ISDA Safe, Efficient Markets

17 CFR Part 43

July 24, 2013

Mr. Richard Shilts, Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20581

Re: Request for Division of Market Oversight Staff Letter Pursuant to CFTC Regulation 140.99: Order Aggregation of "Large Notional Off-Facility Swaps"

Dear Mr. Shilts:

The International Swaps and Derivatives Association, Inc. ("ISDA"), on behalf of its members that are "reporting parties" as defined in CFTC regulation 43.2,[1] hereby requests interpretive guidance or conditional no-action relief from the order aggregation prohibition in Commodity Futures Trading Commission (the "Commission" or "CFTC") regulation 43.6(h)(6)[2] for "large notional off-facility swaps" as such term is defined in CFTC regulation 43.2.[3]

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[1] 17 C.F.R. § 43.2. See Final Rule, Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012) (the "Final Real-Time Reporting Rule"). CFTC regulation 43.2 defines "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 [Commodity Exchange Act ("CEA")]." 77 Fed. Reg. at 1244.

[2] 17 C.F.R. § 43.6(h)(6). See Final Rule, Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 Fed. Reg. 32866 (May 31, 2013) (the "Final Block Trade Rule"). Final CFTC regulation 43.6 provides that: "Except as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size or the cap size requirement is prohibited. Aggregation is permissible on a designated contract market or swap execution facility if done by a person who: (1) (A) Is a commodity trading advisor registered pursuant to Section 4n of the [CEA], or a principal thereof, who has discretionary trading authority or direct client accounts, (B) Is an investment advisor who has discretionary trading authority or directs client accounts and satisfies the criteria of [CFTC regulation 4.7(a)(2)(v)], or (C) Is a foreign person who performs a similar role or function as the persons described in [CFTC regulation 43.6(h)(6)(i)(A) or (h)(6)(i)(B)] and is subject as such to foreign regulation; and (2) Has more than $25,000,000 in total assets under management." 78 Fed. Reg. at 32940.

[3] 17 C.F.R. § 43.2. See 77 Fed. Reg. 1182 (Jan. 9, 2012). CFTC regulation 43.2 defines "large notional off-facility swap" to mean "an off-facility swap that has a notional or principal amount at or above the appropriate minimum block size applicable to such publicly reportable swap transaction and is not a block trade as defined in § 43.2 of the Commission's regulations." 77 Fed. Reg. at 1244.

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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 the Final Real-Time Reporting Rule and the Final Block Trade Rule and strongly supports initiatives to increase regulatory transparency. We also greatly appreciate the efforts of Division of Market Oversight ("Division") staff over the past several months to provide direction and clarification where possible to members as they prepare to comply with the CFTC's reporting requirements, including Part 43 of the CFTC's regulations. ISDA is concerned, however, that without a Division interpretive guidance or no-action relief, the aggregation prohibition in CFTC regulation 43.6(h)(6) will make compliance for reporting parties difficult, if not impossible, and will increase costs to market participants.

CFTC regulation 43.6(h)(6) prohibits the aggregation of orders from different trading accounts in order to satisfy the minimum block trade size or cap size requirement, unless an exemption applies. CFTC regulation 43.6(h)(6) provides an exemption for certain investment managers with discretionary trading authority or direct client accounts that have more than $25,000,000 in total assets under management.[4] While the text of the regulation does not indicate such, the Commission clarified in the preamble to the Final Block Trade Rule, that the prohibition on aggregation of orders in the swap context applies not only to "block trades," but also to "large notional off-facility swaps."[5] However, while the Commission provides an exemption from the aggregation prohibition for certain investment managers that execute "block trades" (i.e., swaps executed on or pursuant to the rules of a swap execution facility ("SEF") or designated contract market ("DCM")), such an exemption is not explicitly provided with respect to "large notional off-facility swaps."

