ISDA Safe, Efficient Markets

May 23, 2014

Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Review of Swap Data Recordkeeping and Reporting Requirements (79 Fed. Reg. 16689)

The International Swaps and Derivatives Association, Inc. ("**ISDA**")[1] appreciates the opportunity to provide the Commodity Futures Trading Commission (the "**CFTC**" or "**Commission**") with comments in response to the request for comment referenced above (the "**Comment Request**").

I. Introduction

While composing ISDA's response to the Comment Request, three key themes emerged that form the basis of many of our answers: (i) the data currently required under Part 45 seems sufficient to meet the rule's objectives (ii) there is a trade-off between timing and accuracy and (iii) there is a need for global regulatory consistency and coordination. In addition, ISDA found it difficult to reply to many of the questions in the Comment Request because the Commission has not clearly articulated how the detailed data provided under Part 45 will be used to assist it in discharging its regulatory responsibilities. ISDA believes that the dialogue regarding swap data reporting requirements would be greatly enhanced if the Commission were to elaborate on how the data will be used by it and what purposes are served in providing highly detailed information regarding individual swaps.

Several questions ask responders to advise the Commission whether the data currently required under Part 45 is sufficient and seek suggestions for additional data elements that may be necessary to meet the objectives of Dodd Frank with respect to Swap Data Repository ("SDR") data collection. We believe the data elements currently provided are more than sufficient to meet the objectives of Dodd Frank to provide transparency and a mechanism for regulators to monitor and mitigate risk. Reducing the complexity of the reporting rules and clearly defining a focused list of key economic values will improve both the quality and timeliness of reported data since it promotes consistency and lessens the difficulty of reporting and maintaining such data. If the Commission's primary use for reported swap data is to calculate aggregate product notionals in order to understand party and industry exposures, then a limited set of clearly defined data fields more accurately and timely supports those objectives.

[1] 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 64 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.

The Primary Economic Terms ("PET") reporting deadlines are significantly shorter than trade repository reporting deadlines for comparable global regulators. Since there is a trade-off between timing and accuracy, these deadlines may run counter to the compelling need for data accuracy. The need to report data to an SDR in as little as fifteen minutes from point of execution means there is a greater likelihood of error or omission. Fewer corrections would be necessary if the reporting counterparty had until end of day on the Trade Date or T+1, as other regulators require, and as is recognized as a permitted approach under Part 45 rules, in certain circumstances. Since data accuracy seems to be the primary concern for regulators, this would be improved by amending the PET deadlines to allow additional time to report. Unless use of SDR data in real time by the Commission is effective, upholding the current PET deadlines only serves to undermine the data quality. Retaining the current deadlines for Part 43 reporting means public transparency will remain intact.

The Part 45 rules blazed the trail for SDR reporting and formed the basis of the initial SDR and firm builds to report trade data. Many global regulators now have trade reporting requirements either in effect already or which will become effective later this year. Many of these build off of the CFTC's established approach pursuant to Part 45, but others differ in key ways, including (i) which party(ies) are compelled to report, (ii) construction and creation of Unique Swap Identifier ("USI") or Unique Trade Identifier ("UTI"), (iii) data elements required to be reported and (iv) timelines for reporting. These inconsistencies create significant operational complexity for parties which may be required to report a swap to multiple jurisdictions, as well as for SDRs and industry infrastructure providers that facilitate reporting. This in turn undermines the quality of the data for use not just by the Commission to meet its own objectives, but also undermines the ability of the Commission and global regulators to utilize the data to meet the goals of global data aggregation, transparency and risk mitigation.

In order to meet the aligned objectives of global regulators stemming from their G20 commitments, certain elements of trade reporting addressed in this Comment Request need to be considered in the context of what works best from a global perspective (e.g. USI/UTI) and in other cases, regulatory cooperation is essential to solve issues that impact trade reporting globally (e.g. data privacy and confidentiality).

In section III, we provide additional clarity and granularity with respect to the preceding statements in our specific answers to the questions provided in the Comment Request. In some cases we recommend changes to the Part 45 rules, certain reportable data elements or reporting flows or obligations which we believe are more operationally efficient, promote consistency, and will result in improved data quality. We condition those proposals with the need to separately consider and agree with the Commission on appropriate timeframes for all impacted market participants to implement any corresponding technological changes and to effect a coordinated transition from the current requirements.

ISDA Safe, Efficient Markets

II. Executive Summary

As further detailed in section III of our response, ISDA believes the Commission should enact some important changes to the Part 45 regulations in order to simplify compliance, improve data quality and increase the Commission's ability to rely on and successfully utilize the SDR data to meet its objectives to achieve market transparency and mitigate risk. These include, but are not limited to:

- Simplifying creation data reporting requirements, including the establishment of a specified data set for confirmation data
- Eliminating reporting obligations for alpha swaps and void *ab initio* swaps
- Eliminating valuation data reporting for cleared swaps by Swap Dealers and /Major Swap Participants
- Clarifying the impact of a change in the status of a reporting counterparty to reporting obligations
- Addressing prime brokerage transaction flows
- Allowing USI creation by additional non-registrants
- Clarifying that post-priced swaps are reportable only when all PET details are finally determined
- Revising Appendix 1 to:
    - Include field level distinctions for Part 45 vs. Part 43
    - Eliminate the "any other terms" field
- Eliminating the requirement to update party specific static data for non-live swaps
- Clarifying reporting obligations for cleared swap transaction flows, including alpha swaps and clearing model distinctions

In addition, we strongly believe that the Commission should invest in international harmonization for purposes of improving the value of global data aggregation and analysis by working with global regulators to agree uniform standards and solutions pertaining to:

- Transaction flows, including for cleared swaps
- Standardization of reportable data fields
- Unique Swap Identifiers/Unique Transaction Identifiers
- Unique Product Identifiers
- Technical standards for SDRs, including standard product representation
- Data privacy and confidentiality

ISDA Safe, Efficient Markets

Table of Contents

III. Responses to CFTC Request for Comment on Part 45 and Related Provisions of the Commission's Swap Data Reporting Rules (79 Fed. Reg. 16689)

A. Confirmation Data (§ 45.3): What terms of a confirmation of a swap transaction should be reported to an SDR as "confirmation data"?

1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.

a. For confirmations that incorporate terms by reference (e.g., ISDA Master Agreement; terms of an Emerging Markets Trade Association ("EMTA")), which of these terms should be reported to an SDR as confirmation data?

Confirmation Data

The current confirmation data reporting requirements are both ambiguous and overly broad. In the absence of clear technical standards, reporting entities and Swap Data Repositories ("SDRs") have implemented the confirmation data requirement by separately interpreting the obligation with the result that there are inconsistencies in the data submissions by market participants (which the CFTC may characterize as data quality issues). However, this same ambiguity leaves CFTC staff to interpret if the data received is sufficient. This risks creating an evolving data standard based on regulatory interaction rather than explicit requirement, which, in turn, creates questions on how enforcement could or would proceed.

The Commission should establish the minimum data necessary to accomplish its regulatory mandate. Although additional data provided by market participants may enhance the Commission's understanding of individual transactions, the Commission must consider (i) the technical ability or standards that can reasonably apply across all potential reporting counterparties (ii) the data necessary to meet its regulatory mandate, including the ability to aggregate data across and within trade repositories and (iii) the corresponding necessity for consistent data. This can only occur with explicit data requirements.

Ideally, the Commission should have one set of creation data fields for reporting, rather than separate Primary Economic Terms ("PET") and confirmation data requirements. Swap Execution Facilities ("SEFs"), Designated Contract Markets ("DCMs") and Derivatives Clearing Organizations ("DCOs") are already required to report PET and confirmation data in one report, and reporting counterparties could do the same, provided creation data is limited to key economic terms of the swaps known at the point of reporting, and not values derived from the process of confirming the swap. A single set of creation data fields would be consistent with global regulatory requirements, (e.g. in Canada, the European Union and Singapore) where messaging is simplified by virtue of a streamlined set of data fields contained in one piece of legislation.

We do not believe the legal confirmation for the swap should be replicated as part of SDR reporting, rather to the extent the Commission believes there are terms that extend beyond the current PET fields that are valuable to meeting the objectives of Part 45, then these should be identified and required as either an expansion of PET data, or to the extent they would not be available at the point of PET reporting, preserved separately as confirmation data. This

"confirmation data" should be a limited and enumerated list of fields that complement the current PET data, rather than duplicating it. Submission of searchable documents as an electronic representation of the full confirmation is a technologically intensive process and costly process for market participants. We propose that the Commission amend the definition of confirmation data in §45.1 to reflect that counterparties do not have to report all terms matched and agreed by the parties but rather just the data fields specified as the reportable confirmation data.

To the extent the Commission is unclear what specific additional data might be required, we believe the best means to determine a defined list of useful and consistent confirmation data fields is through the formation of a CFTC sponsored working group that includes representatives from SEFs, DCMs, DCOs, SDRs, reporting counterparties and relevant trade organizations. The aim of the working group would be to agree any additional creation data elements for each asset class or product which are materially important to the Commission's objectives. If these values are not currently supported by Financial products Markup Language ("FpML"), then they could be prioritized for standardization and included in the reportable data set based on an industry agreed timetable for transition. Once the initial aims of the working group are met, it could reconvene annually to determine whether industry evolution and product development warrants any additions or changes to the set of enumerated fields. A periodic review would also allow for any adjustments to facilitate proper systemic analysis based on the changing landscape of regulatory reporting regimes.

A limited and defined set of confirmation data fields also allows reporting electronically in accordance with §45.3 and eliminates any need for submission of images of paper confirmations – a practice which is onerous for reporting counterparties and ineffective for regulatory review and aggregation. Even for complex and bespoke transactions, a limited and defined set of PET and confirmation terms could be represented electronically in FpML. These terms provide sufficient information for data aggregation and analysis of market exposures.

In the event the Commission should require more fulsome details with respect to party level agreements, such documentation may be readily obtained from the relevant parties or their prudential regulator rather than reiterating on a trade by trade level. In the preamble to Part 45[2], the Commission determined it should not require master agreement reporting. The rationale provided for such decision still persists, as the terms of these agreements are not readily reportable in an electronic format nor could this be easily or accurately achieved. Any attempt to require master agreement terms must be considered under the right framework, based on industry evolution to standardize these elements for a broader purpose. As a first example, FpML has started the development of a framework for the representation of legal documents; version 5.7 contains a representation for the Standardized Credit Support Annex ("SCSA"). But in the meantime, this has not evolved sufficiently and should not be required. Importantly, other global regulators have reviewed the need for master agreement terms and have limited their trade reporting requirements to the relevant date, type and version of the agreement.

In summary, ISDA sees little utility in the reporting of terms that are incorporated by reference into a confirmation. In the case of the ISDA Master Agreement, the terms of the Schedule, which includes the parties' choice of largely non-economic elective variables that are provided for in the Master Agreement as well as customized and individually negotiated terms, are too highly varied to

[2] 77 FR at 2152.

be capable of standardized representation, as needed for SDR reporting. Moreover, it is not apparent what objective would be served by noting, for example, that a cross-default provision or individualized termination events apply. Understanding the effect of such provisions often requires a close analysis of drafting and language, as well as knowledge of factual circumstances beyond the four corners of the Master Agreement (e.g., outstanding indebtedness that is within the scope of a cross-default clause). If such an inquiry is ever needed by the Commission, the relevant documents would be available to it pursuant to the recordkeeping requirements of Regulation 45.2. Limiting confirmation data to a defined set of electronically reportable data fields would provide the Commission with more accurate and meaningful data that can be constructively aggregated and compared.

2. ***Should the confirmation data reported to an SDR regarding cleared swaps be different from the confirmation data reported to an SDR regarding uncleared swaps? If so, how?***

Cleared swap confirmation data

Confirmation data should not be required for an alpha trade that is intended for clearing at point of execution, whether due to the clearing mandate or bilateral agreement. Confirmation data for alpha swaps is not meaningful since they will be terminated and replaced with cleared swaps simultaneously or shortly after execution for which confirmation data will be reported by the DCO. See our response to Question 33 for our additional feedback on the reporting of alpha swaps.

3. ***Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding:***
   a. ***swaps that are required to be cleared but not subject to the trade execution requirement;***
   b. ***swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution;***
   c. ***swaps that are voluntarily submitted to clearing at some point after execution (e.g., backloaded trades); and***
   d. ***uncleared swaps? If so, how?***

SEF confirmations

Regardless of execution method, the confirmation for a swap on a particular product should be based on industry standard templates and definitions. Counterparties rely on this consistency to ensure they do not carry basis risk between like swaps. Therefore, the confirmation data reported should be the same as well.

4. More generally, please describe any operational, technological, or other challenges faced in reporting confirmation data to an SDR.

Confirmation data challenges

As described in the previous responses, the current confirmation data reporting requirements are ambiguous, overly broad, and duplicative of PET data requirements. Reporting confirmation data for complex or bespoke swaps is extremely challenging as by nature these products or trades are not sufficiently standardized to have a full normalized representation that can be represented electronically. Limiting confirmation data to a defined set of electronically reportable data fields will provide the Commission with more accurate and meaningful data that can be constructively aggregated and compared.

The confirmation data requirements should better align with international requirements and should be less onerous in nature. No other regulatory regime requires a separate layer of reporting for data pertaining to the confirmation. Rather, where required at all, those additional elements are limited, specifically defined and form part of a single list of reportable fields. Such an approach is possible because the reporting timeframes are T+1 or later, allowing the submission of a single, complete report. In addition, no other regime requires reporting of every term agreed between the parties to the swap, thus equating to the restatement of the confirmation or requiring the submission of the actual confirmation, rather the relevant terms of the trade are prescribed in a common data set.

B. Continuation Data (§ 45.4): How can the Commission ensure that timely, complete and accurate continuation data is reported to SDRs, and that such data tracks all relevant events in the life of a swap?

5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?

Maintenance of swap continuation data

Reporting counterparties have internal mechanisms in place already to reconcile reportable trades and provide any necessary updates either via intraday or end of day reporting. As such, they believe continuation data is being maintained appropriately to reflect the current swap data. In addition, reporting parties are required to conduct the reconciliation of material terms with their counterparties in accordance with the Commission's Part 23 regulations[3] or similar rules of other jurisdictions. Any discrepancies that are revealed as part of this process are subsequently corrected in the SDR reporting for the swap.

If the Commission believes that data is not being maintained timely and accurately, then reporting parties request that the CFTC use industry trade organizations to convey concerns about trends in the quality of specific data fields. On a number of occasions, informal guidance on the approach to a particular field or feedback on the quality or consistency of the data has been received second-hand from SDRs as a result of the Commission's efforts to harmonize data between SDRs.

[3] http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-21414a.pdf

However, this indirect method makes it difficult for reporting counterparties to substantiate and clarify the guidance and appropriately prioritize any necessary technological changes.

Guidance from Commission staff with respect to reporting certain fields should be made publicly available by the Commission for the sake of consistency amongst reporting entities. Making a guidance document, such as a user guide or a Q&A, available on cftc.gov would prove a useful tool for communicating the Commission's expectations and promoting consistency.

6. ***Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).***
   a. ***What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?***
   b. ***How should reporting entities identify the reason why two swaps are linked (e.g., identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?***
   c. ***Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?***
   d. ***How should related swaps reported to different SDRs be linked?***

Swap Linkage

As recognized by the Commission in the Summary of the Proposed Part 45 Rule[4], the USI is a "crucial regulatory [tool] for linking data together and enabling data aggregation by regulators to fulfill the systemic risk mitigation, market manipulation prevention, and other important purpose of the Dodd-Frank Act." The USI is the current and best approach to achieving a link between related swaps where such linkage furthers the goals of Commission. The Part 45 rules currently require linkage only with respect to allocations; in this case, reporting counterparties report the USI of the pre-allocation swap as the "prior USI" in their messaging for the post-allocation swap(s). Providing USI linkages between pre-allocation and post-allocation swaps has been challenging for firms in some cases due to system limitations. The reason for the linkage is clear in this scenario since the swap data report includes an indication of whether the swap is pre-allocation or post-allocation.

Of the events provided in the definition of life cycle event in Part 45, only a novation would result in the creation of a new USI that may be linked to the USI for the original swap subject to that event. In some cases, cleared swaps are linked to the original bilateral swap, if applicable. In examples such as these, the reason for the linkage is not reported as a separate value, but in most cases the type of post-trade event has been reported under either Part 43 and/or Part 45. Therefore the chain of events that corresponds to related swaps has been reported to the SDR and should be available to the Commission as part of the swap history. Requiring a separate linkage reason does not provide a substantive additional benefit to the analysis of current exposures. System capabilities vary between reporting entities; as trade capture systems were not designed to track trade linkage in this manner there would be a substantial cost and challenge for the industry to implement.

[4] 77 FR at 2138.

It is important to acknowledge as well that swap linkage may not be achievable or transparent to the Commission in cases where related swaps are subject to reporting in different regimes. This can occur for instance, when a pre-allocation swap is reported under Part 45, but based on the ultimate counterparties only a portion of the post-allocation swaps are reportable under Part 45. As a result, the pre-allocation and post-allocation swaps will not tie-out completely. Similarly, a swap reported under Part 45 may be novated or partially novated and the resulting swap may not also be subject to Part 45 so USI linkage between the original swap and the novated swaps will not be transparent to the Commission.

Due to the volume of trades that may be involved in a compression cycle, it is not possible to link all the original swaps to the resulting new swap(s) via USI due to systematic limitations on the part of both reporting entities and SDRs. However, an Event Processing ID is routinely used to connect swaps that have been subject to the same compression event, as well as some other post-trade processes. All terminated trades and any replacement trades in a termination cycle share the same Event Processing ID. The ID is printed on the termination result files that all participants consume after a termination cycle, and is forwarded to the SDR after each termination cycle.

We also recognize that the components of package transactions that are exempt from the trade execution requirement under NAL 14-62, or any substantively similar rule-making, may need to be identified in SDR reporting by a means other than USI. See our response to Question 27 for further feedback on this topic.

Related swaps sent to different SDRs can also be linked via use of the USI; however this is not being applied consistently. This occurs now with respect to cleared swaps reported by some DCOs, for instance, for which the USI for the original ("alpha") swap is reported as the prior USI to the cleared swaps ("beta" and "gamma"). Provided both swaps are sent to the same SDR, the alpha swap may be automatically decremented. Even in the event different SDRs are used for the alpha swap versus the beta and gamma, use of the prior USI on the cleared swap facilitates reconciliation amongst aggregated data. However, on the topic of cleared swaps, we believe reporting of the alpha swaps should not be required; see our response to Question 33.

There is a need for international consistency with regards to whether and how reported trades should be linked. For instance, the Regulatory Technical Standards of the European Market Infrastructure Regulation ("EMIR") do not allow for use of a prior USI, UTI or other mechanism to link transactions and require that a single UTI be used to track a cleared swap through all lifecycle events, including compression. We know that this cannot be practically achieved as new and separate legal transactions result from the novation and compression processes for cleared swaps which take on individual trade histories that cannot be tracked via the single UTI created for the alpha swap. We encourage the CFTC to work with global regulators to form consensus around a limited set of harmonized requirements for trade linkage that are most useful to your mutual aims. Specifically, global regulatory consensus on the use of the alpha/beta/gamma[5] approach to cleared swaps will benefit global data aggregation. Consistency allows parties to submit a single multi-jurisdictional report and maintains global data quality. If trade linkage is required differently between regulators, the task of reporting is significantly more complex and the quality of the data will be lessened.

[5] ISDA, *Unique Trade Identifier (UTI): Generation, Communication and Matching* (December 10, 2013) http://www2.isda.org/attachment/NjI3MQ==/2013%20Dec%2010%20UTI%20Workflow%20v8.7.8b%20clean.pdf

i. Snapshot/State/Lifecycle Methods (§ 45.4)[6]

7. What are the benefits and/or disadvantages of reporting continuation data using: (i) the lifecycle reporting method; and (ii) the snapshot reporting method?

a. Are there events or information that can be represented more effectively using one of the reporting methods rather than the other?

b. Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?

Currently, some reporting entities send continuation data via the snapshot reporting method at end of day, while others are sending intraday lifecycle events. Reporting counterparties also have a responsibility to correct errors and omissions, which can be done via either method, but are more likely to be reported via the snapshot reporting method since they may be discovered as part of a reporting counterparty's end of day reconciliations. SDRs should be required to accept both methods for reporting continuation data and firms should be allowed to report via either method.

