



## U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 12-39  
No-Action  
November 30, 2012  
Division of Market Oversight

### **Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations**

Robert Pickel  
Chief Executive Officer  
International Swaps and Derivatives Association  
1001 Pennsylvania Avenue, NW  
Suite 600  
Washington, DC 20004

Dear Mr. Pickel:

This letter is in response to your request dated November 17, 2012 (the "Letter"), to the Division of Market Oversight ("DMO" or "Division") of the Commodity Futures Trading Commission ("Commission") on behalf of your members that are "reporting parties"<sup>1</sup> or "reporting counterparties"<sup>2</sup> as defined in Parts 43<sup>3</sup> and 45<sup>4</sup> of the Commission's regulations, respectively (collectively, "Reporting Parties"), in which you requested no-action relief for bespoke or complex products from certain reporting requirements of Parts 43 and 45. In the Letter, you assert that there are certain operational constraints that will prevent Reporting Parties from submitting, for bespoke or complex products, specific data elements required by Appendix A to Part 43 and Appendix 1 to Part 45. You further assert that Reporting Parties will be unable to report certain confirmation data for bespoke or complex products in swaps between affiliates that are not submitted for clearing ("uncleared inter-affiliate swaps") because Reporting Parties do not generate paper confirmations for such swaps.<sup>5</sup> In all cases, you request relief until the earlier of such time that the relevant data elements can be electronically represented or July 31, 2013.

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<sup>1</sup> Section 43.2 defines the term "reporting party" as "the party to a swap with the duty to report a publicly reportable swap transaction in accordance with [Part 43] and section 2(a)(13)(F) of the [Commodity Exchange Act]."

<sup>2</sup> Section 45.1 defines the term "reporting counterparty" as "the counterparty required to report swap data pursuant to [Part 45], selected as provided in § 45.8."

<sup>3</sup> 77 Fed. Reg. 1182 (January 9, 2012).

<sup>4</sup> 77 Fed. Reg. 2136 (January 13, 2012).

<sup>5</sup> In cases where "reporting confirmation data normalized in data fields is not yet technologically practicable," section 45.3 permits reporting counterparties to report confirmation data through "an image of the document or documents constituting the confirmation" for 180 days following the compliance date.

For the purposes of this DMO letter, “bespoke or complex” swaps are swaps that meet all of the following characteristics: (a) not listed for trading on a designated contract market; (b) not available to be traded on a swap execution facility; (c) not eligible to be cleared by a derivatives clearing organization; (d) not eligible to be confirmed through an electronic matching confirmation system; and (e) not represented in Financial products Markup Language (“FpML”).<sup>6</sup>

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)<sup>7</sup> added to the Commodity Exchange Act (the “CEA”)<sup>8</sup> provisions requiring the retention and reporting of data relating to swap transactions. Section 727 of the Dodd-Frank Act added CEA Section 2(a)(13), which establishes requirements for the real-time reporting and public availability of swap transaction data, and requires that all swaps, both cleared and uncleared, be reported to a registered swap data repository (“SDR”). Section 728 of the Dodd-Frank Act added CEA Section 21(b), which directs the Commission to prescribe standards for swap data recordkeeping and reporting. Section 729 of the Dodd-Frank Act added CEA Section 4r, which, among other things, establishes reporting requirements for swaps not accepted for clearing by any derivatives clearing organization (“DCO”).

Pursuant to these newly added provisions of the CEA, the Commission added to its regulations Part 43, which sets forth rules for the real-time public reporting (“RTPR”) of swap transaction data, and Part 45, which establishes swap data recordkeeping and SDR reporting requirements. Part 43, among other requirements, sets forth the method and timing for how swap reporting parties must report swap data to SDRs to meet their RTPR obligations. Part 45, among other requirements, sets forth obligations on swap counterparties to report swap creation data, including primary economic term (“PET”) data and confirmation data, to SDRs. Part 43 became effective on March 9, 2012; Part 45 became effective on March 13, 2012.