ISDA respectfully requests, pursuant to CFTC regulation 140.99, that the Division provide (A) a staff interpretive letter to confirm that the application of CFTC regulation 43.6(h)(6) to "large notional off-facility swaps" would not render such swaps subject to a prohibition on aggregation or (B) a staff no-action letter to confirm that the Division will not recommend enforcement action to the Division of Enforcement against market participants for aggregating orders for different accounts with respect to "large notional off-facility swaps," pursuant to several conditions, as discussed herein.

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[4] In the futures context, DCMs are permitted, and a majority of DCMs currently maintain rules, permitting certain commodity trading advisors, investment advisers and foreign persons to aggregate. See Notice of Proposed Rulemaking, Rules Prohibiting the Aggregation of Orders to Satisfy Minimum Block Sizes or Cap Size Requirements, and Establishing Eligibility Requirements for Parties to Block Trades, 77 Fed. Reg. 38229. 38232, note 27 (June 27, 2012) (the "Aggregation Re-Proposal").

[5] See 78 Fed. Reg. at 32906.

I. Discussion

A. Background

The practice for swap dealers and investment managers to execute pre-allocation swaps pre-dates the existence of the CFTC's Final Block Trade Rule. In general, the investment managers with which swap dealers enter into pre-allocation transactions have fiduciary obligations to their customers. Accordingly, there should not be a presumption that execution of pre-allocation swaps is done "in order to" satisfy the minimum block trade size or cap size requirements. In fact, investment managers typically aggregate orders to achieve best execution for their customers as part of their fiduciary obligations to such customers.

Reporting parties, such as swap dealers, frequently receive orders from investment managers for the execution of pre-allocation, off-facility swaps. The allocation information is not known to the reporting party for such swaps and specific allocations are likely not known to the investment manager at the time of execution of such order. Reporting parties are generally provided with allocation information from the investment manager at some point after the execution of the pre-allocation off-facility swap.

If the notional amount of an off-facility pre-allocation swap is at or above the appropriate minimum block size, such pre-allocation swap would be considered to be a "large notional off-facility swap." Pursuant to Section 4r of the CEA and CFTC regulation 43.3(a)(3), a swap dealer that is a counterparty to a swap is the reporting party and is therefore responsible for reporting the information pertaining to the "large notional off-facility swap" to a registered swap data repository ("SDR"). As part of its reporting obligation under CFTC regulations 43.4(a) and 43.6(g)(2), the reporting party has the obligation to report whether the swap qualifies as a "large notional off-facility swap."

B. Market Participants Were Not Aware of the Commission's Intent to Include "Large Notional Off-Facility Swaps" in the Aggregation Prohibition until Publication of the Final Rule

The Commission originally proposed an aggregation prohibition provision on December 7, 2010 in the proposed real-time public reporting rule;[6] however, the Final Real-Time

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[6] See Notice of Proposed Rulemaking, Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76140 (Dec. 7, 2010). The aggregation provision as initially proposed as CFTC regulation 43.5(m) and stated that "[e]xcept as otherwise stated in this paragraph, the aggregation of orders for different accounts in order to satisfy the minimum block trade size requirement is prohibited. Aggregation is permissible if done by a commodity trading advisor acting in an asset managerial capacity and registered pursuant to Section 4n of the Act, or a principal thereof, including any investment advisor who satisfies the criteria of [CFTC regulation 4.7(a)(2)(7)], or a foreign person performing a similar role or function and subject as such to foreign regulation, if such commodity trading advisor, investment advisor or foreign person has more than $25,000,000 in total assets under management." 75 Fed. Reg. at 76176.

Reporting Rule did not finalize this proposed provision. On June 27, 2012, the aggregation prohibition was re-proposed with certain modifications in a separate Commission release relating to the prohibition of aggregation of orders as proposed CFTC regulation 43.6(h)(6).[7] The Commission then finalized CFTC regulation 43.6(h)(6) in the Final Block Trade Rule on May 31, 2013 without making any changes from the proposed version in the Aggregation Re-Proposal.