Either approach meets the continuation data objective for timely and accurate maintenance of creation data. It would be costly and time-consuming to change current builds, especially for reporting counterparties with more limited technical capacity that may submit via csv or other more manual methods.

ii. Valuation Data Reporting (§§ 45.4(b), 45.4(c), and NALs 13-34 and 12-55)

8. How can valuation data most effectively be reported to SDRs to facilitate Commission oversight? How can valuation data most effectively be reported to SDRs (including specific data elements), and how can it be made available to the Commission by SDRs?

a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?

b. What challenges and benefits are associated with unregistered swap counterparties (both financial entities and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?

Effective Valuation Data reporting[7]

We believe the current Part 45 requirement for Swap Dealers ("SDs") and Major Swap Participants ("MSPs") to report valuation data daily is the only effective and accurate approach for uncleared swaps. Current valuation is determined as part of end-of-day processes and the resulting values are used by the accounting and risk systems of the reporting counterparties, and therefore are also the accurate figures for any consolidated review of exposures by regulators. SDs and MSPs should continue to be allowed to submit their valuation data each day in accordance with the timing

[6] This subsection responds to Question 7.
[7] This subsection responds to Question 8.

allowed by their internal firm policies and procedures. Valuations produced via any other method would not be meaningful for risk transparency.

Reporting counterparties currently report the mark-to-market value and currency, as well as the date and time of the valuation. These fields align with requirements from other global regulators and should be adequate to assess market exposures.

Swap Dealers and Major Swap Participants[8]

We believe the valuation data reported by the DCO pursuant to section 45.4(b)(2)(i) provides sufficient and accurate data for understanding the swap valuation. The DCO's valuations are based on an average of the valuations submitted to the clearing houses by its members, so reflect a fair industry view. Further, the DCO's valuations drive the collateral requirements for cleared swaps and would be the only valuation used in the event of a default. The addition of a daily valuation by the SD or MSP does not provide a material benefit.

SDs and MSPs should not be required by the swap data reporting rules to provide their own valuation data for cleared swaps. Relief for the reporting requirement currently exists under CFTC Letters 12-55 and 13-34. In its approval of CME Rule 1001, the Commission set out its interpretation of the single-SDR rule, Rule 45.10, to the effect that the rule applies separately to the original swap and to the swaps resulting from novation to the clearinghouse, each of which is a distinct "given swap" under the rule.[9] As a result, if valuation reporting of cleared swaps is required after the expiration of current no-action relief, SD/MSPs could be required to establish connectivity to multiple SDRs, as each DCO could designate a different SDR. The costs of building such connectivity, which would serve no other purpose than to enable valuation reporting by SD/MSPs to DCO-selected SDRs, is not justified by the purported benefits of SD/MSP valuation reporting of cleared swaps. As its justification for requiring SD/MSP valuation data reporting of cleared swaps, the Commission states: "Because prudential regulators have informed the Commission that counterparty valuations are useful for systemic risk monitoring even where valuations differ, the final rule requires SD and MSP reporting counterparties to report the daily mark for each of their swaps, on a daily basis."[10] DCOs' valuations of outstanding swap exposures to each of their counterparties[11] are already available to the Commission in the DCO's SDR reports. It is not apparent, nor has the Commission explained, why SD/MSP valuations would have any greater utility to the Commission for risk monitoring purposes than these DCO valuations.

Any potential benefits that could be gained from an analysis of divergences between DCO and SD/MSP valuations will be attenuated at best and insufficient to justify the costs. The Commission already has oversight of the DCO settlement price determination process. If differences emerged between the DCO's valuations and those of individual SD/MSPs, understanding the causes and significance of the differences would involve the Commission in a highly technical analysis of

[8] This subsection responds to Question 8(a).
[9] Commission Statement approving request from Chicago Mercantile Exchange (CME) to adopt new "Chapter 10 -Regulatory Reporting of Swap Data" and new "Rule 1001 - Regulatory Reporting of Swap Data" of *CME's Rulebook* (March 6, 2013): 6. http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf
[10] 77 FR at 2154.
[11] It appears that the DCO's "counterparty" for Part 45 reporting purposes is the entity that entered into the original swap, rather than that entity's clearing member. "Swap Data Repositories – Access to SDR Data by Market Participants," 79 FR 16672, 16674 n.14 (March 26, 2014).

valuation methodologies, assumptions, and the purposes for which valuations are prepared. The relevance of such an analysis for the effective monitoring of systemic risk is difficult to discern.

Other regulators, including those in Europe and in Canada, have assigned sole responsibility for reporting valuation for cleared swaps to the clearing agency. So a similar approach by the CFTC would be in line with the global perspective. Further, revocation of §45.4(b)(2)(ii) would eliminate the significant expense and difficulty of multiple parties reporting all data for a cleared swap to the same SDR pursuant to §45.10. The cost savings for SDs and MSPs who may otherwise be expected to build to additional SDRs solely for the purpose of reporting an additional set of valuation data greatly outweighs any perceived benefit of receiving such additional data.

On February 12, 2014, ISDA requested[12] the Commission extend the relief currently granted under NAL 13-34, and previously under 12-55, to SDs and MSPs from the valuation data reporting requirements for cleared swaps under §45.4(b)(2)(ii) until January 31, 2015 in order to allow additional time for the Commission to resolve current ambiguities on the choice of SDR for cleared swaps and implement a permanent solution. We believe that part of the solution is to revoke the requirement under 45.4(b)(2)(ii), but in the meantime, we request that the Commission work quickly to extend the relief currently available under NAL 13-34[19] in order to eliminate concerns related to expiration of the relief and resumption of the corresponding valuation data requirements.

iii. Events in the Life of a Swap (§ 45.4)

9. Please: (i) identify and (ii) describe the complete range of events that can occur in the life of a swap. Please also address whether, and if so how, reporting entities should report each such event.

a. How should events in the life of a swap be represented in SDR data? For example, should an "event type" identifier, as well as a description of the specific event, be required?

Swap events

A rich representation of trade events is already supported by SDRs and reported by reporting counterparties, including indication of a new trade, an amendment, a termination resulting from compression, a corporate action, a full or partial exercise, a full or partial novation, and a full or partial termination. [13]

We believe that the current set of events is sufficient to cover reporting of all substantive swap events. These events have industry standard definitions that should not be described on a swap by swap basis, as doing so would be redundant. Any attempt to expand the list of events or make them more granular would result in more data volume that might lead to less clarity rather than more and may be onerous and costly for some market participants to implement.

[12] See Appendix, "Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Valuation Data Reporting for Cleared Swaps (Part 45.4(b)(2)(ii))," (February 12, 2014).
[13] ISDA, "Event Table," *Unique Swap Identifier (USI): An Overview Document* (November 18, 2013): 15 http://www2.isda.org/attachment/NjE0MQ==/ISDA%20USI%20Overview%20Paper%20updated%202013%20Nov%2018%20v8%20clean.pdf

The Commission should work with SDRs to determine the best method to obtain event specific data, as needed, and clarify the manner in which the Commission will use such data so that it can be made available in a useful format.

10. Can swap data reporting be enhanced so that the current state of a swap in an SDR (e.g., open, cancelled, terminated, or reached maturity) can be determined more efficiently and, if so, how?

b. Should reporting entities and/or SDRs be required to take any actions upon the termination or maturity of a swap so that the swap's status is readily ascertainable and, if so what should those requirements be?

c. Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void ab initio, continue to be reported to and identified in SDR data? Why or why not? If so, how?

i. ***Should the swap data reporting rules be enhanced or further clarified to address void ab initio swaps?***

Swap status[14]

Reporting entities report the maturity date of swaps and the SDR automatically removes matured swaps from the live data set. Terminations of swaps are also reported as part of continuation data. If the Commission requires additional clarity with respect to the status of matured or terminated swaps, such information should be obtained from the SDR.

Void *ab initio* swaps[15]

Void *ab initio* swaps ("VAI") should not be subject to a reporting requirement, as it is both contrary to the premise of "void *ab initio*" and also would operationally complicate matters as many market participants have built their reporting logic to only capture and persist trades that come into existence and not voided or hypothetical trades.

We recognize, however, that there are instances where a SEF may report a trade before it is determined to be VAI, particularly with respect to real time reporting. In those instances, we agree it would be necessary for the SEF to "cancel and correct" any existing report to show that such trade is now VAI.

We note that End of Day reporting or generally a longer time frame between execution and reporting to the SDR would avoid the initial reporting to the SDR and eliminate the need to correct that reporting (the real time reporting would still happen). Unless there is specific information the Commission is seeking to derive from the reporting and subsequent cancellation of a VAI trade, the elimination of these flows from the SDR reporting would improve the overall data quality.

We further note that the relief for resubmission of VAI trades that were voided for operational issues under CFTC letter 13-66 requires linking reporting of the "new trade on old terms" to the old trade. We recommend a modification of that condition in that relief letter to only require linking to

[14] This subsection responds to Question 10(b).
[15] This subsection responds to Question 10(c).

the extent the reporting on the VAI trade actually was done, and that linking not be required if no reporting on the VAI trade was done, or only partial linking if only partial reporting on the VAI trade was done (e.g., only real time reporting but not SDR reporting).

11. Should the Commission require periodic reconciliation between the data sets held by SDRs and those held by reporting entities?

Periodic reconciliation should not be required between the data held by SDRs and reporting entities. Reporting entities already have internal processes in place to monitor their compliance with the Part 45 reporting rules, and should be allowed to follow those established policies and procedures. Moreover, reporting counterparties perform reconciliation of material terms in accordance with Commission's Part 23 regulations or similar rules of other jurisdictions. Any errors or omissions that are revealed as a result of that process are subsequently corrected in SDR reporting.

iv. Change in Status of Reporting Counterparty (§ 45.8)

12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3),29 what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?

As fully detailed in the Request for No-Action Relief and Interpretive Guidance pertaining to changes in registration submitted to the Division of Market Oversight by ISDA on April 4, 2014[16], changes or limitations to a registered person's status as a Swap Dealer ("SD") or Major Swap Participant ("MSP"), in particular deregistration and limited purpose designation, impact the operational ability of its counterparties to comply with their obligations as SDs or MSPs, including, but not limited to, Part 43 and Part 45 regulations, external business conduct, clearing, and confirmation, portfolio reconciliation and portfolio compression requirements. The current process for granting such changes to registration does not consider these implications in a manner that allows for a consistent and coordinated approach to changes or transfer of obligations, which imposes compliance challenges and, with respect to the reporting, may impact the quality of reported data and the ability for parties to comply with their obligations.

In order to promote uninterrupted and accurate reporting to an SDR, the Commission should address the following areas (i) adequate notification (ii) technological requirements imposed on market participants and (iii) clarification of reporting responsibility.

[16] See Appendix, "Request for Division of Market Oversight Staff No-Action Letter and Interpretive Letter Pursuant to CFTC Regulation 140.99: Impact of Swap Dealer and Major Swap Participant Registration Status Changes on Counterparties' Obligations under Reporting Requirements," (April 4, 2014).

Notification

The lack of public transparency with respect to the Commission's intention to approve a deregistration or limited designation does not allow time for market participants to prepare and coordinate the necessary static data and/or technological changes to accurately determine reporting responsibility in accordance with the relevant effective date.

In order to allow time to operationally facilitate the transition, we propose that the Commission issue a publicly available notice with respect to its decision to approve an application for deregistration a minimum of 30 days prior to the effective date of such deregistration and 60 days prior for a limited designation, especially in the event the conditions are unprecedented. Such notice will allow reporting counterparties to assess the impact and plan for any requisite technological changes and static data updates. Despite advance notice, in some cases this suggested notification period may be insufficient depending on the difficulty of any technological changes, as further described below.

Technological requirements

In order to accurately determine the reporting counterparty to a swap, the counterparties to the SD or MSP which has been deregistered or granted limited designation may be required to make significant technological changes to their reporting infrastructure and their static data mechanisms. Limited designations are of particular concern since they may be granted at a business unit, asset class, desk or activity level. The party which is granted such limited designation has prepared to make such a distinction, but all of its counterparties may not be equally privy to the trade specific conditions that may determine whether or a not a swap falls within the scope of the limited designation.

We ask that the Commission strongly consider the technological difficulty imposed on other market participants when determining the conditions for a limited designation, reducing the complexity of such conditions to simplify any corresponding technological changes in order to mitigate the potential for errors or inconsistencies in reporting counterparty determination that impact data quality.

Depending on the difficulty of any requisite technological changes, market participants may need longer than the recommended 60 day notice period to prepare for a limited designation. We ask that the Commission seek input from reporting counterparties via ISDA and other trade organizations in order to proactively issue any necessary no action relief to facilitate a coordinated transition.

Reporting responsibility

The Part 45 rules do not specifically address how reporting counterparty responsibilities are impacted by a change in registration. We assume a change in the status of a SD or MSP impacts determination of the reporting counterparty on a going-forward basis from the effective date of the change for new swaps or swaps subject to a post-trade event that changes the party(ies) to the swap (e.g. a novation.), but explicit guidance in the rules would promote consistency. Based on the limited designations and deregistration approved by the Commission to date, it is apparent that the industry requires clarification with respect to the which party holds the reporting counterparty

obligation for (i) swaps entered into during any period of no-action relief granted in advance of the approval and effectiveness of the change in registration status and (ii) swaps entered into prior to the effective date of the change in registration for which continuation data reporting obligations remain. A clear, consistent approach will allow reporting parties to prepare appropriately and preserve the continuity and accuracy of reported data.

We note for your consideration that a change to the reporting counterparty for a previously reported swap poses operational challenges for both reporting counterparties and market infrastructure providers who have built logic that maintains a reporting counterparty determination for the life of the USI. Consequently, an alternate approach will require technological changes and/or manual overrides.

Also, reporting counterparties have no publicly available means of knowing whether a party that has been granted a limited designation has complied and continues to comply with the conditions, if any, set forth in the relevant Limited Designation Order. Therefore, we propose that the Part 45 rules acknowledge that absent a notification by the Commission, reporting counterparties may assume that the limited designation is in effect and applies, as appropriate, to their mutual swaps. In addition, a reporting counterparty may reasonably rely on representations from the limited designation entity regarding its SD or MSP status with respect to a particular swap.

C. Transaction Types, Entities, and Workflows: Can the Swap Data Reporting Rules be Clarified or Enhanced to Better Accommodate Certain Transactions and Workflows Present in the Swaps Market?

13. Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared. Please include in your response any processes arising from all relevant platforms and methods of execution.

Data transmission processes

ISDA has done work to capture the idealized models for specific flows and processes through both our FpML Business Process Architecture[17] and Unique Trade Identifiers[18] initiatives. However, it is extremely difficult to document all possible flows as there are seemingly endless variations based on asset class, a variety of middleware and execution platforms and various levels of electronification. The aim in asking this question is not clear, but we are happy to work with the Commission to provide insight on specific processes or flows for which it is seeking to better understand the implications with respect to Part 45.

[17] http://www.fpml.org/documents/FpML-SDR-reporting-CFTC.pdf
[18] ISDA, *Unique Trade Identifier (UTI): Generation, Communication and Matching* (December 10, 2013) http://www2.isda.org/attachment/NjI3MQ==/2013%20Dec%2010%20UTI%20Workflow%20v8.7.8b%20clean.pdf

14. Please identify any Commission rules outside of part 45 that impact swap data reporting pursuant to part 45. How do such other rules impact part 45 reporting?

Rules that impact Part 45 reporting

The Part 43 rules impact swap data reporting pursuant to Part 45 in a couple of ways. First, and as more fully described in our response to Question 28, certain reportable fields (e.g. execution timestamp, execution venue and block trade indicator) apply to both Part 43 and Part 45, but each section requires a different approach to reporting values based on the standard for these rules (i.e. one is event based and one is swap based). Though the rules are not clear on this distinction, the value for a Part 43 report is based on the price-forming event that has been reported, while reporting counterparties believe the Commission expects the value pertaining to the original swap execution to be reported for Part 45 and persist through the life of the swap without regard to how subsequent post-trade events have been treated. This means a single report cannot be sent in all cases to meet Part 43 and Part 45 requirements, but messaging has not been designed to provide separate values for each purpose, therefore this can only be achieved if the SDR has mechanisms in place to retain and persist the reported value for the original swap for Part 45. Clarity from the Commission is needed to ensure consistent treatment for these fields and inform any additional technological changes that may be required. Depending on the requisite changes, a suitable period for development, testing, implementation and transition would be necessary.

Also pertaining to Part 43 as well as Part 37, ISDA requested no-action relief from Commission staff on September 23, 2013 and April 3, 2014[19] with respect to the order aggregation prohibition on Permitted Transactions under §43.6(h)(6). Due to condition (i) on page 4[20] of NAL 13-48 (the "Condition"), beginning on the October 2, 2013 compliance date for Part 37, NAL 13-48 does not provide relief from the aggregation prohibition under regulation 43.6(h)(6) for a swap that is listed by a registered SEF or DCM in accordance with Part 37, but which is not executed on or pursuant to the rules of a SEF or DCM. Reporting counterparties are currently complying with the Condition with respect to Required Transactions[21]; however, market participants have identified key operational challenges which make compliance with respect to Permitted Transactions very difficult to achieve. The primary operational challenges are (i) lack of an adequate source for approved Permitted Transactions (ii) block trade indicator determination and (iii) connectivity to a relevant SEF or DCM for both Swap Dealers and clients. We ask that the Commission consider ISDA's latest request on this matter and ideally, provide permanent relief from the order aggregation prohibition on Permitted Transactions, and otherwise address the sourcing and connectivity recommendations in our request.

With respect to addressing how the order aggregation prohibition for Permitted Transactions impacts Part 45 SDR reporting, reporting counterparties are required to determine and report the "block trade indicator" to identify whether the swap qualifies as a "block trade" as defined in the Part 43. This field is used by SDRs to apply available treatment to the public reporting of swaps, including a delay on dissemination, notional caps and masking for other commodity swaps. The

[19] See Appendix, "Revised Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Order Aggregation of Certain Permitted Transactions," (April 3, 2014)

[20] The condition states: "(i) The orders being aggregated are orders for swaps that: (1) are not listed or offered for trading on a SEF; and (2) are not listed or offered for trading on a DCM[.]" NAL 13-48 at 4.

[21] As defined in Section 37.9(a)(1) *Required transaction* means any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act.

task of determining whether a swap is a Permitted Transaction offered by any SEF or DCM adds a great deal of complexity to the technological builds firms need to have in place in order to determine whether the swap is eligible for block treatment and submit the accurate response to the block trade indicator field in their Part 43 and Part 45 reporting. Many firms rely on an ancillary service from an SDR to determine whether a trade is eligible for block treatment, but the SDRs do not have the ability to determine whether a trade may be prohibited from block treatment under §43.6(h)(6) because the swap is offered as a Permitted Transaction but was not executed pursuant to the rules of a SEF or DCM. Therefore, reporting counterparties must have robust logic to report a block trade indicator value of "No" when sending the swap to an SDR instead of being able to rely on the ancillary service. The accuracy and effectiveness of that logic is highly dependent on a reliable, real-time central source for data on Permitted Transactions that firms can leverage for their reporting logic. As firms are unable to automate such updates based on the current list of Trading Organization Products[22], a manual update would be required each time a new Permitted Transaction is certified or approved. Such approach is resource intensive and prone to errors or inconsistencies, especially in cases where the product descriptions are not subject to a consistent standard. As a result, the value may be reported incorrectly for Part 43 and/or Part 45 reporting, and with respect to Part 43, the block treatment for publicly disseminated swaps may not be applied correctly despite the best intentions of the reporting counterparty. Eliminating this prohibition will resolve the operational difficulties and resulting impact to data quality, and better serve the needs of the buy-side and end-user community that rely on the anonymity of block treatment to preserve the quality and confidentiality of their swap activity. In the meantime, and as conveyed in our answer to Question 28, we believe that Appendix 1 to Part 45 should be amended to remove the requirement to report the Block Trade Indicator since this value is not meaningful for Part 45 as it is determined solely and specifically with respect to a particular publicly reportable event and determines how that event is treated for purposes of public dissemination.

15. ***What are the challenges presented to reporting entities and other submitters of data when transmitting large data submissions to an SDR? Please include the submission methods utilized and the technological and timing challenges presented.***

The occasions for which reporting entities need to submit large quantities of data are infrequent, but when they occur they can be challenging since SDRs are not designed to regularly accommodate for such capacity of reporting. Therefore data may not be consumed in a timely fashion and a disparity could exist between the reporting timestamp known by the reporting entity and the timestamp provided by the SDR. Allowing a phase-in period over which reporting counterparties can submit large volumes of swaps is essential to preserving the data quality. The extended period of time provided by the Commission for Part 46 reporting, for instance, was crucial to scheduling an organized backload amongst reporting entities and the SDRs. A similar period for compliance should be proactively provided by the Commission in advance of any other effective dates in the future that would require a backloading effort. The potential expiration of the relief under NAL 13-75 for reporting cross-border swaps on December 1, 2014 is an important milestone where industry coordination is essential to ensure complete and accurate reporting of swaps that may become reportable as a result of the expiration of this relief.

