

April 18, 2022

Dr. Tamara Roust  
Director  
Division of Data  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20581

**Re: Request for Extension of CFTC No-Action Relief 21-12**

Dear Director Roust:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”), on behalf of its members with reporting obligations under Part 43 and Part 45 of the Regulations (collectively, the “**Reporting Rules**”) of the U.S. Commodity Futures Trading Commission and other similarly situated persons, is writing to request, pursuant to Rule 140.99, an extension for the no-action relief provided under [CFTC Letter No. 21-12](#) for the reasons outlined in **Attachment A** of this letter.

ISDA and its members appreciate the no-action relief granted on April 28, 2021 which provided relief until May 25, 2022 to coincide with the compliance date of the Commission’s swap data reporting regulations amendments 17 CFR Parts 45, 46, and 49 “Swap Data Recordkeeping and Reporting Requirements” (RIN 3038-AE31)<sup>1</sup>, 17 CFR Part 43 “Real-Time Public Reporting Requirements” (RIN 3038-AE60)<sup>2</sup>, and 17 CFR Parts 43, 45 and 49 “Certain Swap Data Repository and Data Reporting Requirements” (RIN 3038-AE32)<sup>3</sup> (together “Rule Amendments”). Since that time, in [CFTC Letter No. 22-03](#), the Division of Data extended the period during which it would not recommend that the Commission take an enforcement action regarding the Commission’s swap data reporting Rule Amendments until December 5, 2022. Accordingly, this letter requests an extension of the no-action relief provided under [CFTC Letter No. 21-12](#) until December 5, 2022.

---

<sup>1</sup> 17 CFR Parts 45, 46, and 49 Swap Data Recordkeeping and Reporting Requirements,

[https://www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf?utm\\_source=govdelivery](https://www.cftc.gov/sites/default/files/2020/11/2020-21569a.pdf?utm_source=govdelivery).

<sup>2</sup> 17 CFR Part 43 Real-Time Public Reporting Requirements, [https://www.cftc.gov/sites/default/files/2020/11/2020-21568a.pdf?utm\\_source=govdelivery](https://www.cftc.gov/sites/default/files/2020/11/2020-21568a.pdf?utm_source=govdelivery).

<sup>3</sup> 17 CFR Parts 43, 45, and 49 Certain Swap Data Repository and Data Reporting Requirements, [https://www.cftc.gov/sites/default/files/2020/11/2020-21570a.pdf?utm\\_source=govdelivery](https://www.cftc.gov/sites/default/files/2020/11/2020-21570a.pdf?utm_source=govdelivery).

Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 980 member institutions from 78 countries. These members comprise a broad range of 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, such as exchanges, intermediaries, clearing houses and repositories, as well as law firms, accounting firms and other service providers.

Thank you for your consideration. Please do not hesitate to contact me or Eleanor Hsu at (212) 901-6051 if you have any questions.

Sincerely,



Christopher Young  
Head of U.S. Public Policy  
International Swaps and Derivatives Association, Inc. (ISDA)

**Certification Pursuant to Commission Regulation 140.99(c)(3)**

As required by Commission Regulation 140.99(c)(3), I, Christopher Young, hereby (i) certify that the material facts set forth in the attached letter dated April 18, 2022 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, appearing to read "Chris Young", written in a cursive style.

Christopher Young  
Head of U.S. Public Policy  
ISDA

## Attachment A

17 CFR Part 45

December 1, 2016

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 to No-action Relief for SDR Reporting Requirements for Swaps Cleared by Exempt and No-Action DCOs**

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc.<sup>1</sup> (“ISDA”) is writing to the staff of the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“CFTC” or the “Commission”) to request the issuance of no-action relief for the Part 45 obligations of reporting counterparties<sup>2</sup> with respect to swaps that are accepted for clearing by a central counterparty (“CCP”) which has been granted and is subject to (i) an Order of Exemption from to the obligation to register with the Commission as a derivatives clearing organization (“DCO”) or (ii) no-action relief issued by Commission staff with respect to the obligation to register as a DCO, as described below.