The Aggregation Re-Proposal discusses proposed CFTC regulation 43.6(h)(6) in the context of "block trades" only and does not reference "large notional off-facility swaps" in its discussion relating to proposed CFTC regulation 43.6(h)(6) and the aggregation prohibition. The Commission chose to reference the term "large notional off-facility swap" only in its background discussion in the Aggregation Re-Proposal and declined to mention the term when discussing proposed CFTC regulation 43.6(h)(6) or elsewhere in the release.[8]

Further, both proposed and final CFTC regulation 43.6(h)(6) provide that "the aggregation of orders for different accounts in order to satisfy the minimum block trade size or cap size requirement is prohibited." Both proposed and final CFTC regulation 43.6(h)(6) also contain an exemption from the aggregation prohibition for certain swaps executed on a SEF or a DCM as long as the person who is aggregating meets certain conditions. Yet there is no specific exemption mentioned in CFTC regulation 43.6(h)(6) with respect to "large notional off-facility swaps."

The term "minimum block trade size," as used in proposed and final CFTC regulation 43.6(h)(6) is not defined in CFTC regulation 43.2 or elsewhere, while the terms "appropriate minimum block size"[9] and "block trade"[10] are specifically defined in CFTC regulation 43.2 and used throughout Part 43 of the Commission's regulations. At the time of the Aggregation Re-Proposal, the CFTC had already finalized the definitions of

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[7] See 77 Fed. Reg. at 38236.

[8] The Commission chose to define and discuss the term "block trade," yet omitted defining and discussing the term "large notional off-facility swap" when discussing proposed CFTC regulation 43.6(h)(6). 77 Fed. Reg. at 38231.

[9] CFTC regulation 43.2 defines "appropriate minimum block size" to mean "the minimum notional or principal amount for a category of swaps that qualifies a swap within such category as a block trade or large notional off-facility swap." 77 Fed. Reg. at 1243.

[10] CFTC regulation 43.2 defines "block trade" to mean "a publicly reportable swap transaction that: (1) Involves a swap that is listed on a registered swap execution facility or designated contract market; (2) Occurs away from the registered swap execution facility's or designated contract market's trading system or platform and is executed pursuant to the registered swap execution facility's or designated contract market's rules and procedures; (3) Has a notional or principal amount at or above the appropriate minimum block size applicable to such swap; and (4) Is reported subject to the rules and procedures of the registered swap execution facility or designated contract market and the rules described in this part, including the appropriate time delay requirements set forth in § 43.5 of this [Part 43]." 76 Fed. Reg. at 1243.

"appropriate minimum block size," "block trade" and "large notional off-facility swap," and the Aggregation Re-Proposal acknowledges such definitions.[11] However, the Aggregation Re-Proposal declined to include the term "appropriate minimum block size" in proposed CFTC regulation 43.6(h)(6). The Commission instead chose to use the term "minimum block trade size" in lieu of the defined term "appropriate minimum block size." Market participants would look to the "appropriate minimum block size" when determining whether a swap qualifies as either a "block trade" or "large notional off-facility swap." However, the undefined term "minimum block trade size," which contains the defined term "block trade," suggests a more limited scope than the defined term "appropriate minimum block size."

The discussion of proposed CFTC regulation 43.6(h)(6) in the Aggregation Re-Proposal only references "block trades" and the benefits relating to transparency with respect to "block trades" and exchange trading. Specifically, the Commission explained that the "proposed [CFTC regulation 43.6(h)(6)] would protect the principles of block trading, and would help prevent potential circumvention of exchange-trading and of the real-time reporting obligations associated with non-block transactions."[12] Unlike "block trades," "large notional off-facility swaps" are not executed on or pursuant to the rules of a SEF or DCM, hence the Commission's reasoning relating to the "circumvention of exchange-trading" and the reference to "non-block transactions" appears to be limited to block trades and does not appear to relate to "large notional off-facility swaps." That is, a "large notional off-facility swaps" cannot circumvent exchange-trading because such swaps are not required to be executed on a SEF or DCM. Further, the Commission asked a series of specific questions in the Aggregation Re-Proposal regarding the aggregation prohibition in proposed CFTC regulation 43.6(h)(6), yet none of those questions refers to "large notional off-facility swaps" or otherwise suggests that the CFTC would consider expanding the aggregation prohibition to cover "large notional off-facility swaps" in addition to "block trades."[13]

