEC.752. International Harmonization. <http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>

In addition, ISDA respectfully requests that DMO recommend that enforcement action not be taken against a Reporting Party which does not fulfill the requirements of Part 45.3(h) because either (i) the use of the global UTI standard is not yet accepted for reporting under the laws of the foreign jurisdiction under which the swap was also reported or (ii) the non-reporting party which reported an international swap to a non-U.S. trade repository not registered with the Commission, or the relevant market infrastructure service providers, has not yet implemented the changes necessary to reuse the USI as UTI in accordance with the global UTI standard. We currently believe that within a year reporting requirements may commence in the majority of jurisdictions which have finalized their reporting legislation and parties new to regulatory reporting will have had an opportunity to implement the necessary standards. Therefore we request relief from Part 45.3(h) under these circumstances until January 31, 2015.

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 C. 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 11, 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 black ink, reading "Robert C. Pickel". The signature is written in a cursive style with a large initial "R".

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