#### ***Background***

Section 5b(a) of the Commodity Exchange Act (“CEA”) requires certain CCPs which accept swaps for clearing to register with the Commission as DCOs. Section 5b(h) of the CEA permits the Commission to exempt a CCP from registration as a DCO if the CCP is subject to comparable, comprehensive supervision and regulation by the authorities in its home

---

<sup>1</sup> Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 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](http://www.isda.org).

<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.”

jurisdiction. Accordingly, the Commission has exempted several non-U.S. CCPs from the requirement to register as DCOs in order to allow them to clear swaps for U.S. clearing members and their affiliates on a proprietary basis<sup>3</sup> (each when conducting clearing as addressed under the relevant Order, an “Exempt DCO”).

On several occasions, staff of the CFTC’s Division of Clearing and Risk (“DCR”) have granted conditional, temporary no-action relief permitting some non-U.S. CCPs to clear certain swaps for U.S. persons prior to becoming registered with the Commission as a DCO or becoming exempted from registration, as applicable<sup>4</sup> (each when conducting clearing as addressed under the relevant no-action relief, a “No-Action DCO”).

On June 14, 2016, the Commission approved *Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps*<sup>5</sup> (the “Cleared Swap Rule”) which amended the Part 45 regulations, providing clarity to swap counterparties and registered entities regarding their reporting obligations for cleared swap transactions, defined therein as “Clearing Swaps”. Inter alia, the Cleared Swap Rule unambiguously assigns the sole reporting obligation under Part 45 for Clearing Swaps to the DCO. However, in section 45.1 of the regulation, the Commission has both limited the definition of a DCO to include only DCOs which are *registered* with the Commission and limited the definition of Clearing Swaps to swaps cleared through such registered DCOs.

As a result, swaps which are accepted for clearing by either an Exempt DCO or a No-Action DCO are technically not Clearing Swaps under the Part 45 regulations and neither an Exempt DCO nor a No-Action DCO would have an obligation to reporting the swap transactions which is has cleared. This contradicts the conditions of the Order of Exemption (each an “Order”) or no-action letter (each an “NAL”), as applicable, issued to each CCP by either the Commission or DCR. In each case, the Order or NAL provide that the Exempt DCO or No-Action DCO is required to report to a swap data repository (“SDR”), pursuant to Part 45, “data regarding the two swaps resulting from the novation of the original swap” (a/k/a the alpha) that has been submitted to the CCP for clearing. In each case the Exempt DCO or No-Action DCO is also required to report the termination of the alpha swap accepted for clearing to the SDR to which the swap was originally reported. These requirements mirror those of DCOs under the Part 45 regulations. In order to avoid duplicative reporting, Exempt DCOs and No-Action DCOs are also required by their Order/NAL to have rules which prohibit their counterparties from reporting the cleared swaps.

If the Part 45 reporting requirements assigned to Exempt DCOs and No-Action DCOs in their Orders/NALs are compiled with the obligations of DCOs under the Part 45 regulations, it

---

<sup>3</sup>Exempted CCPs currently include ASX Clear (Futures) Pty Limited (*see* <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf>), Japan Securities Clearing Corporation (*see* <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/jscdcoexemptorder10-26-15.pdf>), Korea Exchange, Inc. (*see* <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/krxdcoexemptorder10-26-15.pdf>), and OTC Clearing Hong Kong Limited (*see* <http://www.cftc.gov/idx/groups/public/@otherif/documents/ifdocs/otcclearcoexemptorder12-21-15.pdf>).

<sup>4</sup>Such no-action relief currently in effect under CFTC Letter No. 16-56 for the benefit of Shanghai Clearing House (<http://www.cftc.gov/idx/groups/public/@lrllettergeneral/documents/letter/16-56.pdf>).