Although the CFTC maintains the identical language in final CFTC regulation 43.6(h)(6) as it proposed in the Aggregation Re-Proposal, the preamble to the Final Block Trade Rule

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[11] See 77 Fed. Reg. at 38231. Additionally, the block trade re-proposal had already been published and did not propose a definition for the term "minimum block trade size." See Further Notice of Proposed Rulemaking, Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 77 Fed. Reg. 15460 (Mar. 15, 2012).

[12] 77 Fed. Reg. at 38231.

[13] The Commission asked for comments on the prohibition of aggregation of orders generally in the context of the swaps market and asked the following specific questions: "The Commission seeks comment on whether such an exception should be available to other categories of Commission registrants, and if so, why? Additionally, the Commission seeks comments on whether the $25 million AUM requirement for the specified account controllers is appropriate in the context of block transactions for swaps? Further, the Commission seeks comments on whether the $25 million AUM requirement should include only swaps assets, or be based on per asset class, or be different for the five asset classes of swaps?" 77 Fed. Reg. at 38232.

suggests that prohibition on aggregation of orders in CFTC regulation 43.6(h)(6) would apply not only to "block trades" but also to "large notional off-facility swaps." In response to a comment from SIFMA Asset Management Group,[14] "the Commission notes that it does intend to include large notional off-facility swaps in the aggregation prohibition under § 43.6(h)(6). The appropriate minimum block size applies to both block trades and large notional off-facility swaps,[] and thus the aggregation prohibition should be applied to both types of transactions."[15] As discussed earlier in this section, the aggregation exemption provided in CFTC regulation 43.6(h)(6) seems to exclude "large notional off-facility swaps" as it requires aggregation be on a SEF or DCM. However, the Commission has not provided any guidance on why "large notional off-facility swaps" would warrant different treatment from "block trades" for the purposes of the aggregation exemption provided in CFTC regulation 43.6(h)(6).

The preamble to the Final Real-Time Reporting Rule clearly contemplates that publicly disseminated information would be pre-allocation data relating to publicly reportable swap transactions. Specifically, it explains that "[t]he Commission clarifies that the swap transaction and pricing data that must be publicly disseminated is pre-allocation data. Accordingly, the notional or principal amount that would be publicly disseminated would be the pre-allocated amount."[16] For the Commission to effectively treat pre-allocation off-facility swaps as prohibited aggregation in the context of "large notional off-facility swaps" would seem to run contrary to the intent of this language in the Final Real-Time Reporting Rule.

Upon reading the language in the preamble of the Final Block Trade Rule, market participants were made aware, for the first time, that the prohibition on aggregation of orders could potentially be read as applying to "large notional off-facility swaps" since proposed CFTC regulation 43.6(h)(6) and the related preamble language did not suggest that such swaps would fall under the regulation. Accordingly, the industry has taken significant time and effort to build out infrastructure, in coordination with third-party vendors, for aggregation to be permitted for "large notional off-facility swaps" in reliance on the Final Real-Time Reporting Rule and the notice provided in the Aggregation Re-Proposal, among other Commission releases.[17]

C. Reporting Parties May Not Know if Orders Have Been Aggregated by Their Counterparties

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[14] SIFMA Asset Management Group asked the Commission to clarify that "large notional off-facility swaps" are not covered under the aggregation prohibition. See SIFMA Asset Management Group Comment Letter at 3-4 (July 27, 2012).

[15] 78 Fed. Reg. at 32906.

[16] 77 Fed. Reg. at 1195.