[22] http://sirt.cftc.gov/sirt/sirt.aspx?Topic=TradingOrganizationProducts

i. Bespoke Transactions (§ 45.3, Appendix 1 to Part 45, and NALs 13-35, and 12-39)

16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?

FpML version 5.5, which was released in May 2013, contains enhancements in the generic product structure – used for the reporting of complex and bespoke transactions[23] - that allow for the representation of all trade details explicitly required under Parts 43 and 45. These enhancements have subsequently been implemented by market participants.

A proposal has been developed and discussed with CFTC staff to report the PET field "any other terms of the swap matched or affirmed by the counterparties in verifying the swap", via a searchable document solution. The development of an implementation plan for this solution is pending confirmation by the Commission that this is an appropriate solution. While the proposed solution could be put in place if required, we strongly believe that this particular PET field actually represents confirmation data. It would be better from a cost/benefit point of view for the Commission to rely upon the confirmation data of the trade to get access to any other economic terms outside of the listed PET data fields. The costs and technologically intensive process required to implement this proposed solution is not justified by any clear benefit to the Commission in receiving this data within the timeframe for PET reporting rather than with the confirmation data. Please see our response to Q28 for a fuller discussion of this PET data field.

As we indicated in our meeting with CFTC staff in February 2013, bespoke and complex transactions represent a limited part of the derivatives landscape. We estimated these products on average to represent less than 5% of the notional across asset classes. Bespoke and complex transactions are more predominant in the equity derivatives and commodity derivative asset classes. Work is ongoing to improve the level of standardization in those asset classes. We would welcome any guidance from the CFTC on standardization priorities based on an analysis of the data currently reported to the SDRs.

[23] "Bespoke or complex swaps" are those swaps that are: (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"). http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-39.pdf

ii. Allocations and Compressions (§§ 45.3, 45.4, NALs 13-01 and 12-50)

17. Please describe any challenges associated with the reporting of allocations. How should allocation data elements (i.e., indications of whether swaps will be allocated, as well as the identities of entities to which portions of executed swaps are allocated) be reported to SDRs?

Allocations

In response to a request from ISDA[24], Commission staff provided relief under NAL 12-50 to agents which gave them additional time to provide the counterparties for the post-allocation swaps to the reporting counterparty in cases where agent and the reporting counterparty are located in different time zones. This relief expired on June 30, 2013, but the issue remains.

Reporting counterparties are responsible for reporting allocated swaps as soon as technologically practicable after receipt of the identity of the counterparties. The agent is responsible for reporting the identities of the counterparties to the allocated swaps within eight business hours based on the location of the *reporting counterparty*. In cases where the parties are in different time zones, this may not be achievable due to differences in working hours and business calendars. Even in cases where the parties are in closer proximity, the rule is unclear how to calculate the eight business hours since it does not define when a business day begins or ends for the purpose of calculating consecutive business hours. As a result, it is nearly impossible for both agents and reporting counterparties to consistently track compliance with the requirements in §45.3(e)(ii). Further, compliance with the post-allocation requirement is contingent on the compliance of a non-reporting counterparty that may not be subject to the Commission's oversight.

Since the pre-allocation swap has already been reported for both Part 43 and Part 45 purposes, the swap execution has been substantively reported. Additional information provided by the reporting of the post-allocation swaps is limited to the notional breakdown and specified funds. Therefore the reporting counterparty's gross exposure doesn't change, only their counterparty-specific exposure. Allowing additional time for the reporting of post-allocation swaps which takes into consideration the respective locations of the counterparties means the Commission is likely to receive more accurate data from the initial report, and both agents and reporting counterparties will be more reasonably capable of meeting their respective obligations. This is another requirement for which we contend that accuracy is more important than the speed of reporting.

We propose that §45.3(e)(ii)(A) be amended to clarify that the agent's timeframe to provide the counterparties resulting from allocation is based on eight business hours after execution *in its own location*. We also propose that the term "business hours" in §45.1 be amended to "*Business hours* means consecutive hours during one or more consecutive business days calculated based on the hours of 9 a.m. to 5 p.m. on any applicable business day(s)." We note that §1.35[25] of the Commission's rules defines a contradictory timing requirement for account managers to provide allocation information "no later than the end of the calendar day that the swap was executed." We suggest that either §1.35 be amended to remove the discrepant language or revised in accordance with our suggestions for §45.3(e)(ii)(A).

[24] See Appendix, "Request for No-Action Relief - Part 45: Swap Allocation Report Timing," (December 10, 2012).
[25] 77 FR at 21306

Finally, with respect to the reporting counterparty's responsibility to report post-allocation swaps as soon as technologically practicable ("ASATP") after receipt of the identity of the counterparties, we note that reporting counterparties may receive such information during non-business hours, especially in cases where the agent is located in another time zone. The reporting counterparty books the allocations in its own business hours and reports ASATP thereafter. We propose that §45.3(e)(ii)(B) be amended to acknowledge that the reporting counterparty's obligation to report ASATP is measured in its own location based on the revised definition of business hours proposed in the preceding paragraph.

18. ***How should swaps resulting from compression exercises and risk mitigation services be reported to, and identified in, an SDR so that the Commission is able to effectively review these exercises and determine what swaps result from a specific exercise***

    a. ***Please describe any technological, operational, or logistical challenges associated with reporting of such swap transactions.***

Compressions

Due to the volume of trades that may be involved in a compression cycle, it is not possible to link all the original swaps to the resulting new swap(s) via USI due to systematic limitations on the part of both reporting entities and SDRs. However, an Event Processing ID is routinely used when compression cycles are conducted via a compression service (e.g. triResolve) to connect swaps that have been subject to the same compression event, as well as some other post-trade processes. All terminated trades and any replacement trades in a termination cycle share the same Event Processing ID. The ID is printed on the termination result files that all participants consume after a termination cycle, and is forwarded to the SDR after each termination cycle.

iii. Prime Brokerage (NAL 12-53)

19. ***Please describe any challenges associated with the reporting of prime brokerage swap transactions (e.g., challenges related to transactions executed either bilaterally or on a platform and/or involving different asset classes)?***

Prime brokerage is a credit intermediation arrangement whereby, in its simplest form, a counterparty commits to the economic terms of a transaction with an "executing dealer", with whom the counterparty need not have a credit relationship, and as a result of such commitment two "mirror image" swaps are entered into. One swap (the "PB-ED swap") is between the executing dealer and the counterparty's "prime broker", and is generally on the terms committed to between the counterparty and the executing dealer. The other swap (the "PB-counterparty swap") is between the counterparty and its prime broker, and is on substantially identical terms to the PB-ED swap, subject to differences that may reflect the prime broker's fee or other customized terms agreed to between the counterparty and its prime broker. The legally binding effectiveness of the mirror image transactions against the prime broker is generally conditioned on the satisfaction of certain pre-agreed terms, such as the transactions not causing the breach of specified exposure and settlement limits, a commitment to terms actually having been made between the counterparty and the executing dealer, and the receipt by the prime broker of matching trade notifications from each of the executing dealer and the counterparty. If the mirror

transactions conform to the pre-agreed terms, the prime broker generally must accept and perform the role of credit intermediary for the transactions. Variants of such arrangements exist, including ones that interpose an additional prime broker between the executing dealer and the counterparty's prime broker.

Currently, Commission regulations provide that the timeframe for reporting of swap transactions begins to run upon execution of the transaction.[26] Although Part 45 definitions do not contain a definition of the term "execution",[27] the related real-time reporting provisions of Part 43 define "execution" to mean an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law.[28] The definition further states that execution occurs simultaneously with or immediately following the affirmation of the swap,[29] but affirmation does not necessarily constitute execution.[30]

Neither Part 43 nor Part 45 contemplate prime brokerage execution methodology, and literal application of their provisions would result in reporting of the mirror image transactions in a manner that fails to portray the economic realities of the transactions. The commitment to terms between the counterparty and the executing dealer is a single pricing event, yet, upon the prime broker's 'acceptance' of those terms, two separate (but mirror image) transactions are established. The reporting result under Parts 43 and 45 as written is problematic:

- because the definition of 'execution' focuses on legally binding obligations of the counterparties to a swap, no reports would be made at the time of the relevant pricing event (i.e., the time at which the counterparty and the executing dealer commit to the economic terms and assume the market risk of the transaction);[31] and

- duplicate Part 43 reporting of the single price-forming event would take place belatedly at the time of 'acceptance' by the prime broker.

In response to these problems, a practical and effective prime brokerage transaction reporting methodology was made possible by CFTC No-Action Letter No. 12-53 ("Letter 12-53"), which established a work flow for reporting the pair of linked, mirror image transactions that are generated by prime brokerage arrangements. Letter 12-53's reporting methodology (which was acknowledged in the letter not to be the exclusive acceptable means of reporting prime brokerage transactions) assigns responsibility for Part 45 reporting of the ED-PB swap to the executing dealer, while assigning responsibility for Part 45 reporting of the PB-counterparty swap to the prime broker, an allocation that realistically reflects when the respective parties become aware of required reporting information and what information is available to each within this work flow. The relief under Letter 12-53 excused Part 43 reporting of the PB-counterparty swap by the prime broker and made clear that the prime broker could treat the time of "acceptance" as the time of execution for purposes of Part 45 reporting. The conditions of Letter 12-53 included that both the

[26] Regulations 45.3 and 43.3.
[27] Regulation 45.1.
[28] Regulation 43.2 (definition of "execution").
[29] Id.
[30] Regulation 43.2 (definition of "affirmation").
[31] We note that in some variants of prime brokerage methodology, execution might be deemed to occur upon the commitment to economic terms.

executing dealer and the prime broker be registered swap dealers and that the prime broker and the executing dealer had entered into an agreement to report in accordance with the letter. The relief provided by Letter 12-53 expired on June 30, 2013.

Subject to concerns regarding extraterritorial implications that we discuss below, ISDA submits that the reporting workflows of Letter 12-53 should be established in Commission rules as the default methodology for reporting of prime brokerage transactions involving PB's and ED's that are registered swap dealers. The Part 43 and Part 45 reporting responsibilities set out in Letter 12-53 should be available without the need for a written agreement among the swap dealers, but swap dealers should have the right to agree in writing on alternative assignments of responsibility for a given swap. Furthermore, the reporting rules should expressly state that a prime broker may treat the time of acceptance as the time of execution for reporting purposes, and the executing dealer may treat the time of commitment to economic terms as the time of execution. Consistent with our proposed treatment of Part 43 reporting, the Part 43 rules should expressly recognize that the PB-counterparty swap serves no price discovery function by excluding such swaps from the definition of "publicly reportable swap transaction". The pricing of the PB-counterparty swap is determined by the earlier commitment to economic terms reflected in the ED-PB swap, and the prime broker assumes no net market risk upon acceptance of the mirror image swap transactions.

In addition, Commission rulemaking should provide an operationally feasible, prospectively applied means of linking the USIs of the PB-ED swap and the PB-counterparty swap that is consistent with automated processing of Part 45 reports. (The Part 43 and Part 45 rules, which took no notice of prime brokerage, do not suggest, or offer a means of, such linkage.) This mechanism should be designed in consultation with prime brokerage market participants and should be made part of the pre-determined workflows for Part 45 reporting. Failure to integrate the provision of the USI into reporting workflows will result in highly manual (i.e., time and labor intensive) processes, which are neither cost-justified nor conducive to orderly and accurate reporting and may also result in untimely reporting of the USI linkage.

Neither the Commission nor its staff have addressed the interplay between the allocation of reporting responsibilities in prime brokerage and the Commission's criteria for the cross-border application of the Part 43 and Part 45 reporting obligations. The Commission should attempt to clarify the responsibilities of the parties (including with respect to USIs) under the various cross-border transactional patterns encountered in prime brokerage, such as when execution occurs on a non-U.S. trading platform for give-up to a prime broker that is a U.S. person, or when the counterparty is the only U.S. person that is party to the prime brokerage arrangement.[32]

[32] Several of these patterns raise additional issues with respect to USI linkage. There is a potential for inconsistent or duplicative identifiers if one of the mirror image transactions is reported under Part 45 using a USI identifier, but the corresponding mirror transaction is subject to EMIR reporting with a UTI identifier, or if a single transaction is subject to both reporting regimes. As part of the Commission's stated efforts to obtain improved global cooperation and consistency, it should endeavor to obtain ESMA's acceptance of the more detailed USI in place of UTI when there are linked transactions and work flows in a prime brokerage arrangement.

v. Swaps Executed or Cleared on or by FBOTs, No-Action CCPs, QMTFs, and Other Non-Registrants/Exempt Entities (§§ 45.3, 45.4, 45.5, and NALs 14-27, 14-16, 14-07, 13-73, 13-43, 13-33, 12-63, and 12-56)

21. Are there instances in which requirements of CFTC regulations or reliance on exemptive or staff no-action relief result in more than one party reporting data to an SDR regarding a particular swap? If so, how should such duplicative reporting be addressed? What should be the role of the reporting entities, as well as other submitters of data, and SDRs in identifying and deleting duplicative reports? What solutions should be implemented to prevent such duplicative reporting?

Non-registrant reporting

Assignment of reporting responsibility to non-registrants should be accomplished via Commission rulemaking rather than via No Action Letters. By issuance of the above referenced NALs and other similar letters, the Commission has created new reporting requirements for non-registered parties that are not specified in the Part 43 or Part 45 rules. This in turn has a created an obligation for reporting counterparties to implement technological changes to their reporting infrastructures that are not otherwise prescribed and that are being dictated in an indirect manner via relief primarily issued for the benefit of parties exempted from registration. Reporting parties may require more time than is allotted by the relevant NAL to implement mechanisms to suppress their Part 43 and Part 45 creation data reporting in order to prevent duplicative reporting.

SDR validations that accept data reported by a No-Action CCP over that of data reported by the reporting counterparty for the same USI could mitigate duplication for cleared swaps in cases where the parties use the same SDR. Similar validations are not available and cannot be implemented for QMTFs since reporting counterparties retain the responsibility for reporting continuation data for uncleared swaps. Therefore, until reporting parties are able to make the requisite changes, data quality may be compromised.

To solve this issue, assignment of reporting responsibility to non-registrants should be accomplished via Commission rulemaking rather than via No Action Letters, and a suitable time period should be agreed for all market participants to make technological changes and transition to the new reporting structures. In the meantime, reporting counterparties should be granted relief in the event they are not able to suppress their reporting in accordance with the timeline provided in any relevant no action letter granted to a QMTF or No-Action CCP.

22. In addition to those entities enumerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers ("USIs")? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.

Creation of USIs by non-registrants

In NAL 14-46, the Commission has introduced the Acknowledgment ID ("AID") which is the equivalent of a USI Namespace issued to QMTFs, No-Action CCPs and other parties that have been exempted from registration but have reporting obligations under Part 45, including the creation of a USI. There is an equally compelling argument for the Commission to issue a USI Namespace or AID to other market participants that are uniquely situated to create and transmit USIs on behalf of the parties.

Electronic communication networks ("ECNs") are used widely in the foreign exchange asset class, and to a certain extent in the other commodities asset class, to execute swaps. The ECNs are not required to register as SEFs due to the U.S. Treasury exemption for FX forwards and swaps[33] but the transactions are still subject to SDR reporting. The market infrastructure for these products dictates full confirmation matching to exchange USI created by the reporting counterparty; therefore in order to facilitate timely reporting and a mutually recognized USI, the ECN is the logical and appropriate party to generate the USI for the swap.

This approach aligns with the first touch principle for efficient USI creation and communication and is increasingly relevant from a global reporting perspective since under other regimes there is not a similar constraint as to who may create the UTI. For the sake of efficiency, accuracy and timeliness, the UTI is created by a central platform whenever possible. The inability for such platforms to create a UTI that aligns with the USI requirements results in the creation of separate UTIs for global reporting, rather than the use of a single global trade identifier based on the USI requirements. In addition, use of multiple identifiers in global reporting for a single transaction is not conducive to global data aggregation in accordance with the efforts of the Financial Stability Board.

We also propose that a non-SD/MSP reporting counterparty which is affiliated with an SD or MSP should be allowed to generate a USI using the USI namespace of its affiliated SD or MSP rather than being required to accept a USI from the SDR. The extra step of consuming the USI from the SDR is technologically challenging for some parties and impacts the ability of the reporting counterparty to report timely in other global jurisdictions using the USI as the trade identifier. Please see our response to Question 53 for further feedback on USIs.

[33] U.S. Treasury, "Final Determination" to exempt FX swaps and forwards from most requirement of the Dodd-Frank Act, *Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act,* (November, 2012): 69704 http://www.gpo.gov/fdsys/pkg/FR-2012-11-20/pdf/2012-28319.pdf

23. How should data reported to SDRs identify trading venues such as SEFs, DCMs, QMTFs, FBOTs, and any other venue?

Identification of trading venues

Trading venues should be identified in reporting by use of a Legal Entity Identifier ("LEI"), where available.

vi. Inter-Affiliate Swaps (§§ 45.3, 45.4, 45.6, and NAL 13-09)

24. In order to understand affiliate relationships and the combined positions of an affiliated group of companies, should reporting counterparties report and identify (and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6? If so, how?

Inter-affiliate relationships are party level data, not swap level data, and so should not be required for reporting on a swap by swap basis except in cases where an exemption is being claimed based on this status (e.g. an exemption from the clearing mandate). If needed by global regulators to consider the exposure across an organization of affiliated entities, this information would be more efficient and appropriate to implement by means of a global static data approach rather than including this information in swap by swap reporting.

The Global Legal Entity Identifier System provides for affiliate relationships as part of its level 2 data. The Financial Stability Board ("FSB") recommendations report[34] asserts that "...it will be important to expand and add to [phase 1 set of reference data], as additional reference information, for example, on corporate ownership and relationships is essential in order to aggregate risks and prepare consolidated exposure statements." The FSB continues on to acknowledge that "adding information on ownership and corporate hierarchies is essential to be able to undertake risk aggregation which is a key objective for the global LEI system." "...The aim is to have sufficient data to construct a map of the financial network and the complex groups of entities which participate in them."

We believe this would be a better mechanism for establishing a database of party affiliations since as a practical matter it is not possible to reflect all relevant affiliations repeatedly on a swap by swap basis. Understanding the combined positions of an affiliated group can only be done accurately at a global level. It is also essential to the Commission's efforts to promote global data aggregation and risk oversight that all global regulators are utilizing the same source of party affiliations.

[34] Financial Stability Board, "Recommendation 11- Standards for the LEI System" and "Recommendation 12 - LEI Reference Data on Ownership," *A Global Legal Entity Identifier for Financial Markets* (June 2012): 37-39, http://www.leiroc.org/publications/gls/roc_20120608.pdf

vii. Reliance on No-Action Relief in General

25. To the extent that a reporting entity is, in reliance on effective no-action relief issued by Commission staff, reporting to an SDR in a time and/or manner that does not fully comply with the swap data reporting rules (e.g., outside reporting rules' timeframe, required data elements missing), how can the reporting entity most effectively indicate its reliance upon such no-action relief for each affected data element.

a. Are there any other challenges associated with the reliance on staff no-action relief with respect to compliance with part 45? If so, please describe them and explain how the swap data reporting rules should address those challenges

The use of staff letters to provide interpretative and no-action relief has proliferated greatly over the past several years. In most instances such relief provided the market with regulatory clarity and/or time to develop the systems and processes to facilitate compliance with the various reporting rules. ISDA greatly appreciates the efforts of CFTC staff to provide this relief. Ideally, proposed new regulatory requirements would be subject to a fulsome cost-benefit analysis which considers both the overall macro impact of the requirements as well as any related implementation and compliance costs. Absent such an analysis, staff letters often remain the best tool for remedying unintended consequences and providing market participants with additional time to comply with complex and costly new requirements. In addition, no-action relief remains a tool for addressing unforeseen or emerging issues related to compliance with CFTC rules. Going forward, the CFTC should revisit previously-granted no-action relief and determine whether more permanent relief is warranted to address these and other issues (e.g., clearing-created swaps, allocation timing, SD/MSP valuation data for cleared swap and data privacy). The CFTC should also be more cognizant of the time constraints and practical implementation challenges facing firms preparing for new regulatory effective dates and, where possible, provide no-action relief in advance of such effective dates that does not introduce complex conditions that require technological development. This approach will provide greater clarity to firms and assist in planning as it will allow them to focus resources on ultimate compliance and avoid the need to develop temporary or interim solutions. In no event should reporting entities be required to indicate as part of their Part 45 reporting that they are relying on relief for a particular swap or specific swap data elements. Such process would be extremely costly and difficult to implement. Since by its nature, the relief is temporary, such information will not add a justifiable benefit.

viii. Post-Priced Swaps (§§ 45.3 and 45.4)

26. Under the swap data reporting rules, are there any challenges presented by swaps for which the price, size, and/or other characteristics of the swap are determined by a hedging or agreed upon market observation period that may occur after the swap counterparties have agreed to the PET terms for a swap (including the pricing methodology)? If so, please describe those challenges.