<sup>5</sup>81 Fed. Register 41736

appears as though the counterparties which have entered into cleared swaps with either a DCO, an Exempt DCO or a No-Action DCO have no obligation to report the cleared swaps since such obligation has been assigned, in each case, to the relevant CCP. However, by limiting the definition of DCO to include only registered DCOs (and thereby excluding Exempt DCOs and No-Action DCOs), the Part 45 regulations, as amended by the Cleared Swap Rules, do not relieve reporting counterparties from the obligation to report swaps that have been cleared with an Exempt DCO or No-Action DCO and therefore do not qualify as Clearing Swaps. The Orders/NALs that are currently in effect which assign an obligation for Exempt DCOs and No-Action DCOs to report under Part 45, also do not relieve reporting counterparties from their obligation to report these cleared swaps under the Part 45 regulations.

In essence, both an Exempt DCO or No-Action DCO and its non-CCP counterparty to a cleared swap have an obligation to report the swap between them, notwithstanding the fact that as one of the conditions of its Order/NAL each Exempt DCO or No-Action DCO is required to have a rule to prohibit its counterparties from reporting the swaps under Part 45. It is therefore impossible for the non-CCP counterparty in this circumstance to simultaneously comply with the rules of the CCP and the Part 45 regulations.

The facts that under Part 45 (i) swaps cleared through an Exempt DCO or No-Action DCO are not technically Clearing Swaps and (ii) Exempt DCOs and No-Action DCOs are not DCOs as defined by the regulation also creates a challenge for the reporting of the clearing indicator and clearing venue fields as required by the Cleared Swap Amendments. The clearing indicator field is defined as a “Yes/No indication of whether the swap will be submitted for clearing to a derivatives clearing organization” and the clearing venue field is defined as the “LEI of the derivatives clearing organization”. Since Exempt DCOs and No-Action DCOs are not “derivatives clearing organizations”, then for an alpha swap intended for clearing with an Exempt DCO or a No-Action DCO, a strict interpretation of the rule would require the reporting counterparty to report “No” to the clearing indicator field in such cases and would disallow the reporting of the LEI of the CCP through which the swap is intended to be cleared in the clearing venue field.

To bifurcate the approach to the clearing indicator and clearing venue fields, reporting parties would need to establish and maintain static data which distinguishes DCOs from Exempt DCOs and No-Action DCOs and implement alternative reporting logic with respect to the clearing indicator and clearing venue fields in each case. This runs contrary to existing industry builds which have established a consistent relationship between the swaps for which a reporting counterparty reports “Yes” to the clearing indicator field and identification in the clearing venue field of the relevant CCP which is required by the Commission to terminate the alpha and report the related cleared swaps. The clearing indicator field acts as the suppression mechanism for whether a reporting counterparty reports data for the cleared swaps. Severing that relationship means that reporting counterparties and market infrastructure providers that offer reporting services will need to build new logic that determines reporting suppression based on the current status (registered, exempt, no-action) of each DCO. This complicates reporting logic while producing no benefit.

If the clearing indicator is reported as “No”, the Commission would not be able to tell from the reported data that a swap intended for clearing with an Exempt DCO or a No-Action DCO is an alpha swap for which there is a CCP (whether it be an Exempt DCO or a No-Action DCO) which is obligated by the Commission to report the termination of that alpha swap and report the data which ties it to the reported data of the related cleared swaps (e.g., USIs of the cleared swaps, LEI of the SDR where the cleared swaps have been reported). This would limit the ability of Commission staff to monitor whether the alphas are being terminated, as required by the Orders/NALs, and following the entire life of the original swap through to clearing. In addition, reporting of the LEI of the CCP in the clearing venue field will help the Commission to identify those swaps which are submitted for clearing at an Exempt DCO or No-Action DCO.