[17] See 77 Fed. Reg. 1182; 77 Fed. Reg. 38229. See also 77 Fed. Reg. 15460; 75 Fed. Reg. 76140.

Reporting parties under Part 43 of the CFTC's regulations have the obligation to make the determination whether a reportable off-facility swap reaches the appropriate minimum block size by making such an indication to the SDR when reporting swap transaction data. Such a determination can only be made by a reporting party based on the facts and circumstances known to the swap dealer at the time of execution. This specific requirement on reporting parties is found in CFTC regulation 43.6(g)(2) and requires that "[a] reporting party who executes an off-facility swap that has a notional amount at or above the appropriate minimum block size shall notify the applicable [SDR] that such swap transaction qualifies as a large notional off-facility swap concurrent with the transmission of swap transaction and pricing data in accordance with this [Part 43]." As a matter of practice and presumed understanding of the aggregation requirements discussed in the Aggregation Re-Proposal, at the time of execution of a pre-allocation swap, a reporting party receives only one order from an investment manager. There is no current practice of the investment manager aggregating orders with a swap dealer that is the reporting party or otherwise notifying a reporting party that such orders have been aggregated "in order to satisfy the minimum block trade size or cap size."

D. Prohibiting the Aggregation of Orders for all Large Notional Off-Facility Swaps Does Not Promote Transparency and Is Inconsistent with Public Policy Objectives

The Commission's assertion in the Final Block Trade Rule that "large notional off-facility swaps" are subject to the aggregation prohibition in CFTC regulation 43.6(h)(6), effectively forces market participants to choose to either: (1) execute aggregated orders that exceed the appropriate minimum block size on a SEF or DCM; (2) risk disclosing information without a time delay or notional cap that could lead to counterparty identifying information or front-running; or (3) refrain from aggregating customer orders that would otherwise obtain better pricing and best execution.

Forcing aggregated customer orders to be executed on or pursuant to the rules of a SEF or DCM in order to receive a time delay and notional cap may not be feasible if a SEF or DCM does not list the swap for trading. Because there are currently no DCMs that list swaps and there are no operational SEFs, it is very difficult to understand or recognize the ability for market participants to execute aggregated orders that exceed the appropriate minimum block size pursuant to the rules of a SEF or DCM. Additionally, because it is anticipated that SEFs and DCMs will tend to list swaps with more standardized terms, the anomalous effect of the Commission's interpretation of CFTC regulation 43.6(h)(6) is that less standardized, bespoke swaps of significant size will be denied the time delays from public dissemination provided in Part 43 of the CFTC's regulations while more standardized block trades will receive such time delays.

Section 2(a)(13)(C)(iii) of the CEA requires that the Commission's rules (i.e., Part 43 rules) maintain the confidentiality of business transactions and market positions of uncleared swaps. Further Section 2(a)(13)(E)(i) requires that the Commission protect the identities of counterparties to swaps (i.e., both cleared and uncleared) with respect to the

public reporting of such information. The Commission provided regulations in Part 43 to specifically protect the anonymity of market participants, including the inclusion of cap sizes for large transactions.[18] Accordingly, the ineligibility for "large notional off-facility swaps" that consist of aggregated orders to avail themselves of the notional caps described in CFTC regulation 43.4(h) seems to be inconsistent with Congressional intent and with the Commission's reasoning for such regulations in the first place. Further, as discussed above, "large notional off-facility swaps" will generally tend to be more customized and less liquid than block trades, which leads to greater risk that a counterparty's transactions can be identified when publicly disseminated.

Investment managers and swap dealers will be forced to consider the risks of disclosing post-trade pricing data without a time delay and will price such risks of disclosure into the price of the "large notional off-facility swap." As a result of the disclosure and front-running risks, investment managers may choose not to aggregate customer orders. Such a result will likely lead to increased transaction costs since investment managers will be required to enter into more transactions to achieve the same results. The higher transaction costs will consequently be passed on to customers (e.g., end-users).