Swaps for which the price, size and/or other characteristics of the transaction are determined based upon subsequent hedging activity or an agreed upon market observation period are common transaction types, and are broadly used across equity, fixed income and commodities asset classes, and come in a variety of structures. We will refer to structures with these attributes as "post-priced

swaps." The primary challenge presented by such transactions is the information leakage which will result from the reporting of a post-priced swap before all material terms of the swap are finalized, in particular price and size, and the advantage which other market participants will gain due to this information leakage to the determinant of the swap customer.

By way of background, for swap transactions that are not post-priced, the SD and the customer will agree on all PET terms of the transaction, including price and size, at the point of execution. For post-priced swaps, the client will contact the SD and make a transaction request (either by phone or electronically) for a swap. The nature of the client's order will depend on their objectives and the market environment. The actual price and size of the transaction, if any, will be determined at some point later in the day as a result of the specified pricing methodology and availability of the swap dealer's hedge. Examples of these types of orders may include:

i. a "guaranteed" price (e.g., a market observable volume weighted average price or using an execution benchmark such as "VWAP" published on Bloomberg) with or without a set notional size,[35]
ii. an average price based on the swap dealer's hedge executions with or without a benchmark (e.g., "Target VWAP"),[36]
iii. executions subject to a price limit (e.g., Limit VWAP), or
iv. a combination of some or all of the above.[37]

With respect to size of a post-priced swap, while the size requested by the client initially may be the ultimate size of the transaction, the SD will, as a general matter, only agree to the size that it is able to hedge taking into account the specified pricing methodology. For example, if an early closure, trading halt or other market disruption event occurs that affects positions that would otherwise have been established to hedge a transaction, or if the pricing methodology specified by the client includes pricing conditions (e.g., Limit VWAP) that could not be met because market prices were not within the relevant parameters, the size of the transaction agreed to by the SD will equal the size the SD was able to hedge. If the SD could not establish any hedge, the transaction request will not result in a swap transaction.

Because of the use of the term "execution" under Part 43, the reporting rules could be interpreted as requiring the reporting of a post-priced swap before the price, size, and/or other characteristics of the swap are determined, which would effectively expose the investment strategy of market participants that rely on these products, such as institutional customers that use swaps to perform global asset allocation strategies, to the entire marketplace. This reporting would be the equivalent of publicly disclosing an "order" prior to its full and at times even partial execution. If such premature disclosure were required, certain other market participants likely would trade ahead of the client's order and thus negatively impact the price to the client. The effect of this would be to add a material transaction cost to trading a swap as compared to cash, listed options or futures. This higher cost would be imposed on long term investor types—money managers, insurance

[35] For a "guaranteed" benchmark transaction, the price will not be determined until that benchmark is known.
[36] For a "best efforts" pricing methodology, such as target VWAP, whether or not a target benchmark is specified in the transaction request, the price of the transaction will be a volume-weighted average price of the swap dealer's hedges.
[37] In both "best efforts" and "guarantee" pricing, transactions in the swap underlier, components of the swap underlier or related securities/futures by other market participants during the hedging period will impact the price of the client's transaction. If the client's transaction request is known to the market at the time it is made, other market participants, knowing that there will likely be demand or supply, as the case may be, in positions that would be established to hedge the transaction, will push the price against the interest of the client.

companies, pension plans, among others— and benefit market participants seeking to trade on such information leakage.[38]

ISDA believes that the higher cost to clients noted above would be avoided by clarifying that, for purposes of the reporting rules, post-priced swaps should be deemed "executed" and thus reportable only when all PET details are finally determined. This interpretation is not inconsistent with the rules as currently formulated—under Part 43, "execution" is defined both as (a) agreement by the parties to the terms of a swap that legally binds the parties under applicable law and (b) occurring simultaneously with or immediately following "affirmation" of the transaction. The rule defines "affirmation" to mean the process by which the parties verify that they agree on all the Primary Economic Terms of the swap.[39] It does not, however, define the term "primary economic terms". The economic terms that are relevant for Part 43 are different than the terms that are relevant and reportable under Part 45. Assuming that the term "primary economic terms" for purposes of Part 43 refers to the fields (or at least a subset of the fields) set forth in Table AI to Part 43, it follows that the term "price notation" must be included among the "primary economic terms" that are relevant for Part 43. The term "price notation" is defined as "the price, yield, spread, coupon, etc., depending on the type of swap, which is calculated at affirmation" (emphasis added). The words "is calculated" suggest that the price notation must be a numerical value and not simply a formula or methodology. If that is so, affirmation (and, therefore, execution) is not possible until at least the "price notation", expressed as a numerical value, is determined. If the words of the rule are consistent with the Commission's intention, it should be clarified that, in the context of post priced and other forward starting swaps, execution occurs after the prices have been determined using whatever method agreed between the parties.

In addition to avoiding the negative cost impact for clients, this interpretation will allow reporting parties to use their current systems that capture trade information only when price and size are known and will achieve the overall goal of regulatory and public transparency but not at the expense of reporting open unfilled "orders", which only serve to allow other market participants to trade ahead of these orders and thereby negatively impacting the client's price on the transaction. It is also consistent with the approach that currently applies to analogous cash market trades that are priced by reference to a formula (i.e., the way that VWAP trades are reporting in the U.S. equities market). In addition, such treatment will not adversely affect overall market transparency, as the underlying cash market that is the basis for the pricing is completely transparent, so reporting of the swap prior to finalization of the pricing terms will not perform a price discovery function.

[38] Over the past 12 months, ISDA scheduled several briefings with senior CFTC staff at which client representatives explained why post-priced swaps are an important component of their overall investment strategies and articulated their concerns with the premature reporting of such swaps.

[39] 17 C.F.R. §43.2

ix. Complex Swap Transactions (NAL 14-12)

27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?

ISDA believes each individual component of a package transaction, and similar strategy, regulated by the Commission should be reported separately to an SDR until such time as the industry agrees on conventions for reporting packages in aggregate, and can implement those conventions. In the event that not all components of a package transaction are reportable under the CFTC's regulations, then only the components subject to SDR reporting will be reported. Support for package transactions is actively being developed in *Financial products Markup Language* ("FpML") version 5.7. The standard has addressed topics including package identification, approvals, and allocations, for both trading strategies (such as butterflies or switches). In respect to reporting, the current approach is to propagate package identifying information to each component of a package strategy. The package identifier will eventually be available for reporting purposes and provides a way to trace back each individual component to the original package. Utilizing the package identification code will enable counterparties to the transaction and the Commission to understand the timing and economics of the strategy, in addition to an aggregation of the component swap transactions. However, this solution is still under development for the purposes of trade reporting and requires that SDRs and other market infrastructure providers upgrade to the current version of FpML, a step that is not expected in the near term. Therefore, adequate time to develop, test, implement and transition to additional identification of packaged transactions should be separately discussed with the Commission and agreed with the industry.

D. PET Data and Appendix 1 (§ 45.3 and Appendix 1): Monitoring the Primary Economic Terms of a Swap

28. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to:

a. Cleared status;

b. Collateralization;

c. Execution timestamp;

d. Notional value;

e. U.S. person status; and

f. Registration status or categorization under the CEA (e.g., SD, MSP, financial entity).

Collateralization[40]

We believe there are inconsistencies in the way reporting counterparties determine the value to report as the Indication of Collateralization for each swap. This is due in part to some differences in the way reporting parties are interpreting the reportable values as defined in Part 43[41], and an overall need for global consistency with respect to categorizing the level of collateralization. ISDA raised some clarifications with respect to these values to Commission staff in March of 2012, and appreciates the opportunity to further comment.

Global initiatives are currently underway to establish margin requirements for uncleared swaps through the BCBS-IOSCO[42]. Any review of collateralization terms should consider the results of that initiative. In addition, reporting counterparties now have a requirement to report these same values in other regulatory jurisdictions, often accomplished by use of a single multi-jurisdictional report. As such, it is important that the meaning of these values aligns with the evolving industry standard and is globally consistent.

The following table shows the possible combinations of bilateral margin requirements:

Ref	Party A		Party B		Collateral Status
	Posts IM	Posts VM	Posts IM	Posts VM	
1	No	No	No	No	Uncollateralised
2	Yes	No	No	No	One Way Collateralised
3	No	Yes	No	No	One Way Collateralised
4	Yes	Yes	No	No	One Way Collateralised
5	No	Yes	No	Yes	Partially Collateralised
6	Yes	Yes	No	Yes	Partially Collateralised
7	Yes	Yes	Yes	No	Partially Collateralised
8	Yes	Yes	Yes	Yes	Fully Collateralised

[40] This subsection responds to Question 28(b).
[41] 77 FR at 1224.
[42] http://www.bis.org/publ/bcbs261.pdf

The only scenario that we believe should be categorized as "fully collateralized" is the one in which both parties are obligated to post both initial margin *and* variation margin. All other scenarios in which both parties have an obligation to post margin, but both parties are not required to post *both* initial margin and variation margin, should be considered "partially collateralized".

We recommend the Commission revise the descriptions of reportable values for the Indication of Collateralization field for Parts 43 and Part 45 as follows. (Please note that for the sake of comparing our proposed language versus the original, we have struck through existing text and underlined replacement text.)

1) "Uncollateralized" - An uncleared swap shall be described as "Uncollateralized" when there is no credit arrangement between the parties to the swap or when the agreement between the parties states that no collateral (neither initial margin nor variation margin) is to be posted at anytime.

2) "Partially Collateralized" – An uncleared swap shall be described as "Partially Collateralized" when the agreement between the parties states that ~~both parties will regularly post variation margin~~ each party is required to post initial margin and/or variation margin, but both parties are not required to post both initial margin *and* variation margin. ~~The word "regularly" is used to exclude situations where the parties may set threshold amount(s) that is so high that one or both parties will rarely post variation margin, if at all.~~

3) "One-way Collateralized" – An uncleared swap shall be described as "One-way Collateralized" when the agreement between the parties states that only one party to such swap agrees to post initial margin, ~~regularly~~ post variation margin or both with respect to the swap. ~~The word "regularly" is used to exclude situations where the parties may set threshold amount(s) that is so high that one or both parties will rarely post variation margin, if at all.~~

4) "Fully Collateralized" – An uncleared swap shall be described as "Fully Collateralized" when the agreement between the parties states that both initial margin ~~must be posted~~ and variation margin must ~~regularly~~ be posted by both the parties. ~~The word "regularly" is used to exclude situations where the parties may set threshold amount(s) that is so high that one or both parties will rarely post variation margin, if at all.~~

We note the following with respect to the above (i) no change is suggested for the definition of Uncollateralized (ii) an uncleared swap which is neither Uncollateralized, One-way Collateralized or Fully Collateralized should fall under the definition of Partially Collateralized and (iii) the use of the term "regularly" is subjective and therefore may be the cause of some of the inconsistent treatment of this reportable value. We believe it should be removed from the definitions and instead the value determined based purely on the terms of the credit agreement with respect to the parties' obligations to post variation and/or initial margin. This is party static data that should be subject to clear and consistent parameters. We refer to our response to Question 32 for further discussion on reporting pertaining to collateral.

Part 43 vs. Part 45 field value[43]

A number of fields are reportable under both Part 43 and Part 45 without distinction for whether and how they should be treated in each case considering the difference in nature of these levels of reporting (i.e. Part 43 is event based and Part 45 is swap level). These fields include execution timestamp, execution venue and block trade indicator. Based on guidance received either indirectly via the Commission's data harmonization discussions with SDRs or via direct inquiries from ISDA, reporting counterparties believe that CFTC staff expects that although the Part 43 messaging logically reflects these values as they pertain to a particular reported price forming event, that the value pertaining to the most recent price-forming event for public reporting of a swap should not be reflected in the SDR reporting for that swap. Rather, it seems, the value related to the original execution of the swap is meant to become a static data value that persists through the life of the swap in Part 45 reporting.

Since the rules do not articulate this distinction, reporting entities, middleware providers and SDRs did not build consistently to this view and additional work has been undertaken and may still be required to revise reporting infrastructures. Making this distinction is not easy, especially in cases where a single report is submitted for both real-time and PET data and therefore only one value is provided for these fields. In order to persist a particular value for Part 45 reporting based on the value for the new swap, the SDRs would have to build extraordinary logic that disregards the values submitted for subsequent price-forming events. Clarity from the Commission either through rulemaking or clear guidelines publicly available to all market participants is needed to ensure consistent treatment for these fields and inform any additional technological changes that may be required. Depending on the requisite changes, a suitable period for development, testing, implementation and transition would be necessary.

Appendix 1 to Part 45 should be revised to provide clarity with respect to these fields and any other fields for which the Commission expects the value should be based on the original execution of a swap and therefore a distinct value from any subsequent price-forming events that may be publicly reportable and reported as continuation data. However, the opportunity for reporting entities to submit a consolidated message should be retained, an approach the Commission has previously supported as cost-effective.

With respect to the block trade indicator value, we believe this is not meaningful for Part 45 as the value is determined solely and specifically with respect to a particular publicly reportable event and determines how that event is treated for purposes of public dissemination. Therefore, it may be meaningless or even misleading to analysis of a particular swap or aggregated swap data and should only be used by the Commission with respect to the review of real-time reporting under Part 43. We recommend that block trade indicator be removed as a PET field in Appendix 1.

[43] This subsection responds to Question 28 and 28(c).

Notional amount[44]

With respect to reporting to the Commission under Part 45 and trade reporting globally, there is a lack of clarity and consistency as to whether reported notional is a static data field that reflects the original notional of the trade or dynamic based on the latest post-trade event. Reporting parties believe that the correct approach is for the reportable notional amount to be current notional based on the latest reportable trade event, thus reflecting the current exposure of the swap.

We believe that Appendix 1 should be amended to clarify that the notional amount subject to reporting is the current notional based on the latest reportable trade event. Global consistency on the reporting of notional amount is essential; otherwise, the accuracy of any aggregated data will be diminished. We strongly believe that the Commission should engage with global regulators on this point.

Party specific fields[45]

The challenges pertaining to party specific fields are two-fold: (i) data accuracy and (ii) data maintenance.

In order for party static data to be accurate and useful, it should be consistent across swaps reported by different reporting entities. These values, including U.S. Person, financial entity, LEI and SD or MSP status, apply and are held internally at a party level rather than a swap level. Currently, there is no publicly available source for U.S. Person or financial entity qualification, like there is for SD and MSP status via the SD/MSP registry[46] maintained by the National Futures Association ("NFA").

Absent a publicly available source, reporting entities are required to individually seek representations from their clients to determine which are U.S. Persons and financial entities. Industry mechanisms, such as ISDA Protocols[47] and/or cross border representations (to the extent the counterparty has provided these Protocols or Representations), help facilitate the collection of this static data, but where the definitions have evolved since the start of reporting, as with U.S. Person, the process of maintaining accurate data is challenging and subject to inconsistencies between entities which report swaps transacted with the same counterparties. For non-U.S. parties, financial entity status may not be ascertainable given that only counterparties that are U.S. persons, guaranteed affiliates or affiliate conduits can be compelled to complete the relevant Protocol. It has been extremely difficult for reporting counterparties to persuade their counterparties to submit cross border representations, and thus the determination of U.S. person status may be solely based on information available to the reporting counterparty, which may be inadequate to make a determination in all cases.

Without a single, publicly available source for U.S. Person or financial entity, market participants leverage static data for reporting from a number of proprietary sources, including ISDA Amend and static data collected by middleware providers and confirmation platforms that aid reporting counterparties. Multiple sources and separate methods of collection and verification means there

[44] This subsection responds to Question 28(d).
[45] This subsection responds to Question 28(e) and 28(f).
[46] http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML
[47] http://www2.isda.org/functional-areas/protocol-management/open-protocols/

may be in consistencies among reporting counterparties in the values used to determine reporting eligibility, reporting counterparty and the corresponding reportable party specific data.

The SD/MSP registry provides a publicly available source for registration status and based on a request from ISDA, the NFA recently enhanced the registry to track deregistered parties and those which are subject to a limited designation. But, they do not have the technological capability to carry effective dates for a limited designation or any related conditions that may be relevant to determining whether a counterparty should be classified as a SD or MSP in reporting and for purposes of determining the reporting counterparty with respect to a particular swap. These changes to, or limitations on, SD/MSP applicability add additional complexity to reporting, increasing the potential that these values could be reported incorrectly or inconsistently. See our response to Question 12 for further input on this topic.

The other major challenge with respect to party specific data is the expectation that parties need to determine and update this information in instances where it was not available for previously reported swaps. Updating a single party specific attribute on previously reported trades is not easily achieved, as it is part of a reporting counterparty's static data and not an update to the swap in trade capture systems. The challenge is particularly difficult for swaps which are non-live and therefore are not regularly subject to continuation data reporting. In this case, the mechanisms available from SDRs to view and reconcile this data are limited and processes to update are manual in nature. Whether for pre-enactment and transition swaps reported under Part 46, or swaps reported subsequently that have terminated, matured or otherwise been rendered non-live, there is no discernible value to updating these attributes since these swaps do not play any part in analyzing current exposures and risk. We believe reporting counterparties should not have to update party specific data, such as U.S. Person, financial entity and party role (e.g. SD or MSP) for non-live trades in cases where the counterparty information becomes available or is clarified after the trade is no longer live.

International swaps[48]

As discussed further in relation to Unique Swap Identifiers[49], the need to provide the fields required for international swaps in accordance with §45.3(h) is extremely challenging and does not reflect the Commission's endorsement of USI as a mechanism for global data aggregation[50]. Industry methods do not exist to easily notify your counterparty that you have reported a swap to a trade repository ("TR") authorized in another jurisdiction, provide the identity of such TR and offer any alternate identifier. Likewise, a reporting counterparty does not have the systematic ability to retain and update reported swaps with this information. Instead, we believe the use of a global Unique Trade Identifier is the appropriate standard to identify duplicative reporting for the purposes of global data aggregation. Please see our response to Question 55 pertaining to Unique Swap Identifier for further explanation. Additional reference should be made to the Request for No-Action Relief for International Swaps filed with the Commission by ISDA[51] on February 11, 2014. We request the Commission revoke the requirements under §45.3(h) and instead work with global

[48] This subsection responds to Question 28.
[49] See response to Question 55.
[50] 77 FR at 2138 and 2224.
[51] See Appendix, "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))," (February 11, 2014).

regulators to agree and endorse a global USI/UTI standard that is better suited to meet the stated objectives of this provision.

Any other terms[52]

Above all other PET fields, the requirement to report "any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap" (hereafter, "any other terms") poses the most challenges and concerns for reporting entities. As conveyed separately with respect to confirmation data in our response to Question 1, a requirement to provide data that is not defined breeds ambiguity and inconsistency as reporting entities will make different determinations as to what constitutes any other terms. Further, there will always be discrepancies in the set of terms that parties verify as part of swap affirmation and thus are subject to the any other terms requirement.

Beyond the interpretation concerns, the actual process of reporting these terms is difficult, as any terms reported need to fit within the prescribed parameters of fields available by the SDR and need to be supported by industry standard representation, such as FpML. Full product representation via FpML is not available for products or terms that are not sufficiently standardized. In addition, SDRs require specific technical requirements and field specifications to support additional values and therefore cannot adequately plan for a catch-all bucket of potential values to allow for both reportability and data quality oversight of any other terms data. A reporting counterparty may therefore be unable to systematically report a term they believe qualifies for the any other terms PET requirement. The need to report any other terms is the primary driver behind the challenge of reporting complex and bespoke swaps, which are more likely to suffer from an inability to report some term(s) electronically using specific data fields. As addressed in our response to Question 16, in this case the only realistic method of supplying additional data is through the submission of a searchable document, such as the confirmation. However, submission of documents is challenging and costly for reporting entities and is not a suitable solution for data aggregation. We question the value of such additional data to the Commission's goals and believe the PET data that is reportable electronically provides sufficient information to perform relevant analysis and oversight.

Requiring "any other terms" runs contrary to the title of "Primary Economic Terms" since they go beyond the scope of what standard industry practice would deem to be the actual primary, economic terms of the swap that are used by reporting counterparties for internal risk assessment. Data that is not subject to the benefits of prescriptive rule guidance, industry standard representations or SDR validation cannot be relied on to add a material benefit to swap analysis, rather it ensures that overall data quality will always be compromised by this subset of reported values. We propose that the Commission amend Appendix 1 of the Part 45 rules to remove the requirement to report any other terms in order to simplify SDR reporting and improve the overall data quality and usefulness.