The duplicative and contradictory reporting requirements described above for swaps accepted for clearing by and resulting from the novation to Exempt DCOs and No-Action DCOs are unintentional consequences of the establishment of regulatory obligations under Part 45 external to that published regulation. ISDA believes that it is the intention of the Commission that only one party to these swaps be solely responsible for reporting of creation and/or continuation data, as applicable. However, while Part 45, as amended by the Cleared Swap Rules, is clear that the party solely responsible for reporting a clearing swap and the termination of the associated original swap is the DCO, Part 45 and the Orders/NALs do not consistently convey that those same obligations are assigned exclusively to Exempt DCOs and No-Action DCOs for the alpha swaps which they accept for clearing and the swaps which result from such clearing novation. Part 45 and the Orders/NALs are also not clear and consistent that in each of these cases, the non-CCP counterparty has no obligation to report the creation and/or continuation data under Part 45.

ISDA also observes that the Orders/NALs currently in effect refer generically to the obligation of an Exempt DCO or a No-Action DCO to report “data” pursuant to Part 45 for the swaps resulting from novation to the CCP of the original swap submitted for clearing. ISDA understands that “data” refers to the obligation to report all of the creation data and the continuation data for the cleared swaps, including the creation of the associated Unique Swap Identifier (“USI”) and reporting of swap valuation data, in each case as defined and prescribed in the Part 45 regulations. ISDA believes it would be beneficial to clarify the definition of “data” in the Orders/NALs to eliminate any ambiguity regarding the obligations of Exempt DCOs and No-Action DCOs pursuant to the Part 45 regulations.

### ***Relief request***

In order to resolve these conflicting obligations and provide further clarity and certainty to market participants regarding their respective obligations for the reporting of alpha swaps and cleared swaps pursuant to the Part 45 regulations, ISDA requests that DMO provide no-action relief to reporting counterparties as described below.

ISDA respectfully requests that DMO issue no-action relief to reporting counterparties which are neither DCOs nor CCPs from their Part 45 obligations to report:

- swap continuation data for alpha swaps which have been accepted for clearing by either an Exempt DCO or a No-Action DCO; and



- any creation and continuation data (including USI generation and transmission) for swaps resulting from novation of an alpha accepted for clearing by an Exempt DCO or a No-Action DCO, as well as any related swaps which may be entered into as part of post-trade activities including netting or compression exercises or novations (the “Exempt DCO/No-Action DCO Swaps”).

ISDA requests that the no-action relief issued to reporting counterparties confirm that:

- The Exempt DCO or the No-Action DCO is solely responsible for (i) reporting both swap creation and swap continuation data for Exempt DCO/No-Action DCO Swaps (including creation and transmission of the USIs for these swaps) and (ii) swap continuation data reporting (including termination) of the alpha which has been accepted for clearing by an Exempt DCO or No-Action DCO, as applicable, in the SDR to which the alpha swap was reported.

Furthermore, ISDA respectfully requests that DMO issue no-action relief to reporting counterparties as specified in Part 45 which provides that DMO will not recommend that the Commission take enforcement action against a reporting counterparty for either of the following:

- reporting a value of “Yes” in the clearing indicator field for swaps intended to be submitted for clearing to an Exempt DCO or a No-Action DCO; and
- reporting of the LEI of the Exempt DCO or No-Action DCO in the clearing venue field for swaps intended to be cleared at an Exempt DCO or No-Action DCO.

ISDA asks that the no-action relief requested above be granted to reporting counterparties and remain in effect until further Commission action resolves these overlapping and contradictory reporting obligations in respect of the Part 45 obligations for Exempt DCO/No-Action DCO Swaps and related alpha trades accepted for clearing by those Exempt DCOs/No-Action DCOs.

Thank you for your consideration of these concerns.  
Please contact me if you have any questions.

Sincerely,



Tara Kruse  
Co-Head, Data, Reporting & FpML  
International Swaps and Derivatives Association, Inc.

cc: Dan Bucsa, Deputy Director, Division of Market Oversight, CFTC