Further, the application of the aggregation prohibition to "large notional off-facility swaps" does not promote pre-trade price transparency. "Block trades" are, by definition, executed away from a SEF's or DCM's platform and then brought to the platform for execution, meaning they are not subject to the pre-trade transparency requirements of the platform. "Large notional off-facility swaps" similarly would not be subject to pre-trade transparency requirements. Accordingly, there is no difference in pre-trade price transparency for "block trades" compared to "large notional off-facility swaps" and orders are aggregated without pre-trade transparency for both types of swaps.

E. The Effective Date of the Aggregation Prohibition Does Not Correspond with the Compliance Date for SEFs

The Final Block Trade Rule becomes effective on July 30, 2013, meaning that only swaps that are equal to or greater than the appropriate minimum block size will be eligible for the time delays described in Part 43 of the Commission's regulations. However, because compliance with the SEF rules is not required until October 2, 2013,[19] there will be few, if any, block trades prior to such date meaning that most swaps equal to or greater than the appropriate minimum block size will be considered "large notional off-facility swaps." Accordingly, absent further clarification, the language relating to the scope of CFTC regulation 43.6(h)(6) in the Final Block Trade Rule, may render market participants unable to qualify for the exemption in CFTC regulation 43.6(h)(6) by executing "block trades," for swaps will likely not be listed on SEFs until compliance is required with the SEF rules.

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[18] See CFTC regulations 43.4(d), 43.4(h) and Appendix E to Part 43.

[19] See Final Rule, Core Principles and Other Requirements for Swap Execution Facilities, 78 Fed. Reg. 33476 (June 4, 2013); CFTC Letter No. 13-28 (June 17, 2013).

Such a result will create a situation where investment managers will not be able to comply with the exemption for aggregating orders based on existing market conditions. Accordingly, it is imperative that the Commission act on this request prior to July 30, 2013.

II. Request for Relief

A. Request for Interpretive Guidance That Application of the Aggregation Prohibition in CFTC Regulation 43.6(h)(6) Does Not Render "Large Notional Off-Facility Swaps" Subject to a Prohibition on Aggregation

We respectfully request that the Division staff provide interpretive guidance that "large notional off-facility swaps" are not subject to the aggregation prohibition in CFTC regulation 43.6(h)(6). Specifically, we request clarification from the Division that the undefined term "minimum block trade size," as used in CFTC regulation 43.6(h)(6), refers to the "appropriate minimum block size" only with respect to the defined term "block trade" and not with respect to "large notional off-facility swaps." We anticipate that if the Commission had intended CFTC regulation 43.6(h)(6) to apply to "large notional off-facility swaps," the Commission would have used the Part 43 defined term "appropriate minimum block size," as such term is applied to both "block trades" and "large notional off-facility swaps." Thus, when applying CFTC regulation 43.6(h)(6) to "block trades" and "large notional off-facility swaps," only "block trades" would be subject to the aggregation prohibition. Such an interpretation would not conflict with the Commission's statement in the preamble to the Final Block Trade Rule in that in applying the aggregation prohibition in CFTC regulation 43.6(h)(6) to "block trades," "block trades" would be subject to the prohibition; however, when applying the aggregation prohibition to "large notional off-facility swaps," "large notional off-facility swaps" would not be subject to the prohibition. Thus, the Commission's statement in the preamble to the Final Block Trade Rule refers to the application of CFTC regulation 43.6(h)(6) to a specific transaction, and not a statement of the result of such application to such transaction (i.e., whether or not the aggregated transaction would be prohibited).