[52] This subsection responds to Question 28.

29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

a. Should the Commission require reporting of the identities, registration status, and roles of all parties involved in a swap transaction (e.g., special entity (as defined in Commission regulation 23.401(c)); executing broker; or voice/electronic systems)?

b. What, if any, additional fields would assist the Commission in obtaining a more complete picture of swaps executed on SEFs or DCMs (e.g., order entry time; request for quote ("RFQ"), or central limit order book ("CLOB"), or order book; request for cross, blocks, and other execution method indicators or broker identification)?

c. Are there additional data elements that could help the Commission fulfill its oversight obligations, as described above?

d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?

Additional Data elements[53]

As reiterated in our introductory remarks as well as in response to a number of specific questions, including those on confirmation data and PET data, we believe the Commission's reporting rules are overly complex and require more swap data than can be practically used to meet key Part 45 objectives for systemic risk mitigation and market manipulation prevention. The CFTC's reporting rules, including Part 43, Part 45 and Part 46, require more data elements than any other global regulator and are the only ones to include a requirement to report terms that are not enumerated. The need to report multiple layers of data on different timeframes adds to the complexity of the reporting since a single report may not be possible to meet all creation data reporting requirements, including PET and confirmation data.

Requiring data in as little as fifteen minutes of execution cannot be justified unless the Commission is actually prepared to analyze data in real-time. Otherwise, we believe that data reported by the end of trade date or the business day following would be of higher quality and more useful to data aggregation and analysis. This is the approach that other global regulators have taken.

We do not believe that whether a swap is guaranteed should be required for reporting. Guarantees are not factored into execution and therefore this information may not be available in real-time. In addition, determining guarantees at a swap level has become more difficult as the cross-border landscape changes as a result of the reach of global regulatory oversight. We believe

[53] This subsection responds to Question 29.

that understanding the affiliate and guarantor relationships of reporting counterparties is more appropriate as a global static data initiative; please refer to our response to Question 24 for further discussion on this point.

Likewise, we believe that the identities, registration status, and roles of other parties involved in a swap transaction, including special entities, brokers and systems should not be required. The party data already subject to reporting provides its own challenges and expanding these requirements to non-registrants and other parties involved in the trade flow will only exacerbate the challenges of maintaining accurate party data. The involvement of additional parties in the trade flow that are not legal counterparties to the swap does not add a material benefit to risk analysis and transparency since they do not own any of the exposure.

The industry believes that, on an overall basis, the swap information is currently sufficiently captured, and therefore suggest that no additional data elements be added to Appendix 1 of Part 45. Instead, if the PET and confirmation data fields were streamlined and well defined, and the timeframe for PET reporting more in line with global standards (e.g. end of day or T+1), then the overall quality of data would improve vastly. We encourage the Commission to consider simplifying its reporting rules rather than seeking to expand the list of reportable data fields and thus further complicating the task of making sense of the swap data provided.

SEF or DCM executed[54]

Collecting data on the operation of markets is not part of the original intent of the Part 45 rules. Additional information pertaining to the execution of swaps on a registered execution facility should be obtained from the SEF or DCM, if and when needed, and not included as part of the reportable Part 45 data.

30. Have reporting entities been unable to report to an SDR terms or products that they believe are required under part 45 or related provisions? If so, please generally describe the data elements and/or products involved.

a. Where a single swap has more than two counterparties, please comment on how such information should be provided within a single part 45 submission (i.e., one USI)?

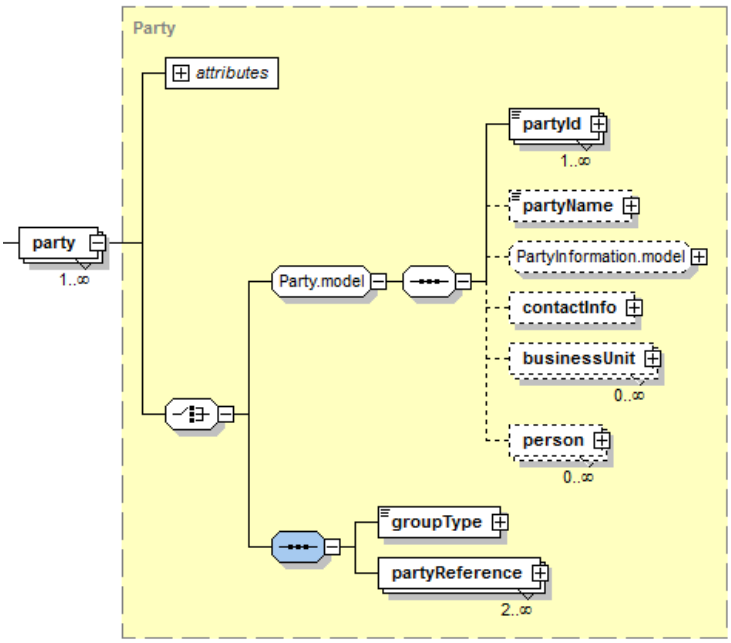
Joint and Several counterparties

There are multiple cases where more than two counterparties can exist. One such case recently addressed in FpML relates to the representation for joint and several counterparties. FpML version 5.7, which is currently in Last Call Working Draft status and for which the final Recommendation is expected by June, has a representation developed for jointly and severally liable counterparties. The party structure is enhanced with a new groupType (only added for the purpose of defining JointAndSeveralLiability group so far) followed by a series of two or more partyReference to define the collection of joint and several parties.

The representation looks as follows: (more information is available as part of the FpML specifications):

[54] This subsection responds to Question 29(b).

```
<party id="party1">
  <groupType>JointAndSeveralLiability</groupType>
  <partyReference href="js_party1" />
  <partyReference href="js_party2" />
</party>
```



Please note that although the representation is now available as part of the FpML standard, significant additional time might be required for firms and SDRs to implement version 5.7 of the standard. In order for SDRs and reporting entities to budget and plan for any related changes for this or other scenarios that might involve multiple counterparties, it is essential that the Part 45 rules be enhanced to clarify the Commission's expectations and that adequate timelines for implementation and transition be agreed.

31. ***Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows reflected in a swap as agreed upon at the time of execution? If so, how could the requirements be modified to capture such a schedule?***

Payment flows

The Part 45 reporting requirements should not be modified to require a complete schedule of underlying payments. The current reporting includes sufficient data pertaining to the payment terms. A full schedule of exchanges does not provide a material benefit to the understanding of the risk profile of the swaps and would be a major build for reporting entities that would require a lot of maintenance. A cost-benefit analysis would not substantiate this change.

32. Taking into account the European Union's reporting rules39 and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral is reported for cleared and uncleared swaps?

Collateral reporting

As pointed out in the question, the European Union reporting rules require the reporting of collateral information. The industry is currently working through a number of issues that can have a substantial impact on the reporting of collateral and the usability of the collateral data and we strongly suggest to wait to define any collateral reporting requirements until the reporting in Europe has started and we can leverage the experience and build on the infrastructure put in place. In addition, as far as reporting of collateral for uncleared swaps is concerned we suggest waiting until the margin determination rules for uncleared swaps have been finalized.

Collateral is managed on a portfolio level, not on an individual transaction basis, and collateral reporting, to be most useful, should not be addressed through Part 45 reporting rules focused at the individual swap level. A separate collateral repository is the best way forward.

In order for the collateral data to be useful to the Commission in its regulatory function, collateral reporting requirements should be coordinated at both national and international levels. Differences in approach between different regulators will reduce the value of the collateral reported and might make data aggregation impossible. Collateral portfolios will include CFTC-reportable swaps and securities based swaps and non-swap transactions which are not reportable to the CFTC.

E. Reporting of Cleared Swaps (§§ 45.3, 45.4, 45.5, and 45.8): How Should the Swap Data Reporting Rules Address Cleared Swaps?

33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically:

- ***a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and ipso facto the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?***
- ***b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?***
- ***c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?***
- ***d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.***

Alpha swaps

Whether there is an alpha swap which precedes the cleared swaps varies by asset class and execution model and may not be determined solely by whether a product is subject to the trade execution and/or clearing mandate. However, as products have become subject to the clearing mandate, there is a decreased likelihood of the parties entering into an alpha swap. Even where they do, these alpha swaps, regardless of whether they are executed bilaterally or on a SEF or DCM, are routinely cleared directly or shortly after execution and so are terminated and replaced by the beta and gamma swaps which are subject to full creation data reporting by the DCO. Therefore there is little value to reporting creation data, either PET or confirmation, for alpha swaps since they are almost immediately superseded by the cleared swaps, and thus are not meaningful to an analysis of counterparty exposure. We agree that the Part 45 reporting requirement for alpha swaps that are required to be cleared or executed with the intent to clear (and subsequently cleared) should be waived. Part 43 reporting provides sufficient transparency with respect to these executions.

Revoking the obligation to Part 45 report the alpha trade will also produce the benefit of eliminating orphaned alpha swaps that result from the beta and gamma being sent to another SDR, and thus not updating the alpha to reflect its terminated state.

Many reporting counterparties have built combined messaging for alpha swaps to meet both Part 43 and Part 45 PET reporting requirements. As a result, should the Commission eliminate the Part 45 reporting obligation for cleared swaps, reporting counterparties could not immediately halt the PET reporting since technological changes will need to be done to separate the messaging. Therefore, reporting of the alpha swap should be allowed, but not required. Since most alpha swaps are cleared at point of execution, a preferred solution may be for the rule to permit the DCO

to conduct the Part 43 reporting, when not reported by the SEF or DCM, since they will be ultimately responsible for reporting the related cleared swaps.

35. Can the existing rules be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap (alpha) and the two new resulting swaps (beta and gamma)? If so, please explain.

a. Responses should address:

i. ***The reporting obligations applicable to alpha swaps;***
ii. ***The reporting obligations applicable to beta and gamma swaps;***
iii. ***Who holds the reporting obligation(s) for each swap;***
iv. ***The reporting of the linkage of alpha, beta, and gamma swaps; and***
i. ***Who has the legal right to determine the SDR to which data is reported?***

Reporting obligation for cleared swaps

Yes, the existing rules can be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap ("alpha") and resulting swaps ("beta" and "gamma").

Alpha swaps should not be reportable under Part 45 if they are subject to the clearing mandate or executed with the intent to clear. An alpha swap should only be reportable if it is not subject to the clearing mandate and fails to clear the same day as intended. Although §45.3(b)(1) and §45.3(c)(1)(i) excuses the reporting counterparty from submitting swap creation data if the original swap is accepted for clearing before the applicable reporting deadline, monitoring the time of clearing acceptance vs. the PET deadline for each swap is extremely difficult and risks that the reporting counterparty will not meet its PET reporting deadline if the swap does not clear in the expected timeframe. Therefore, reporting counterparties routinely report alpha swaps without taking advantage of this carve out. An overall exemption for alpha swaps would greatly simplify these reporting flows.

For trades that were executed without the intention or requirement to clear but are subsequently cleared after the trade date of the original swap, the beta and gamma swaps should be sent to the same SDR as the original swap with the USI of the alpha reported as the prior USI in order to ensure the alpha is updated to reflect its termination and link it to the beta and gamma. We believe this approach is appropriate since according to §45.10, the reporting counterparty has the right to select the SDR to which a cleared swap is reported. In order for this to work effectively, the DCO must send a report to the chosen SDR that complies with that SDR's messaging specifications. Currently some DCOs send a "copy" of their report for a cleared swap to the SDR selected by the reporting counterparty, however these are sent in a format that cannot be consumed by the SDR and therefore cannot accurately reflect the terminated status of the alpha swap nor the beta and gamma positions.

If the Commission decides not to waive the requirement to report the alpha swap and does not compel the beta and gamma to be reported to the same SDR, then in order to eliminate orphaned trades the party that reported the alpha swap – whether SEF, QMTF or reporting counterparty -

would need to send a message to appropriately exit or update the alpha post-clearing. We believe this is less efficient than the other suggested approaches.

Clearing models

There are two primary models for clearing, the agency model (a/k/a FCM) and the principal model (a/k/a SCM). In our response above regarding the reporting obligation for cleared swaps, the examples of cleared swaps are based on the agency model, wherein there are legally two novated swaps (the beta and gamma) that result from the original alpha with the Futures Commission Merchant ("FCM") acting as agent between the client and the clearing agency without being a party to the swaps. However, under the principal model, the clearing house doesn't face the client directly and instead faces a clearing member ("CM") and the CM faces the DCO. As a result, there are four resulting swaps that the DCO should report, two between CMs and the DCO, and two between the CMs and their clients. Which model is used varies based on the asset class, the clearing house and client preferences, but generally the agency model is more prevalent in the U.S., whereas the principal model is used more frequently in Europe. For reference, ISDA's UTI Overview document includes diagrams of the clearing models and the resulting corresponding swaps[55].

The Part 45 rules should recognize these distinct models and the corresponding differences in the number of reportable swaps and their relevant counterparties. Based on our observations and subsequent conversations with clearing agencies, it seems that based on guidance from the Commission, DCOs are reporting all cleared swaps to the CFTC based on the agency model even if the alpha was cleared via the principal model. That approach incorrectly reports that the DCO directly faces the clients and fails to report two of the four resulting swaps. In this case, an insufficient number of USIs will be created by the DCO and the cleared swaps reported by the DCO will not align with those booked by the counterparties to the cleared swaps. If reporting counterparties are ultimately required to report valuation data for cleared swaps, their continuation data reporting will not be reconcilable with the cleared swaps reported by the DCO. DCOs should be required to create a USI for and report each swap resulting from the applicable clearing model.

This issue has further impact from a global data aggregation perspective since cleared swaps are being reported differently in separate jurisdictions. Contrary to the approach for CFTC, we understand that the European Securities and Markets Authority ("ESMA") has advocated that clearing agencies should report using the principal approach regardless of whether the trade was executed in the agency style. As a result, the number of cleared swaps and relevant legal counterparties may be misrepresented since the FCM is not a legal party to the cleared swaps. The same set of cleared swaps may be reported differently to the CFTC than they are reported under EMIR, undermining effective data aggregation. We recommend that the Commission consider the importance of global consistency of trade reporting flows and work with other regulators to agree on consistent requirements that reflect the legal status of the swaps and their counterparties.

[55] ISDA, *Unique Trade Identifier (UTI): Generation, Communication and Matching* (December 10, 2013): 13-20 http://www2.isda.org/attachment/NjI3MQ==/2013%20Dec%2010%20UTI%20Workflow%20v8.7.8b%20clean.pdf

Clearing member affiliates

As per Part 39 of the CFTC's regulations, affiliates of a clearing member must use a house account of the CM to clear swaps. However, not all DCOs report the resulting cleared swaps in a consistent manner under Part 45. In some cases, where an affiliate of a CM enters into a swap that is subsequently submitted for clearing through its affiliated CM, the DCO reports the CM (and not the affiliate of the CM) as the counterparty to the cleared swap. This causes issues for the affiliate and its CM, because the affiliate (and not the CM) entered into the alpha trade and the affiliate (and not the CM) should end-up with a cleared swap. Books and records of the CM and its affiliate will reflect that the affiliate (and not the CM) has a cleared swap with the DCO.

Additionally, for purposes of compression exercises the relevant DCOs commingle swaps of the CM with those of the CM affiliate. The end result is a discrepancy between what a DCO reports to the SDR and what the CM and its affiliates reflect on their books. Like the discrepancy in clearing model reporting, this will also create an issue if SDs and MSPs are ultimately required to report valuation data for cleared swaps as the internal systems of the CM and the affiliate will trigger that the affiliate (and not the CM) has to send swap valuation data reporting to the SDR.

The submission of the swap for clearing should not result in a change in the name of the counterparty that is reported to an SDR. While clearing of CM affiliate trades through a CM house account may create other issues, which we do not plan to comment on as part of this Comment Request, we ask that as long as affiliates of a CM have to clear their trades through a house account of the CM, the Part 45 rules provide explicit guidance that the Part 45 report submitted by the DCO for the cleared swap has to reflect the relevant affiliate (and not the CM) as the legal counterparty to the cleared swap with the DCO.

36. What steps should reporting entities and/or SDRs undertake to verify the absence of duplicate records across multiple SDRs for a single cleared swap transaction?

Duplicate records

The duplication of records for a cleared swap across SDRs is a scenario resulting directly from the Commission's decision to allow the use of captive SDRs by DCOs[56]. Rather than requiring reporting counterparties and SDRs to implement extraordinary efforts to verify the absence of duplicates, the Commission should seek a permanent solution that eliminates the duplicate reporting and improves the data quality over time. Eliminating the valuation data reporting requirement for SDs and MSPs, in accordance with our response to Question 8, will prevent a large volume of cleared swaps from being reporting to one SDR by the DCO and to another by the reporting counterparty. If the Commission retains the requirement under §45.4(b)(2)(ii), then allowing the reporting counterparty to select the SDR for a cleared swap in accordance with §45.10 will eliminate the need for a "copy" to be sent to a second SDR, thus eradicating the duplicate records that impact data quality.

38. What reporting technique, term, or flag is recommended to identify a cleared swap?

Part 45 sufficiently provides for a flag to identify a cleared swap. Appendix 1 communicates the requirement for a "clearing indicator" – a "yes/no indication of whether the swap will be cleared by the DCO." The industry is in alignment with this requirement, and believes this current technique is sufficient.

i. CDS-Clearing Related Swaps and Open Offer (Part 45 and NALs 12-59, 13-36, and 13-86)

39. Swaps created by operation of a DCO's rules related to determining the end-of-day settlement prices for cleared credit default swaps ("CDS") are also known as "firm trades" or "clearing-related swaps" (see NAL 13-86). How should these swaps be reported pursuant to the swap data reporting rules?

Clearing Related Swaps

DCOs have been meeting this reporting obligation on behalf of reporting counterparties in conjunction with NAL 13-86, but a permanent solution is needed. Reporting of an alpha trade in this case was instigated based on a requirement from the Commission to report an alpha swap even though reporting counterparties argued there wasn't a true bilateral swap in these cases and that the execution of the "firm" or "forced" trade was booked directly in their systems as a cleared swap facing the DCO. Therefore, we believe that the solution is for the Commission to acknowledge that like swaps created from open offer, as referenced in Question 40, these "clearing-related swaps" do not have an alpha swap and therefore there is no obligation for any party to report.

[56] http://www.cftc.gov/PressRoom/PressReleases/pr6525-13
http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul041013icc002.pdf

40. Aside from "firm trades," some swaps may be created from "open offer," meaning there is no original swap between two counterparties, but only equal and opposite swaps between each of the counterparties and the clearinghouse. How should the swap data reporting rules address such swaps?

Open offer

Like the clearing-related swaps, cleared swaps created from "open offer" for which there is no original swap between two counterparties should not be subject to reporting of an alpha swap. Doing so requires a reporting entity to fabricate a swap record and misrepresents the legally binding swap obligations. Only the cleared swaps should be reportable upon their execution.

ii. DCO Reporting, Netting Processes, and Positions (§§ 45.3 and 45.4)

42. For cleared swaps, how can the netting and compression of swaps and positions by DCOs be most effectively represented

b. Are netting and compression different concepts in the uncleared swaps markets versus the cleared swap market? If so, how?

Netting vs. compression

Although the terms are sometimes incorrectly used interchangeably, netting and compression are different concepts. Portfolio compressions result in both a reduced number of positions and reduced total notional amount for a counterparty, usually without changing the overall risk of the portfolio. Netting, however, does not result in a change in the number of positions, and is primarily used for margin purposes.

F. Other SDR and Counterparty Obligations (§§ 45.9, 45.13, 45.14): How Should SDRs and Reporting Entities Ensure That Complete and Accurate Information is Reported to, and Maintained by, SDRs?

i. Confirmation of Data Accuracy and Errors and Omissions (§ 45.14)

46. Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR.

47. In what situations should an SDR reject part 45 data from entities due to errors or omissions in the data? How should the Commission balance legal requirements for reporting as soon as technologically practicable and the need for complete and accurate data

48. All data in an SDR must be current and accurate, and the Commission expects SDRs, counterparties, and registered entities to take proactive steps to ensure data accuracy. Are there challenges that a reporting entity faces in confirming data accuracy? If so, how can those challenges most effectively be addressed

Data accuracy[57]

Reporting counterparties proactively reconcile their reported data against their internal records to maintain data accuracy and are required to submit swap reporting in accordance with the specifications and validations of their SDR. Swaps are also subject to a reconciliation of material terms between the parties pursuant to the Commission's Part 23 regulations or similar rules of other jurisdictions, which further serves to maintain data accuracy. We acknowledge that from an aggregated review of data, more prescriptive requirements and validations by the SDRs that align with the requirements of the other SDRs may improve overall data quality. But there is a downside to being more prescriptive. If more swaps are rejected due to additional validation, this will have an impact on timely reporting and reporting entities will incur additional costs to resolve their submissions.