From your representations, many Reporting Parties are prepared to report data to SDRs under Part 43 and 45 using Financial products Markup Language (“FpML”), a data standardization language. As you describe in the letter, FpML does not currently support bespoke or complex products for all fields required in Parts 43 and 45. Reporting Parties would therefore be unable to report these unrepresented fields to SDRs for such products. Specifically, you assert that FpML does not yet support the following fields required by Appendix A to Part 43 for bespoke or complex products (“Unrepresented Part 43 Fields”):

- (1) day count convention
- (2) unique product identifier (“UPI”)
- (3) payment frequency
- (4) reset frequency

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<sup>6</sup> If a swap that currently qualifies as bespoke or complex fails to meet one of the enumerated requirements in the future, that swap would cease to be bespoke or complex for purposes of the relief conferred herein.

<sup>7</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>8</sup> 7 U.S.C. 1, *et seq.*

- (5) option strike price
- (6) option family
- (7) option lockout period

In addition, you indicate that FpML currently lacks the ability, for bespoke or complex swaps, to support the following minimum PET data fields required by Appendix 1 of Part 45 (“Unrepresented Part 45 Fields”):<sup>9</sup>

Credit and equity swaps

- (1) UPI
- (2) payment frequency of the reporting counterparty
- (3) payment frequency of the non-reporting counterparty
- (4) any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap

Foreign exchange transactions (other than cross-currency swaps)

- (1) UPI
- (2) delivery type
- (3) any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap

Interest rate swaps (including cross-currency swaps)

- (1) UPI
- (2) day count convention
- (3) payer (fixed rate)
- (4) payer (floating rate leg 1)
- (5) payer (floating rate leg 2)
- (6) direction
- (7) fixed day count fraction
- (8) floating rate payment frequency
- (9) floating rate reset frequency
- (10) any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap

Other commodity swaps

- (1) UPI
- (2) quantity

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<sup>9</sup> Each reference below to “any other terms of the swap matched or affirmed by the counterparties in verifying the swap” in the credit, equity, foreign exchange, interest rate, and other commodity asset classes is a reference to the data field of the same name in Exhibits A–D of Appendix 1 to Part 45.

- (3) quantity frequency
- (4) total quantity
- (5) settlement method
- (6) buyer pay index
- (7) buyer pay averaging method
- (8) seller pay index
- (9) seller pay averaging method
- (10) option style
- (11) hours from through
- (12) hours from through time zone
- (13) days of week
- (14) load type
- (15) any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap

Based on your representations, the Division believes that time-limited no-action relief is warranted for certain Part 43 reporting obligations. For bespoke or complex swaps, the Division will not recommend that the Commission commence an enforcement action against a reporting party for failure to report the Unrepresented Part 43 Fields to SDRs as required by sections 43.3(a)(3),<sup>10</sup> 43.4(a)<sup>11</sup> and Appendix A to Part 43<sup>12</sup> until the earlier of such time that the relevant data elements can be electronically represented in FpML or **June 30, 2013**.<sup>13</sup>

In addition, the Division believes that time-limited no-action relief is warranted for certain Part 45 reporting obligations. For bespoke or complex swaps, the Division will not recommend that the Commission commence an enforcement action against a reporting counterparty for (1) failure to report the Unrepresented Part 45 Fields of PET data to SDRs as required by sections 45.3(b)(1),<sup>14</sup> 45.3(c)(1)(i),<sup>15</sup> 45.3(c)(2)(i),<sup>16</sup> 45.3(d)(1)<sup>17</sup> and Appendix 1 to Part 45<sup>18</sup> or (2) failure to report the Unrepresented Part 45 Fields of swap continuation data for uncleared swaps

<sup>10</sup> Section 43.3(a)(3) designates which party to off-facility swaps has the obligation to report for publicly reportable swap transactions.

<sup>11</sup> Section 43.4(a) requires that swap transaction and pricing information be reported to SDRs for RTPR.

<sup>12</sup> Appendix A to Part 43 sets forth data fields for public dissemination.