B. Alternative Request for No-Action Relief from the Aggregation Prohibition in CFTC Regulation 43.6(h)(6) for "Large Notional Off-Facility Swaps"

If the Division does not wish to provide interpretive guidance in the manner described above, we respectfully request that Division staff grant no-action relief, subject to certain conditions described below, to market participants from CFTC regulation 43.6(h)(6), to confirm that it will not recommend enforcement action to the Division of Enforcement for market participants that aggregate orders that exceed the appropriate minimum block size or cap size such that they become "large notional off-facility swaps." In order for a market participant to receive such relief, such market participant must meet the following conditions:

(1) The market participant that is aggregating orders must be either:
(i) A commodity trading advisor registered pursuant to Section 4n of the CEA, or exempt from registration under the CEA, or a principal thereof, who has discretionary trading authority or directs client accounts;
(ii) An investment adviser who has discretionary trading authority or directs client accounts and satisfies the criteria of CFTC regulation 4.7(a)(2)(v); or
(iii) A foreign person who performs a similar role or function as the persons described in (i) and (ii) above and is subject to foreign regulation; and
(2) The market participant must have more than $25,000,000 in total assets under management.

The conditions described above are meant to mirror the conditions set forth for the exemption to the aggregation prohibition described in CFTC regulation 43.6(h)(6). Maintaining such criteria would ensure that the sophistication and safeguards that the Commission has historically permitted for the exemption from the order aggregation prohibition remain intact.

C. Summary of Request for Relief

As discussed above, applying CFTC regulation 43.6(h)(6) to "large notional off-facility swaps" and limiting the exemption for qualified investment managers to "block trades" (1) does not increase pre-trade transparency, and (2) has the effect of removing time delays for public dissemination for less liquid, less standardized swaps and swaps that are not subject to the trade execution requirements, while permitting time delays for public dissemination for swaps that are more liquid, more standardized and that are subject to the trade execution mandate. Similarly, the limitation on the exception to "block trades" permits more liquid, more standardized transactions to apply notional caps to protect anonymity while less liquid, less standardized transactions would be denied the ability to apply the notional cap.

Providing either the interpretive guidance or no-action relief requested in this letter would ensure investment managers can continue to aggregate orders for "large notional off-facility swaps" and receive a time delays and notional caps to protect against front-running and public dissemination of identifying information. Without this relief, investment managers will not be able to provide best execution to their customers and the prices of such swaps will increase and those increases will be passed along to customers.

Any perceived benefit from driving such aggregated orders to the rules of a regulated platform is balanced by the conditions on the relief described above and the fact that investment managers have a fiduciary obligation to their clients. Additionally, the desired result of driving trading to SEFs or DCMs may be incapable of being realized if a SEF or DCM does not offer a particular swap on its platform or facility.

Finally, as discussed above, market participants were generally not aware until the publication the Final Block Trade Rule that CFTC regulation 43.6(h)(6) could potentially be read to apply to "large notional off-facility swaps" and there are generally no market infrastructures and systems in place today which could accommodate such a reading of Part 43.6(h)(6).

III. Conclusion

In summary, the application of the aggregation prohibition in CFTC regulation 43.6(h)(6) to "large notional off-facility swaps," was not anticipated by market participants based on previous Commission releases. Accordingly, without the interpretive guidance or no-action relief from the Division that we have requested in this letter, reporting parties will not be able to comply with certain provisions in Part 43 of the Commission's regulations. Further, such a restriction on "large notional off-facility swaps" will not increase pre-trade transparency, but will increase the risk of publicly disseminating identifying counterparty information and make such swaps more susceptible to front-running. Ultimately, such a result will lead to increased transaction costs which will be passed along to customers of investment managers.

ISDA is committed to working with Division staff and the Commission to further discuss any aspect of this request. 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 market participants, 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.[20]

[20] 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: Hon. Gary Gensler, Chairman, CFTC
Hon. Bart Chilton, Commissioner, CFTC
Hon. Scott O'Malia, Commissioner, CFTC
Hon. Mark Wetjen, Commissioner, CFTC
David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC
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Eric Juzenas, Chief Operating Officer and Senior Counsel to Chairman, CFTC
Ryne Miller, Counsel to Chairman, CFTC
Megan Wallace, Counsel to Chairman, CFTC

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 July 24, 2013 are true and complete to the best of my knowledge.

Robert Pickel
Chief Executive Officer
ISDA