SDRs could assist with efforts by both reporting counterparties and non-reporting counterparties to verify the accuracy of their reported swaps by providing a portal through which data on reported swaps could be searched and viewed in real-time. Some SDRs provide primarily end of day reporting and no access to data on non-live swaps, limiting the parties' view of their reported data and the ways in which they can verify its accuracy.

When asking these questions, the Commission should consider the importance they place on data accuracy and timeliness of reporting. As noted in our introductory remarks and elsewhere in our response, a trade- off exists between accuracy and speed. We believe that generally there is no

[57] This subsection responds to Questions 46, 47 and 48.

considerable downside to extending the PET reporting deadlines, while the Commission would benefit from improved data quality.

49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?

Errors or omissions

Reporting counterparties update any confirmed errors or omissions via the next reported message for that swap, in some cases intraday but in no event later than the end of day, in either case based on the firm's implemented reporting model. This approach is sufficient to maintain the quality of data and complies with the requirements under §45.14. However, reporting entities should not be required to update swaps that are no longer live in the event an error or omission is discovered. Consistent with our responses to other questions, amending data for swaps that are non-live is operationally challenging and does not provide a material benefit in the cases of swaps that have been terminated, matured or otherwise no longer represent existing swap exposures.

ii. SDR Required Data Standards (§ 45.13)

50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.

Consistent usage of FpML as the standard for product representation and messaging is a first and important step to improve data quality and standardization. The FpML schemes define the necessary elements to be reported and the format of each of these elements. In addition to the standardization of the data fields that this provides, FpML defines a large set of enumerations and scheme values[58] (such as currency code, floating rate indexes, day count fractions, etc.). The scheme values and enumerations allow for further standardization of the actual values submitted. While the scheme values and enumerations are integrated into the FpML standard, it is worth pointing out that they can be used to validate values and improve the data quality of information submitted, irrespective of the underlying messaging standard used. Lastly, FpML provides a set of validation rules for each of the asset classes that allows information checks at the business level (e.g., start date is before end date).

The different levels of validation provided by the FpML standard described above should be implemented first. In a later phase additional levels can be developed, such as agreement on computation of notionals.

When implementing the different levels of validation, the SDRs should initially send warning messages that allow the reporting parties to improve the data quality. Eventually the message

[58] http://www.fpml.org/spec/coding-scheme/index.html

should either be rejected if the required changes have not been implemented by the reporting counterparties or the reporting counterparty should be alerted that the data will not provided to the Commission until it meets the established data standards.

52. Are there additional existing swaps data standards (other than the legal entity identifier ("LEI"), unique product identifier ("UPI") and USI) that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators

ISDA believes that global regulatory cooperation is essential to the success of LEI, UPI and USI values as appropriate tools for data aggregation. Use of the USI and UPI would be more valuable tools at this stage if regulatory consensus around their use had been achieved prior to the publication of reporting requirements and the commencement of trade reporting in various jurisdictions. The LEI is viewed as a highly valuable tool for data aggregation since it benefited from international coordination at an early stage and is well established. With regulatory agreement and endorsement of global standards for USI (or UTI) and UPI, they can become equally valuable tools as well. Please see our response to Questions 53, 54 and 55 for additional feedback with respect to these identifiers.

In addition to the identifiers mentioned above, we strongly suggest the Commission consider the multiple schemes and enumerations documented as part of the FpML standard as an important set of standardized reference data for global harmonization. These schemes and enumerations are based on ISDA documentation, reflect market practice and incorporate other standards such as ISO, where appropriate.

The full set of scheme values is publicly available (subject to the free FpML open source license), at: http://www.fpml.org/spec/coding-scheme/index.html

Mandatory use of these values would dramatically increase the data quality of the trade information reported to the SDRs. Although these values are maintained and published by FpML use of the values does not require use of the FpML standard for reporting to the trade repositories. The values can equally be used to improve the quality of a CSV data submission.

By way of example a subset of the dayCountFractionScheme:

CODE	SOURCE	DESCRIPTION
1/1	FpML	Per 2006 ISDA Definitions, Section 4.16. Day Count Fraction, paragraph (a) or Annex to the 2000 ISDA Definitions (June 2000 Version), Section 4.16. Day Count Fraction, paragraph (a).
30/360	FpML	Per 2006 ISDA Definitions, Section 4.16. Day Count Fraction, paragraph (f) or Annex to the 2000 ISDA Definitions (June 2000 Version), Section 4.16. Day Count Fraction, paragraph (e).
30E/360	FpML	Per 2006 ISDA Definitions, Section 4.16. Day Count Fraction, paragraph (g) or Annex to the 2000 ISDA Definitions (June 2000 Version), Section 4.16. Day Count Fraction, paragraph (f). Note that the algorithm defined for this day count fraction has changed between the 2000 ISDA Definitions and 2006 ISDA Definitions. See Introduction to the 2006 ISDA Definitions for further information relating to this change.
30E/360.ISDA	FpML	Per 2006 ISDA Definitions, Section 4.16. Day Count Fraction, paragraph (h). Note the algorithm for this day count fraction under the 2006 ISDA Definitions is designed to yield the same results in practice as the version of the 30E/360 day count fraction defined in the 2000 ISDA Definitions. See Introduction to the 2006 ISDA Definitions for further information relating to this change.
ACT/360	FpML	Per 2006 ISDA Definitions, Section 4.16. Day Count Fraction, paragraph (e) or Annex to the 2000 ISDA Definitions (June 2000 Version), Section 4.16. Day Count Fraction, paragraph (d).
ACT/365.FIXED	FpML	Per 2006 ISDA Definitions, Section 4.16. Day Count Fraction, paragraph (d) or Annex to the 2000 ISDA Definitions (June 2000 Version), Section 4.16. Day Count Fraction, paragraph (c).

iii. Identifiers (§§ 45.5, 45.6 and 45.7)

53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.

a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?

Legal Entity Identifiers (LEI)

Regulatory cooperation is vital to eliminating the challenges the industry currently faces with respect to ensuring all parties identified in reporting have obtained and maintain a Legal Entity Identifier ("LEI"). We acknowledge and appreciate the efforts the Commission has already made to inform counterparties of their obligation to obtain an LEI. As additional global regulators require the parties under their oversight to acquire one, the instances where a reporting counterparty cannot identify their counterparty in reporting by an LEI have reduced and will continue to decline. However, certain challenges remain and are discussed in the following paragraphs.

Dealers are limited in what remedies they can take if the counterparties they face do not obtain or maintain an LEI. The situation would improve dramatically if all regulators require that counterparties in their jurisdiction get LEIs and keep them current. The CFTC could help by actively reiterating the importance of the global standard and publicly encouraging counterparties to obtain

and maintain LEIs. If all SDRs require parties signing up to their service to obtain an LEI, this would further alleviate this issue. While the scope of global LEI evolves, the CFTC, global regulators and market participants should accept the full use of LEIs as a mutual aim, rather than expecting reporting counterparties to bear the burden for producing party identification that is not within their control.

With respect to whether an LEI is maintained (i.e. the party affirms its data is still valid and pays its annual fee) and thus considered current, we have been advised by a Local Operating Unit ("LOU") that it is the CFTC's position that a non-current LEI is not a valid LEI for Part 45 reporting purposes. Based on this stance, a reporting counterparty would have to implement additional layers of static data that influences their reporting logic to determine whether an existing LEI should be included in a swap report. If non-current at time of reporting, this implies that the reporting counterparty should not use the LEI, which diminishes the Commission's clarity on the non-reporting counterparty to the swap and impedes data aggregation. It also presumably creates an obligation for the reporting counterparty to update the swap reporting once the counterparty maintains its LEI and it is relabeled as current. Similarly, if the original swap report submitted to the SDR contained a current LEI that subsequently fell into a non-current status during the life of the swap (or for 5 years following the termination date), then the reporting counterparty arguably would have to amend that swap report to reflect that there was no longer a "valid" LEI, and then perhaps amend it again if and when the non-reporting counterparty maintained the LEI. These scenarios are not reasonable for reporting counterparties to implement and undermine the quality of the reported data and ability for regulators to aggregate swaps at a party level.

We recognize that periodic verification is essential to upholding the integrity of the LEIs and their metadata. However, the FSB has stated that "Responsibility for the accuracy of reference data should rest with the LEI registrant."[59] Despite outreach from reporting counterparties and LOUs, counterparties not subject to the Commission's oversight or another G20 regulator may be less likely to pay an annual fee and recertify their LEI registration absent that direct regulatory obligation. We believe that an otherwise active and valid LEI should be an acceptable LEI for purposes of swap data reporting and note that the uniqueness of an LEI and the ability to use it to identify a particular counterparty remains intact regardless of the maintenance status since under the LEI standards the value will never be used to identify another party and therefore remains a valuable tool for swap transparency. We ask that the Commission accept as part of PET data a validly issued LEI for an active counterparty, regardless of whether it is in current or non-current maintenance status. The ability to consistently utilize the LEI as important tool for data aggregation and analysis should not be undermined by the associated administrative requirements.

LEIs are publicly available and can be sourced collectively from a number of unofficial sources[60], but the development of a Central Operating Unit ("COU") by the Global LEI Foundation ("GLEIF") is still in the formative stage. Market participants have witnessed instances where inactive or invalid LEIs are not being decommissioned properly, leading to multiple LEIs for one legal entity, or duplicate LEIs. Firms may see one LEI for a legal entity at the portal for a particular LOU, but a different LEI for the same legal entity elsewhere. This is exacerbated by the fact that there is currently no endorsed, centralized source of LEI/pre-LEIs, nor any target date for its establishment. Regulators

[59] Financial Stability Board, "Recommendation 18 - LEI Data Validation," *A Global Identifier for Financial Markets* (June 12, 2012): 46 http://www.leiroc.org/publications/gls/roc_20120608.pdf

[60] Examples include http://www.p-lei.org/, http://openleis.com/, http://www.lei-lookup.com/

could work together towards helping to ensure data integrity across LOUs and reinforcing the value of an established COU.

Individuals are currently excluded from the LEI scope[61], and therefore cannot be identified in reporting by use of an LEI. §45.6 and Appendix I should be revised to acknowledge the acceptance of a reporting counterparty's internal identifier for reporting individuals.

Finally, we do not agree that the "availability of a legal entity identifier for a swap counterparty previously identified by name or some other identifier where previously not reported" constitutes a life cycle event, as defined in §45.1. Whether or not a counterparty has an LEI does not and should not have a material effect on the execution of the swap, even though it is the required standard for party identification in reporting. If a non-reporting counterparty obtains an LEI after trades have already been reported, the record cannot be easily updated in all cases to add the LEI. This is particularly difficult for non-live trades. We propose that the Commission not require that reporting counterparties update counterparty specific static data, like the LEI, for trades which are no longer live since the effort involved does not result in a material benefit to market transparency since non-live trades do not impact current risk exposures. The volume of non-live swaps will increase greatly as time passes, and maintaining this growing population over the course of the years is not practical for either SDRs or reporting counterparties. In the unlikely event the Commission should need to analyze non-live trade populations, non-reporting counterparty identification is still available on these swap by means of an alternate party identifier (e.g. a BIC) which has been used by reporting parties when reporting the relevant data into the SDR.

54. What principles should the Commission consider when designating a UPI and product classification system pursuant to § 45.7?

a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.

Unique Product Identifiers (UPI)

To fulfill the need for product classification for SDR reporting, ISDA worked with market participants to develop the ISDA over-the-counter ("OTC") Taxonomies[62] which are available in both human readable tabular (i.e. Excel) and machine readable FpML formats. The concatenation of the layers of taxonomy values provide a solution to UPI for data aggregation that is already used widely by reporting counterparties, SEFs, and some DCOs for reporting to the Commission. The ISDA OTC Taxonomy has an established governance model for proposing and approving changes to the taxonomy that is subject to both regulatory input and broader industry consultation.

In addition to Part 45 reporting to the CFTC, the ISDA OTC Taxonomy is also used, or approved for use in the near term, as the UPI value for reporting globally in Japan, Australia, Hong Kong, Singapore, and Canada. ISDA has requested that ESMA endorse this standard for EMIR reporting. Acceptance and collaboration by global regulators on a single product classification method is essential to global product aggregation; otherwise we risk fragmentation in global product

[61] ISDA et. al, "Types of Legal Entities," *Requirements for a Global Legal Entity Identifier (LEI) Solution* (May 2011): 18 http://www.gfma.org/uploadedFiles/Initiatives/Legal_Entity_Identifier_%28LEI%29/RequirementsForAGlobalLEISolution.pdf

[62] http://www2.isda.org/attachment/NTQzOQ==/ISDA%20OTC%20Derivatives%20Taxonomies%20-%20version%202012-10-22.xls

classification. Therefore, we recommend acceptance and development of the ISDA OTC Taxonomy as the designated UPI and product classification system by the Commission.

Reasons to accept the taxonomy as the CFTC and global standard:

- in use broadly for product identification in reporting already
- provides an established baseline for product identification that is publicly available
- can be built upon and developed further to meet the needs of global regulators, based on their cooperation and input

55. Please explain your experiences and any challenges associated with the creation, transmission and reporting of USIs.

Unique Swap Identifiers (USI)

Creation

The predominant issue with respect to creation of USIs is who can generate the value. From a data integrity perspective, the primary purpose of a USI Namespace is to ensure uniqueness of USIs, and therefore which party generates the USI is immaterial provided they have a unique prefix. Party identification is provided via the LEIs submitted for the parties and need not be derived from the USI.

The task of creating and transmitting USIs would be improved if there was more flexibility as to the generator. For instance, a non-SD/MSP reporting counterparty which is affiliated with an SD or MSP should be allowed to generate a USI using the USI namespace of its affiliated SD or MSP rather than being required to accept a USI from the SDR. The extra step of consuming the USI from the SDR is technologically challenging for some parties and impacts the ability of the reporting counterparty to report timely in other global jurisdictions using the USI as the trade identifier.

As similarly advised in response to Question 22, market participants who may be exempt from registration with the CFTC, such as execution platforms like electronic communication networks ("ECNs") or middleware providers and electronic confirmation platforms that offer reporting services, do not have the ability to create a USI on behalf of the parties. Generation of a USI from a central platform that has established electronic connectivity to counterparties eliminates the challenges associated with timely transmission of the USI between the reporting counterparty and the non-reporting counterparty. Further, these limitations are likely to have a profound negative impact on global data aggregation, as further described below.

Transmission

Transmission of the USI between parties continues to be a challenge since there are countless trading scenarios and flows through which a USI may need to be exchanged. Broader use of central platforms for USI creation and transmission as suggested above would vastly reduce the scope of transactions for which USIs are exchanged via less efficient methods.

In addition, not all reporting counterparties take advantage of the available means of exchange between the parties to communicate the USI to the non-reporting counterparty. Even in cases where the USI is being consistently transmitted, the non-reporting counterparty does not always consume and retain this value to meet their recordkeeping or global trade reporting obligations,

further impeding the ability to establish a single global trade identifier. The Commission can assist in these scenarios by openly encouraging consistent transmission of USIs from reporting counterparties to non-reporting counterparties as well as consumption and retention of USIs by the non-reporting counterparties.

The opportunity to communicate the USI via electronic confirmation platforms is being wasted by some DCOs who withhold regulatory data from their tri-party confirmation submissions for cleared swaps in the credit asset class. Inclusion of the USI in electronic confirmations is extremely useful to market participants as an efficient method to consume and reconcile the USIs for their cleared swaps. We ask that the Commission encourage all parties that generate USIs to use all available methods, including confirmations, to transmit USIs.

Global impact

Beyond the USI issues that are relevant to meeting the CFTC's reporting requirements, there is a substantial and growing factor negatively affecting the accuracy and efficiency of global reporting.

Creation of a regulator specific USI construct complicates the ability to extend the approach to reporting in other jurisdictions. Whether a USI or a UTI, the expectation is the same – that the parties to the transaction recognize and utilize a mutually exclusive transaction identifier. The benefit to each regulator is evident, but there is even greater benefit to regulators from a global data aggregation perspective. Use of the same USI/UTI by all parties required to report a transaction globally is the only truly effective means for regulators to identify duplicate trade reporting and produce accurate aggregated data to meet their mutual objectives for global transparency and risk mitigation. In addition, it is inefficient and costly for reporting counterparties, SDRs, SEFs, DCOs, market infrastructure providers and others integral to meeting reporting requirements to maintain a separate USI or UTI for each jurisdiction to which a trade is reported.

Anticipating the need for a global standard for UTIs, ISDA advocated that the CFTC staff take a more global approach to USI generation by using the LEI as the USI Namespace. The approach adopted by the CFTC is not easily extendible to global reporting. So, ISDA worked with market participants to develop a best practice for the generation and communication of a single UTI[63] for global reporting that includes a key principle that the USI should be used as the UTI for reporting in other jurisdictions. ISDA advocated that global regulators accept the USI as the UTI for reporting under their regulations and many have agreed. However, there is wide gap between accepting and requiring. Since reporting counterparties are not compelled by their regulators to follow a global standard that facilitates creation and use of a single trade identifier across regimes, there are many scenarios whereby the parties cannot effectively use the USI as the UTI or choose not to do so due to additional complexity and burden. This includes the examples provide above for swaps transacted via an ECN and those for which the non-reporting counterparty is not repurposing the USI.

The CFTC could eliminate these reporting and data quality issues by proactively working with global regulators to agree a single approach to USI/UTI construct, generation and transmission and advocating the necessity to follow such standard. The UTI best practice published by ISDA is in use

[63] ISDA, *Unique Trade Identifier (UTI): Generation, Communication and Matching* (December 10, 2013) http://www2.isda.org/attachment/NjI3MQ==/2013%20Dec%2010%20UTI%20Workflow%20v8.7.8b%20clean.pdf

broadly by market participants for reporting already, so is an established baseline for a regulatory consistent approach. Market participants understand the importance and benefit of a single UTI so would be willing to work with global regulators to transition over an appropriate period of time if an alternate method is agreed and endorsed by global regulators.

In the meantime, although other regulators are willing to accept CFTC specific USIs, there is no reciprocity whereby the Commission will accept a UTI created for reporting to another jurisdiction. Reciprocity would be particularly effective when a swap is also reportable in a regime that requires reporting by both counterparties. In these cases, there is a compelling necessity to agree and exchange a UTI timely and therefore frequent use of UTI generated by platforms that are not registered with the CFTC. The difference in construct of the UTI and the party which generated it should not be an impediment to this mutual recognition since they only ensure a unique value and therefore should be secondary to the regulatory benefit of a single global transaction identifier.

The use of multiple identifiers in global reporting for a single transaction is not conducive to global data aggregation in accordance with the goals of the Financial Stability Board. We encourage the Commission to view USI from the global landscape and work with other regulators to congregate on a mutually beneficial solution.

G. Swap Dealer/Major Swap Participant Registration and Compliance: How Can the Commission Enhance Part 45 to Facilitate Oversight of Swap Dealers and Major Swap Participants?

56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (e.g., for purposes of monitoring the SD de minimis calculation)?

SDR aggregation

The LEI is available to the Commission as a tool to aggregate data for a particular counterparty based on the aim of such analysis. Should SDRs aggregate transactions for an entity by number and notional for use by the Commission and reporting counterparties, we note that it may not provide a complete tool for monitoring an entity's de minimus threshold. However certain entities may use aggregated data as a tool in their overall de minimus monitoring framework if the aggregated information is made available to such entities and the Commission. The Commission should clarify their data aggregation needs and work with SDRs and reporting counterparties to determine the best method to use the reports they provide to achieve those objectives.

57. Should data elements be reported to the SDR to reflect whether a swap is a dealing or non-dealing swap? If so, how should this information be reflected in the SDR

Dealing vs. non-dealing

Data that indicates whether a swap is for purposes of dealing or hedging should not be required. This information is not part of trade capture and the intentions of the client may not be known; nor would it be practicable for reporting counterparties to obtain representations from counterparties on a transaction by transaction basis as to whether the swap is a dealing swap or a non-dealing

swap. Having to do so would be very burdensome and extremely difficult to implement as it would necessitate written representation from the counterparty at the time of each trade. Without clarity on how the Commission would use this information to meet its objectives, it is difficult to justify the cost of implementation.

58. Where transactions are executed in non-U.S. dollar ("USD") denominations, should the SDR data reflect USD conversion information for the notional values, as calculated by the counterparty at the time of the transaction (rather than the conversion taking place at the SDR)?

a. If so, how should the SDR data reflect this information?

b. Would this answer be different depending on the registration status of the reporting counterparty (e.g., SD/MSP)?