<sup>13</sup> Nothing in this letter should be interpreted as altering the responsibility of SDRs to disseminate swap transaction and pricing data in real-time pursuant to section 43.4(b). That section requires SDRs to disseminate the information described in Appendix A to Part 43, as applicable. If, pursuant to the relief granted in this letter, a reporting party does not report the Unrepresented Part 43 Fields to an SDR, the SDR would not be required to disseminate those specific fields pursuant to section 43.4(b).

<sup>14</sup> Section 45.3(b)(1) sets forth reporting counterparty PET reporting obligations, for off-facility swaps subject to mandatory clearing.

<sup>15</sup> Section 45.3(c)(1)(i) sets forth reporting counterparty PET reporting obligations, for off-facility swaps not subject to mandatory clearing, with a swap dealer (“SD”) or major swap participant (“MSP”) reporting counterparty, for credit, equity, foreign exchange, and interest rate swaps.

<sup>16</sup> Section 45.3(c)(2)(i) sets forth reporting counterparty PET obligations, for off-facility swaps not subject to mandatory clearing, with an SD or MSP reporting counterparty, for other commodity swaps.

<sup>17</sup> Section 45.3(d)(1) sets forth reporting counterparty PET obligations, for off-facility swaps not subject to mandatory clearing, with a non-SD/MSP reporting counterparty.

<sup>18</sup> Appendix 1 to Part 45 sets forth tables of minimum PET data that must be reported by swap asset class.

to SDRs pursuant to section 45.4(c) until the earlier of such time that the relevant data elements can be electronically represented in FpML or **June 30, 2013**. For bespoke or complex swaps that are uncleared inter-affiliate swaps, and for which paper confirmations are not generated, the Division will not recommend that the Commission commence an enforcement action against a reporting counterparty for failure to report confirmation data as required by sections 45.3(b)(3),<sup>19</sup> 45.3(c)(1)(iii),<sup>20</sup> 45.3(c)(2)(iii)<sup>21</sup> and 45.3(d)(3)<sup>22</sup> until the earlier of such time that the relevant data elements can be electronically represented in FpML or **June 30, 2013**.

The no-action relief provided herein is time-limited, and ends in all respects on or before **June 30, 2013**. It applies only to bespoke or complex swaps and only to the Unrepresented Part 43 Fields and Unrepresented Part 45 Fields, and to confirmation data for uncleared inter-affiliate swaps. In addition, the no-action relief provided herein applies to Reporting Parties, regardless of whether they are members of ISDA.

This Division letter, and the no-action position taken herein, which is based on your representations, represents the views of DMO only, and does not necessarily represent the position or views of the Commission or of any other division or office of the Commission's staff. The no-action position taken herein does not excuse affected persons from compliance with any other applicable requirements of the CEA or the regulations thereunder. As with all no-action letters, DMO retains the authority to, in its discretion, further condition, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein.

If you have any questions concerning this correspondence, please contact Sebastian Pujol Schott, Associate Director, DMO, at (202) 418-5641, or Brian Robinson, Attorney Advisor, DMO, at (202) 418-5385.

Sincerely yours,

Richard A. Shilts  
Acting Director  
Division of Market Oversight

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<sup>19</sup> Section 45.3(b)(3) sets forth reporting counterparty confirmation data reporting obligations, for off-facility swaps subject to mandatory clearing, where the swap is not accepted for clearing.

<sup>20</sup> Section 45.3(c)(1)(iii) sets forth reporting counterparty confirmation data reporting obligations, for off-facility swaps not subject to mandatory clearing, with a SD or MSP reporting counterparty, for credit, equity, foreign exchange, and interest rate swaps, where the swap is not voluntarily submitted for clearing.

<sup>21</sup> Section 45.3(c)(2)(iii) sets forth reporting counterparty confirmation data reporting obligations, for off-facility swaps not subject to mandatory clearing, with a SD or MSP reporting counterparty, for other commodity swaps.

<sup>22</sup> Section 45.3(d)(3) sets forth reporting counterparty confirmation data reporting obligations for off-facility swaps not subject to mandatory clearing, with a non-SD/MSP reporting counterparty, where the swap is not voluntarily submitted for clearing.