Currency conversion

For sake of consistent comparison and efficiency, it makes sense for the SDR to do any necessary conversions as they will be based on the same rate at same point in time. Requiring the conversions to take place at the reporting counterparty level would be costly and inefficient.

H. Risk: How Can Part 45 Better Facilitate Risk Monitoring and Surveillance?

60. Are there data elements that should be reported on a transaction basis to identify the linkage between a swap transaction and a reporting counterparty's other positions in products regulated by the Commission?

Linking counterparty positions

No additional data elements are required to link a reporting counterparty's positions in products regulated by the Commission. Data aggregation by product can be accomplished via the Unique Product Identifier and aggregation by reporting counterparty can be accomplished via LEI.

62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?

See response to Q63.

63. What international regulatory coordination would be necessary to facilitate such data aggregation?

Data aggregation across multiple trade repositories[64]

Data aggregation across multiple trade repositories requires data harmonization and the use of consistent data standards by the trade repositories. While a majority of trades are reported using the FpML format or a CSV format that is harmonized based on FpML, the Commission to date has

[64] This subsection responds to Questions 62 and 63.

not mandated the use of one data standard. The lack of a common data standard used by all trade repositories makes the process of aggregation more difficult, can have a negative impact on the data quality of the aggregated data and increases the risk for errors. In addition, consistent use of trade (i.e. USI/UTI) and product identifiers (e.g. UPI) are key requirements to successful data aggregation.

Data aggregation across multiple repositories is not limited to trades reported in the U.S. to the CFTC. In order to fulfill the G20 requirements around systemic risk management, data aggregation will need to happen across multiple repositories in multiple jurisdictions. Internationally the aggregation becomes even more complex. Besides the absence of a mandated data standard (FpML is also on a global basis the standard that is the basis for the majority of trade reporting but not mandated by regulators), there are differences in workflow (e.g. single party reporting versus dual party reporting or differences in reporting of trade lifecycle of cleared trades) that make the consistent use of identifiers and understanding of global workflows even more important. Data aggregation on an international level will only be successful if there is international collaboration and agreements on data standards and the use of identifiers. Absent a mandated international standard, mutual recognition of prescribed standards will be required (e.g. allow the use of an ESMA sanctioned UTI format for reporting to the CFTC). We believe that mutual recognition in the area of Unique Identifiers is the second best solution if a global solution cannot be achieved.

As far as international data aggregation is concerned, the Financial Stability Board ("FSB") is expected to come out with a set of recommendations around a global market infrastructure for data aggregation. As we have pointed out in our response to the FSB consultation[65] data aggregation on an international level needs to take data privacy and confidentiality concerns into account. Propagation of international standards supported by regulators globally will facilitate data aggregation on a national level as well.

[65] http://www2.isda.org/attachment/NjM3MA==/20140228%20FSB%20Feasibility%20study%20on%20data%20aggregation%20-vfinal.pdf

I. Ownership of Swap Data and Transfer of Data Across SDRs

64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?

a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?

b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?

c. What would be the basis for property rights in the data for each of these scenarios?

d. What ownership interests, if any, are held by third-party service providers?

e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity

Permitted Usage[66]

As a preliminary matter, ISDA submits that Commission policymaking in the area of protecting parties' interests in swap transaction data should focus on determining appropriate uses of data, rather than on abstract and elusive questions of data ownership and property rights. The Commission should be guided by the fundamental principle that swap transaction data is received and collected by SDRs and other registered entities only by virtue of statutory mandate, which contains both express and implicit limits on the use of that data. Apart from the real-time data that is required to be publicly disseminated pursuant to Part 43, data collected and maintained by a SDR is intended for use by the Commission and certain other regulators and is accorded protections under Sections 8 and 21(c)(7) of the Commodity Exchange Act. Further use of such data inherently conflicts with that mandate.

A registered entity should be permitted to use the data submitted to it only for purposes of discharging its regulatory obligations under the Commodity Exchange Act. The sole exception to this principle should be to permit SDRs to offer value-added analysis or services to one or both counterparty(ies) to trades for which data has been reported to the SDR under relevant CFTC reporting rules based on the data reported for such trades (but not on data pertaining to trades to which such person is not a counterparty). Consistently with core principles on fair, open and equal access and on the management of conflicts of interest (including Commission regulation 49.27 in the case of SDRs), registered entities should not be permitted to condition membership or user status on the granting of consent to use data for any other purpose.

Under existing Commission regulation 49.17(g)(2), the swap dealer, counterparty or any other registered entity that submits the swap data may consent to commercial or business use of that data. ISDA recommends that the right to consent should be vested only in the counterparties to the swap (meaning the counterparties to the "original swap" in the case of a cleared swap). When data is reported to an SDR by a SEF, DCM or DCO, the fact that such other registered entity is the means of submission to the SDR should not give that registered entity the ability to consent to

[66] This subsection responds to Questions 64, 65(a) and 66

commercialization of the reported trade data. Again, impartial access and conflicts management core principles demand that a SEF, DCM or DCO not be permitted to condition membership or user status on the granting of consent to commercial use of data. Accordingly, ISDA recommends that Commission regulation 49.17(g)(2) be modified to require written consent of the swap counterparties to commercial or business use in all cases.

65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?

a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?

b. Does commercialization of swap data increase potential data fragmentation?

c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?

Commercialization and Transparency

The commercialization of swap transaction data would not advance the regulatory objective of transparency. Transparency goals are already addressed by the public dissemination of Part 43 data and by the Commission's weekly swaps report. Further, ISDA questions the utility and reliability of any derived information that would be produced for commercial use. First, because only the consenting sub-population's data could be considered, the representativeness of the data used to produce the derived information is open to question. Second, the soundness and statistical integrity of the derived information could only be tested by providing third party auditors with access to the raw data, which would constitute a broadening of access that is inconsistent with statutory protections.

66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide "consent" to further distribution or use of swap transaction data for commercial purpose by the SDR?

See response for Q64.

67. Even though swap data reported to an SDR must be available for public real-time reporting, should any use of such real-time data or commercialization of such data occur only with the specific consent of the counterparties to the swap

Part 43 Real-time Data

Real-time data, once publicly disseminated by the SDR, will be in the public domain, and restrictions on its further commercial or other use would not be practicable. However, further use of public data by the SDR that disseminated it (and will generally be the custodian of the non-public data pertaining to the same swaps) should be subject to firewalls and other safeguards to ensure that the SDR personnel involved in commercialization have no access to non-public data and are not advantaged relative to other persons who receive the data from public sources.

68. An ancillary issue relating to commercialization of data and legal property rights relates to the "portability" of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or "ported" to another SDR.52 The Commission seeks comment on whether § 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported

Portability of Data

The portability of swap data would be improved by consistent data standards across SDRs. The CFTC should work with global regulators to set clear and consistent technical standards for trade repositories that facilitate portability and improve data quality.

Nevertheless, in order to preserve the ability of market participants to change SDRs should circumstances warrant, Commission regulation 45.10 should be amended to permit porting of the complete data series for each ported swap at the election of the reporting counterparty.

J. Additional Comment

69. To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) the accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data. Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.

a. What challenges do Commission registrants (SDs, MSPs, SEFs, DCMs, and DCOs) face as reporting entities and reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

Data Privacy

Conflicts between the Commission's reporting mandate and non-U.S. bank secrecy, data privacy or similar laws (including blocking statutes) ("Privacy Laws") remain a formidable challenge in reporting cross-border transactions. Existing no-action relief under CFTC Letter No. 13-41, while appreciated by market participants, does not fully resolve these difficulties. The conditions of the

relief under CFTC Letter No. 13-41 may be impossible to satisfy in a variety of contexts. For example, the application of conflicting non-U.S. Privacy Laws may be triggered by booking location and other factors not within the scope of the no- action relief. In addition, the conditions of 13-41 prohibit its use for guaranteed affiliates and affiliate conduits. Furthermore, as preparations for reporting progress globally, additional legal analysis may reveal problems in jurisdictions that were not included as "Enumerated Jurisdictions" under CFTC Letter No. 13-41. The assumption, implicit in CFTC Letter No. 13-41, that a market-wide consensus on which jurisdictions present reporting conflicts is itself problematic. The applicability of non U.S. Privacy Laws and judgments regarding their interpretation and appropriate implementation by institutions are highly fact-specific and reflective of situational characteristics of those institutions. The Commission should not expect uniformity across reporting parties in their perception of a jurisdiction as problematical in this regard or not.

Additionally, as addressed in ISDA's no-action letter request submitted June 21**,** 2013[67], obtaining and processing counterparty consent as required under relevant Privacy Laws of some jurisdictions is a challenging process.

These challenges can only be addressed effectively through efforts by regulators to achieve international harmonization of relevant laws so that a reporting party's compliance with mandatory trade reporting obligations in itself will be recognized as a permitted act (even without counterparty consent) under all applicable Privacy Laws, a result that is unlikely to be achieved prior to June 30, 2014, the expiration date of the existing relief, or any time soon thereafter.

[67] See Appendix, "Request for No-Action Relief – Parts 20, 45 and 46," (June 21, 2013)

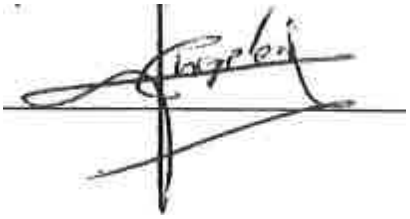
ISDA Safe, Efficient Markets

IV. Summary

ISDA and its members recognize the importance of the Part 45 regulations and strongly support initiatives to increase regulatory transparency. We would like to reiterate our appreciation for the opportunity provided by the Commission to respond to the Comment Request with our feedback and proposals. We are happy to discuss our responses and provide any additional information that may assist with your consideration of these important matters. We look forward to the changes to the SDR reporting requirements that the Commission will enact as a result of the Comment Request. We anticipate that such changes will improve the ability for reporting entities to comply with the Part 45 regulations in a meaningful, consistent and cost-effective manner while improving the Commission's ability to use the data to meet the primary objectives of the regulations.

Thank you for your consideration of these very important issues to market participants. Please contact ISDA staff if you have any questions or concerns.

Sincerely,



Karel Engelen
Senior Director
Head, Data, Reporting & FpML
International Swaps and Derivatives Association, Inc.

ISDA Safe, Efficient Markets

V. Appendices

Documents referenced below are on the following pages, identified by title:

- "Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Valuation Data Reporting for Cleared Swaps (Part 45.4(b)(2)(ii))," (February 12, 2014). (Q8)

- "Request for Division of Market Oversight Staff No-Action Letter and Interpretive Letter Pursuant to CFTC Regulation 140.99: Impact of Swap Dealer and Major Swap Participant Registration Status Changes on Counterparties' Obligations under Reporting Requirements," (April 4, 2014). (Q12)

- "Revised Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Order Aggregation of Certain Permitted Transactions," (April 3, 2014). (Q14)

- "Request for No-Action Relief - Part 45: Swap Allocation Report Timing," (December 10, 2012). (Q17)

- "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))," (February 11, 2014). (Q28)

- "Request for No-Action Relief – Parts 20, 45 and 46," (June 21, 2013). (Q69)

ISDA Safe, Efficient Markets

17 CFR Part 45

February 12, 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: Valuation Data Reporting for Cleared Swaps (Part 45.4(b)(2)(ii))

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. However, challenges remain, and therefore, ISDA, on behalf of its members that are "reporting counterparties" under Part 45[1] (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.

I. Background

On December 13, 2012, ISDA submitted a request to staff of the CFTC's Division of Market Oversight ("DMO") requesting no-action relief on behalf of its members, and other similarly situated market participants, from the requirements of Part 45.4(b)(2)(ii) of the Reporting Rules.

[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."

In response to ISDA's request, DMO issued CFTC Letter No.12-55[2] which granted conditional relief to Swap Dealers and Major Swap Participants from their obligations under Part 45.4(b)(2)(ii) until June 30, 2013. Subsequently, DMO extended such relief until June 30, 2014 under CFTC Letter No. 13-34[3] ("NAL 13-34").

ISDA and its members are grateful for the relief granted by Commission staff with respect to Part 45.4(b)(2)(ii). Unfortunately, the conditions that prompted the original request for relief, and the subsequent extension, remain. Reporting Parties require certainty as to (i) their obligations with respect to valuation data reporting for cleared swaps and (ii) whether any such reporting of valuation data for cleared swaps may be sent to the Swap Data Repository ("SDR") of their choice or may be required to be sent to the SDR selected by the Derivatives Clearing Organization ("DCO").

Certainty on these points is essential before Reporting Parties can commence (i) reporting valuation data to an SDR to which they are already connected or (ii) onboarding, development and testing necessary to submit valuation data to an SDR to which they are not already connected and live with reporting. Such work may be significant, especially in the event reporting to multiple additional SDRs is required. With three provisionally registered SDRs and two further applicants, parties may need to connect to as many as four additional repositories, thus multiplying the time and effort required to prepare.

Although the relief extended under NAL 13-34 is still in effect until June 30, 2014, there is no clear indication that a resolution of the outstanding legal uncertainty with respect to reporting of valuation data for cleared swaps by Reporting Parties is imminent. Depending on the outcome, Reporting Parties believe they might need at least six months to complete the necessary onboarding, development and testing. Therefore, on their behalf, ISDA is proactively seeking an extension of NAL 13-34.

II. Relief request

In consideration of the conditions described above, ISDA respectfully requests that DMO further extend the relief granted pursuant to NAL 13-34 and thereby recommend that enforcement action not be taken against a Reporting Party which does not report valuation data for cleared swaps as required by Part 45.4(b)(2)(ii) of the Reporting Rules. We request an extension of such relief until January 31, 2015 with the understanding that further relief may be necessary depending on when unambiguous clarification is made available to market participants regarding the obligations of Reporting Parties with respect to Part 45.4(b)(2)(ii) and any corresponding requirements pertaining to the selection of SDR for purposes of reporting valuation data for cleared swaps.

[2] http://www.cftc.gov/LawRegulation/CFTCStaffLetters/12-55
[3] http://www.cftc.gov/LawRegulation/CFTCStaffLetters/13-34

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

Sincerely,

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 12, 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,

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

ISDA Safe, Efficient Markets

17 CFR Part 43
17 CFR Part 45

April 4, 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 and Interpretive Letter Pursuant to CFTC Regulation 140.99: Impact of Swap Dealer and Major Swap Participant Registration Status Changes on Counterparties' Obligations under Reporting Requirements

Dear Mr. McGonagle,

Changes to a registered person's status as a Swap Dealer ("SD") or Major Swap Participant ("MSP"), in particular deregistration and limited purpose designation[1], impact the operational ability of its counterparties to comply with their obligations as SDs or MSPs, including, but not limited to, Part 43 and Part 45 regulations (the "Reporting Rules") of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), external business conduct, clearing, and confirmation, portfolio reconciliation and portfolio compression requirements. The current process for granting such changes to registration does not consider these implications in a manner that allows for a consistent and coordinated approach to changes or transfer of obligations, which imposes compliance challenges and, with respect to the Reporting Rules, may impact the quality of reported data and the ability for parties to comply with their obligations.

The International Swaps and Derivatives Association, Inc. ("ISDA") and its members recognize the importance of the Reporting Rules and other CFTC regulations and strongly support initiatives to increase regulatory transparency. In order to address the challenges noted above, ISDA, on behalf of its members that are "reporting parties" under Part 43[2] and "reporting counterparties" under Part 45[3] (collectively, "Reporting Parties"), hereby request relief from certain requirements under the Reporting Rules and interpretive guidance with respect to other requirements under the Reporting Rules as set forth in Sections III and IV and explained below.

---

[1] Though not an aspect of their registration with the Commission, we note that a change to a party's status as a guaranteed affiliate or conduit affiliate (as defined in the CFTC's Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations: Rule) will create similar challenges.

[2] 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]."

[3] 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."

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 64 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.

I. Background

Registration Withdrawal or Termination ("Deregistration")
A SD may submit an application to the Commission to withdraw its registration[4] if it has been a SD for at least 12 months provided it qualifies for the *de minimus* exception[5]. Approval of such a withdrawal request from a SD (the "applicant") may be effective 30 days after receipt[6], even though the applicant's counterparties may be unaware of the request during this time in order to prepare. A MSP may also qualify for a termination of its status[7] (also, an "applicant") if subsequent to its registration it does not exceed any of the applicable daily average thresholds for four consecutive fiscal quarters. Though not privy to a request for withdrawal or a qualification for termination, as applicable, a SD or MSP which faces the applicant will become responsible for certain obligations under the Reporting Rules for their mutual swaps. Insufficient notification by the Commission of its intention to approve a withdrawal or termination means the change in registration may take effect before Reporting Counterparties have made the requisite changes to their static data for application to swaps entered into on or after the applicable effective date, resulting in gaps in reporting and exceptional effort to identify and correct any errors or omissions.

Limited Designation ("LD")
Under a "limited purpose designation" or "limited designation", a person can be designated by the Commission as a SD for one type, class or category of swap or activities without being considered a SD for other types, classes, categories or activities[8]. A MSP may be designated by the Commission as a MSP for one or more categories of swaps without being a MSP for all classes of swaps[9].

Though the person which requested a LD (also, the "applicant") is expected to demonstrate full compliance with respect to the requirements that apply to the type, class or category of swap or activity that fall within its limited designation, the rule does not contemplate the need for its counterparty to implement technical capabilities to consider which swaps fall inside and outside of that scope. In the case of determining the Reporting Party in accordance with Part 45.8, such clarity is necessary in order

[4] 17 C.F.R. 1.33(ggg)(4)(iv).
[5] 17 C.F.R. 1.33(ggg)(4)(i).
[6] 17 C.F.R. 3.33(f).
[7] 17 C.F.R. 1.33(hhh)(5).
[8] 17 C.F.R. 1.33(ggg)(3).
[9] 17 C.F.R. 1.33(hhh)(2).

to designate a single Reporting Party for the swap. The parameters (i.e., specific activities or specified categories) under which a LD may be granted under CFTC rules may differ from case-to-case, which means that it may not be possible for static data and reporting logic to accommodate the demarcation between the LD and the applicant's other swap activities and, in any event, Reporting Parties are unlikely to anticipate all possibilities in order to proactively build static data and reporting logic that is flexible enough to accommodate all undetermined parameters. As a result, they require lead time in each case of a LD to assess their ability to adjust their static data and reporting logic, and then, when necessary and practicable, develop and test necessary changes. Even if their systems are capable of accommodating the conditions of the LD, Reporting Counterparties will still require advance notice to make the necessary static data changes concurrent with the relevant effective date.

We further note that Reporting Parties will not have insight into whether a SD or MSP with LD has met and continues to comply with the conditions, if any, prescribed by the CFTC in the relevant Order of Limited Purpose Designation (the "LD Order"), either in general or with respect to a particular swap. Significantly, Reporting Parties may not be able to ascertain whether a particular swap is within or outside the LD due to its conditions (e.g., that the swap be a "non-dealing" swap of the LD entity).

To date, the Commission has granted two LDs and one deregistration, respectively[10]:

1. Cargill, Incorporated[11] ("Cargill"), effective October 29, 2013 (the "Cargill LD")
2. State Street Bank and Trust Company[12] ("State Street"), effective December 19, 2013 (the "State Street LD")
3. The Hong Kong & Shanghai Banking Corporation Limited ("HBAP"), effective January 16, 2014 (the "HBAP deregistration")

II. Impact statements

We request that the Commission and DMO staff consider the following impact statements and recommendations in order to (i) clarify its expectations with respect to swaps subject to the approved changes in registration listed above and (ii) establish a standard for future changes in registration approved by the Commission to ensure an orderly implementation and facilitate continuity for Reporting Parties to comply with their obligations under the Reporting Rules which prevents gaps or duplications in reporting that may impact data quality.

Notification

As a result of a change to a SD or MSP's registration status, the obligations of its counterparties will be altered with respect to new swaps, and may be altered with respect to previously reported swaps. Reporting Parties house internal static data sourced from or validated against the National Future Association's ("NFA") SD/MSP registry[13] (the "Registry") to determine which party will be the

[10] We understand that a limited designation granted to Cargill Financial Services International, Inc. is not in effect since this affiliate was not registered as a Swap Dealer by November 30, 2013 in accordance with the conditions of the LD.

[11] http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/cargillorder102913.pdf

[12] http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/ssbtorder121913.pdf

[13] http://www.nfa.futures.org/NFA-swaps-information/regulatory-info-sd-and-msp/SD-MSP-registry.HTML

Reporting Counterparty in accordance with Part 45.8. Most parties track SD or MSP status at the party legal entity level (e.g. via its Legal Entity Identifier). Likewise, the Registry is currently only capable of providing SD/MSP registrant status on those grounds.

ISDA requested of staff at the NFA that changes to the Registry be implemented to include the additional data elements pertaining to a deregistration or a LD. NFA staff has advised they will enhance the Registry to include the following:

1. Deregistered firms with the date of deregistration; and
2. An indication of Limited Designation as applicable.

The target date for implementation is April 30, 2014.

However, as the NFA does not currently maintain in electronic format the effective date of a LD nor the key parameters, they are unable to provide these as part of the Registry. Both of these data elements are essential for Reporting Counterparties to determine whether specific trades fall within the scope of the LD, and therefore which party will report. Issuing conditions for a LD in terms that can be managed systematically is essential to parties' ability to comply accurately and consistently in accordance with an LD Order. Therefore we request that the Commission work with the NFA to make the effective date, parameters and conditions of a LD Order available on the Registry.

With respect to a change in registration status, parties expect that changes would apply to new swaps on a going forward basis from the effective date of the corresponding order. However, advance notice is still required to implement a change to static data for the relevant effective date. In the case of the HBAP deregistration no notice was issued by the Commission that this withdrawal from registration was approved. Rather, on the day the change in registration was effective, HBAP was removed from the Registry without explanation or an audit trail. Advance notification is essential for Reporting Parties to update their static data in a cohesive manner that prevents gaps or duplications in reporting. Such notice should not be left solely to the party seeking deregistration, but rather should be made publicly available by the Commission in order to facilitate an industry coordinated approach to requisite operational changes.

Further, Reporting Parties may also be dependent on communication and action by the applicant to facilitate a transition in reporting obligations. For instance, the applicant may need to correct its set-up with (i) third party service providers (e.g. Markitwire or DSMatch) which determine the Reporting Counterparty on behalf of the parties which use their electronic confirmation platforms or (ii) swap execution facilities. Also, additional communication on the part of the applicant may be necessary for Reporting Parties to understand how to determine which trades fall within the scope of the relevant business unit or activity for which a LD was granted.

In order to allow time to operationally facilitate the transition, we request that the Commission issue a publicly available notice with respect to its decision to approve an application for deregistration or LD a minimum of 30 days prior to the effective date of a deregistration and 60 days prior for a LD, especially in the event the conditions are unprecedented. Such notice will allow Reporting Parties to assess the impact, plan for any requisite technological changes and static data updates for the effective date of the LD or deregistration. Despite advance notice, in some cases this suggested notification

period may be insufficient depending on the difficulty of any technological changes, as further described below.

Technological Requirements

The Cargill LD and State Street LDs require parties to distinguish SD status at a business unit level and asset class level, respectively. The rules even contemplate a LD which may "split the desk" and apply solely to activity involving swaps not entered into for the purposes of hedging a physical position[14]. A SD or MSP which is granted such LD must be able to make such a distinction, but all of its counterparties may not be equally privy to activity-level considerations. Most parties' static data systems are currently not designed to track an SD/MSP registration at a level more granular than the legal entity. Reliance on a pre-trade notification from the counterparty for each single swap transaction as to which swaps fall within the scope of the LD, may not be a feasible or the most prudent solution as it would mainly involve front office personnel and manual processes. The need to report as soon as technologically practicable means that any such logic must be automated to the largest extent possible, in order to ensure timely and accurate reporting. Therefore, if the determination of the Reporting Party is to hinge on whether a transaction is within or outside the scope of the LD, it is essential that Reporting Parties are able to build robust static data and reporting logic that is capable of assessing whether the swap meets the parameters of the LD and hence whether their counterparty is considered a SD or MSP for the swap. In order to ensure they remain in compliance with Commissions rules, Reporting Parties need to have the system capability in place ahead of time, rather than addressing issues and impact after a change in registration has already occurred.[15]

In order to allow for consistent global reporting, Reporting Parties are reliant on robust static data that can be used for multi-jurisdictional reporting. Static data distinctions at a business unit, asset class or activity level complicate static data infrastructure and may impact global reporting and so need to be implemented carefully to maintain the quality and accuracy of global reporting. We request that the Commission take into consideration the technological impact on Reporting Parties to ensure that the conditions for a LD are discernible by the counterparties to the SD/MSP with LD.

Reporting Party Responsibility

Based on the LD and deregistrations approved by the Commission to date, it has become apparent that the industry requires guidance from DMO staff with respect to how these changes impact reporting of (i) swaps entered into during any period of no action relief granted to the applicant in advance of the approval and effectiveness of its change in registration status and (ii) swaps entered into prior to the effective date of the change in registration for which the applicant was previously determined to be the Reporting Counterparty and for which continuation data reporting obligations remain.

We note for your consideration that a change to the Reporting Party for a previously reported swap poses operational challenges for both Reporting Parties and market infrastructure providers who have built logic that maintains a Reporting Party determination for the life of the Unique Swap Identifier ("USI"). Consequently, an alternate approach will require technological changes and/or manual overrides.

---

[14] Fed Reg. 77 at 30646

[15] In the case of the Reporting Rules, any errors or omissions can be corrected, but in the case of other Commission regulations, such as the business conduct rules, it may be too late to remedy.

Summary

We acknowledge that some of the above referenced issues have impact and oversight beyond DMO, and therefore we request that DMO consult inter-divisionally within the Commission to consider these dependencies while reviewing future requests from applicants for changes in their registration status. Building in adequate notification time to market participants in advance of the effective date of the relevant change will allow Reporting Parties and market infrastructure providers, if applicable, to make the necessary changes.

We request that DMO staff consider the operational limitations of the counterparties to the applicant when a request for a change in registration is under consideration by the Commission in order to proactively issue no action relief that allows time for the remaining registrant to development and test any necessary changes to their internal static data source and reporting logic. We are happy to provide input on a case by case basis to help determine what, if any, period of time is needed. Ideally such relief should be provided in advance of the effective date of the LD or deregistration to prevent any gaps or duplications in reporting during the period of relief and to eliminate the need for either party to correct prior errors or omissions, which could be manual in nature.

III. Request for Relief

We acknowledge that Cargill and State Street have made an extraordinary effort to communicate their expectations, plans and actions with their counterparties in order to facilitate the transition of reporting obligations. However, parties may still face technological challenges and interpretive questions persist, potentially impacting the quality of reporting.

As explained above, most Reporting Parties do not currently have the technological capabilities to distinguish a Swap Dealer at the business unit level and/or asset class level in accordance with the conditions for the Cargill LD and State Street LD, respectively. As a result, they may be assigning themselves as the Reporting Party for all swaps between themselves and these counterparties, resulting in duplicate reporting in cases where either Cargill or State Street, as applicable, has assumed the Reporting Party obligation. Alternatively, the LD entity and its SD counterparty may be assigning the Reporting Party obligation in accordance with industry best practice[16], resulting in cases where neither party is reporting the swap. Reporting Parties require time to clarify which trades fall within the scope of the relevant LD and develop and test the necessary changes to their static data infrastructure and reporting logic in order to determine the Reporting Party in accordance with the stated scope of each of the Cargill LD and State Street LD.

Further, there may be uncertainty in these cases as to which party was responsible for:

(i) reporting new swaps entered into prior to the effective date of the applicable LD (but during the time that the Commission may have granted no-action relief while the application was under consideration); and

(ii) reporting swaps entered into prior to the effective date of the applicable LD for which continuation data reporting obligations remain.

[16] http://www2.isda.org/attachment/NjE3Ng==/Reporting%20Party%20Requirements_16Dec13_Final.pdf

Therefore, there may be cases where either both or neither party has reported the swap or the most recent events on the swap or a Reporting Party may have incorrectly reported whether the non-reporting party is a SD with respect to the swap. In either case, time is needed for corrective action once it is clear which party is responsible for any duplications or omissions, as applicable.

As a result of the conditions described, ISDA respectfully requests that DMO recommend that enforcement action not be taken against a Reporting Party which either over or under reports, or incorrectly reports the Swap Dealer status with respect to its swaps with Cargill or State Street until June 30, 2014. Such date assumes a timely response to the request for interpretive guidance below. [17]

IV. Request for Interpretive Guidance

We request that DMO issue an interpretive letter which provides guidance with respect to the parties' respective obligations under the Reporting Rules in the event of a LD or deregistration, as follows:

a. The Reporting Counterparty is determined at point of execution and remains throughout the life of the swap and its USI. Therefore any change in registration status does not impact the Reporting Party for swaps entered into prior to the effective date of a LD or deregistration with respect to either Part 43 or Part 45 reporting requirements.

b. The original Reporting Party for the swap remains responsible for the continuation data requirements under Part 45 for the remaining life of the USI for a swap entered into prior to the effective date of the change in registration. In the event of a lifecycle event which changes the parties to the swap (e.g., a novation), or otherwise results in the assignment of a new USI, the parties would reassess the Reporting Party in accordance with Part 45.8[18] and issue a new USI based on the then current respective registration status of the parties.

c. The SD/MSP which is granted a change in registration status continues to be treated as a SD/MSP for purposes of meeting any reporting obligations for swaps entered into prior to the effective date of the change in registration status. To the extent such obligations were not met during a period of relief made available to the applicant while the Commission was reviewing the application for LD or deregistration, the applicant would be responsible for resolving any errors or omissions following the effective date of the change in registration.

d. Absent a notification by the Commission of change in status, and a corresponding update on the Registry, Reporting Parties may assume that a SD or MSP which has been granted a LD has complied and continues to comply with the conditions, if any, set forth in the relevant LD Order. And therefore, the Reporting Party may assume the LD is in effect and applies, as

[17] Additional time may be needed after June 30, 2014 for Reporting Parties to correct in the SDR data which previously has been incorrectly reported by the Reporting Party, as applicable.

[18] Instances where Part 45.8 permits the parties to agree on which of them is the Reporting Party would be unaffected by the requested interpretive letter.

appropriate, to their mutual swaps. In addition, a Reporting Party may reasonably rely on representations from the LD entity regarding its SD status with respect to a particular swap.

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

Sincerely,

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

cc:

Laurie Gussow, Special Counsel, Division of Market Oversight, CFTC
David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC
Nancy Markowitz, Deputy Director, 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 April 4, 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,

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

ISDA Safe, Efficient Markets

17 CFR Part 43

April 3, 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: Revised Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: Order Aggregation of Certain Permitted Transactions

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc. ("ISDA") and its members recognize the importance of the 17 CFR Part 43 and 17 CFR Part 37 regulations (the "Rules") of the Commodity Futures Trading Commission (the "Commission" or "CFTC") and strongly support initiatives to increase transparency. We also appreciate the efforts of Commission staff over the past several months to provide direction, clarification and no-action relief where possible as our members continue preparations for complying with the Rules. Specifically, our members appreciate CFTC Letter No. 13-48[1] ("NAL 13-48") issued by staff from the Commission's Division of Market Oversight ("DMO") which provides relief from the aggregation prohibition under CFTC regulation 43.6(h)(6)[2] for certain "large notional off-facility swaps".[3] However, challenges remain with respect to complying with CFTC regulation 43.6(h)(6), and

[1] CFTC Letter No. 13-48, dated July 30, 2013 from the Division of Market Oversight, "No-Action Relief for Certain Commodity Trading Advisors and Investment Advisors From the Prohibition of Aggregation Under Regulation 43.6(h)(6) for Large Notional Off-Facility Swaps", subsequently amended as of August 6, 2013.

[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.

therefore,ISDA, on behalf of its members that are "reporting parties" under Part 43[4] ("Reporting Parties"), submitted a request for relief to DMO on September 23, 2013 with respect to Permitted Transactions. DMO have not yet responded to that request, and therefore since the challenges remain, ISDA is renewing our request for relief, 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 64 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.

I. Discussion

A. Background

Due to condition (i) on page 4[5] of NAL 13-48 (the "Condition"), beginning on the October 2, 2013 compliance date for Part 37 (the "Compliance Date"), NAL 13-48 does not provide relief from the aggregation prohibition under regulation 43.6(h)(6) for a swap that is listed by a registered swap execution facility ("SEF") or designated contract market ("DCM") in accordance with Part 37, but which is not executed on or pursuant to the rules of a SEF or DCM. Since Reporting Parties understand that their clients will wish to avail themselves of the protection provided under the Rules for delays in the public dissemination of swap details and notional capping for a swap that exceeds the minimum block size and cap size, respectively, the parties must be (i) fully and equally aware of all swaps that are approved as Permitted Transactions[6] listed on a SEF or DCM and (ii) have the ability to immediately execute the swap pursuant to the rules of a SEF or DCM which has listed it.

Reporting Parties are currently complying with the Condition with respect to Required Transactions[7]; however, market participants have identified key operational challenges which make compliance with respect to Permitted Transactions very difficult to achieve. The primary operational challenges are (i) an adequate source for approved Permitted Transactions (ii) block trade indicator determination and (iii) connectivity to a relevant SEF or DCM for both Swap Dealers and clients.

---

[4] 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]."

[5] The condition states: "(i) The orders being aggregated are orders for swaps that: (1) are not listed or offered for trading on a SEF; and (2) are not listed or offered for trading on a DCM[.]" NAL 13-48 at 4.

[6] As defined in Section 37.9(c)(1) *Permitted transaction* means any transaction not involving a swap which is subject to the trade execution requirement in section 2(h)(8) of the Act.

[7] As defined in Section 37.9(a)(1) *Required transaction* means any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the Act.

B. Source for Permitted Transactions

First, in order to comply with the Condition, parties would need to be informed of which swaps are offered as Permitted Transactions, and thus required to be executed in accordance with the rules of the SEF or DCM in order to be eligible for block trade and notional cap treatment. Therefore, parties need to have a central, reliable source that provides real time information as to which swaps are listed as Permitted Transactions on which SEF(s) or DCM(s).

Regardless of whether individual SEFs or DCMs may provide data for the swaps they list, it is not practical for market participants to check multiple sources in advance of transacting in the event a new swap is offered, especially where the parties are not connected to a particular SEF or DCM that lists such new swap, and therefore the parties may not have a direct line of information.

We acknowledge that a list of Trading Organization Products is available on the Commission's website[8], and we assume that a list of Permitted Transactions can be ascertained by filtering on either type of "Swap" or "Option" and status of "Certified" or "Approved".

However, the source is inadequate for the purpose of monitoring whether a trade may be subject to the Condition for the following reasons:

- Multiple searches required to obtain full list of products that may be Permitted Transactions;
- No distinction made for which products are Required Transactions vs. Permitted Transactions;
- Product names are inconsistent and contain different levels of granularity, thus requiring review of any associated documents;
- There is no search function by product (i.e. to search whether a particular product is listed/offered for trading by a particular SEF/DCM);
- There is no means to export the list for review or reuse;
- There is no method to download the data for systematic consumption;
- Notifications regarding updates are not available; and
- There is uncertainty as to whether data is maintained in real time.

As a result of the above, regular and repeated review and reconciliation of the data provided on this list would be necessary to ensure the parties executed via a SEF or DCM in all cases where they are seeking to aggregate an order for a Permitted Transaction.

For compliance with the Condition, access to complete and current data on self-certified and approved Permitted Transactions would be essential. The golden source for data on Permitted Transactions is the Commission in its role as gatekeeper of requests from all SEFs and DCMs for products they intend to list. Any data for use by market participants would need to be provided on a real time basis following approval or expiration of the one-business day period (or any stay of such listing) pursuant to Part 40 of the CFTC's regulations,[9] in a format suitable for

[8] http://sirt.cftc.gov/sirt/sirt.aspx?Topic=TradingOrganizationProducts

[9] CFTC regulation 40.2(a)(2) explains that the CFTC must receive the product submission "by the open of business on the business day preceding the product's listing."

programmatic consumption and with sufficient prior notice in case previously published data changes or new data is added, so that relevant systems of relevant market participants can take in and process the new information.

C. Block Trade Indicator determination

For purposes of both the Part 43 and Part 45 regulations, Reporting Counterparties are required to determine and report the "block trade indicator" to identify whether the swap qualifies as a "block trade" as defined in the Part 43. This field is used by SDRs to apply available treatment to the public reporting of swaps, including a delay on dissemination.

The task of determining whether a swap is a Permitted Transaction offered by a SEF adds a great deal of complexity to the technological builds firms need to have in place in order to determine whether the swap is eligible for block treatment and submit the accurate response to the block trade indicator field in their Part 43 and Part 45 reporting.

Many firms rely on an ancillary service from an SDR to determine whether a trade is eligible for block treatment, but the SDRs do not have the ability to determine whether a trade may be prohibited from block treatment under 43.6(h)(6) because the swap is offered as a Permitted Transaction but was not executed pursuant to the rules of a SEF or DCM. Therefore, Reporting Parties must have robust logic to report a block trade indicator value of "No" when sending the swap to an SDR.

The accuracy and effectiveness of that logic is highly dependent on a reliable, real-time central source for data on Permitted Transactions that firms can leverage for their reporting logic. As firms are unable to automate such updates based on the current list of Trading Organization Products, a manual update would be required each time a new Permitted Transaction is certified or approved. Such approach is resource intensive and subject to errors or inconsistencies, especially in cases where the product descriptions are not subject to a consistent standard.

D. Establishing Connectivity

The Condition further imposes on market participants a requirement to connect to all SEFs or DCMs that uniquely offer a Permitted Transaction. Until the party has on-boarded and established connectivity, they would not have access to block trade and notional cap treatment for particular swaps. That is to say that both parties, not just the Reporting Party, would be required to connect to the SEF or DCM offering the unique Permitted Transaction. Though connectivity to multiple SEFs and DCMs will be necessary in order to enter into Required Transactions, such swaps are expected to be offered by multiple SEFs and/or DCMs thus increasing the likelihood that a market participant will have established connectivity to at least one. On the other hand, a Permitted Transaction has a greater likelihood, at least initially, of being offered by a single SEF or DCM, thus limiting the potential for market participants to enter into the transaction in accordance with the requirements of Part 37 and NAL 13-48.

Considering the time, effort and cost to onboard, establish and test connectivity to a SEF or DCM, not all market participants will immediately have the capability and capacity to do so each time a SEF or DCM is approved to offer a Permitted Transaction which the party was previously able to execute off-facility, thus losing access to the block and cap treatment that may have previously been available. The process of establishing functionality with a SEF or DCM involves a number of required steps which cannot be completed concurrently. These include but are not limited to, review and iterative negotiation of the rulebook, execution of user agreements, building out internal technological infrastructure, establishing connectivity, and testing trade and data flows with the SEF or DCM. These must be completed in a manner that preserves legal certainty and mitigates risk for market participants.

Further, the number of potential SEFs or DCMs that may offer Permitted Transactions magnifies the effort for parties looking to transact with the protection of block trade and notional cap treatment as simultaneous onboarding to multiple SEFs or DCMs creates additional obstacles. As of the date of this letter, nineteen parties have, been granted temporary registration as a SEF, while another five are pending temporary registration. In addition, there are seventeen DCMs which have been designated and three others which are pending. The burden to onboard and connect would be greatly increased for smaller market participants that may not have the same technologically capability and resources to connect to multiple SEFs and DCMs. Since use of a relevant SEF or DCM requires both parties to be fully on-boarded and functional, the capabilities of all market participants must be considered.

Similarly, it is not a viable solution for parties to ask a SEF or DCM on which they are both connected to list a Permitted Transaction that is listed on another SEF or DCM to which they are not connected. SEFs and DCMs may be unwilling to list particular products for a number of reasons. Further, SEFs and DCMs will need to self-certify any products with the Commission pursuant to Part 40 of the CFTC's regulations and will not be permitted to list such products until one full business day following such submission for self-certification. The one-business day period for deemed approval for product submissions is an extremely short approval process which makes it difficult for market participants to track which swaps are listed on SEFs or DCMs in real-time.

Although parties are not required to transact Permitted Transactions on a SEF or DCM, the requirement to use a SEF or DCM in order to access block trade and notional cap treatment (as per the Condition) creates a necessity for them to do so. As a practical matter, for any SEF or DCM that uniquely offers a product, parties will have no choice but to connect to that particular facility in order to obtain block trade and notional cap treatment—something many market participants may not be able to do in a timely manner. Thus, this requirement has created a burden for market participants who may not be afforded the same access to block treatment depending on their technological capabilities and whether they have had prior reason to execute via a particular SEF or DCM to warrant onboarding and connectivity.

II. Request for Relief

ISDA respectfully requests that DMO recommend that the Commission make available to market participants via www.CFTC.gov a source for real-time data for approved Permitted Transactions in a format which is suitable for programmatic consumption.

Following the availability of such a source for Permitted Transactions and market participants having sufficient time to connect to such source and to take in the information already available on the source at that time, we request that DMO provide no-action relief for market participants for additions or amendments to the source listing Permitted Transactions, in each case, for a period of time between the listing of an approved or self-certified Permitted Transaction (or amendment thereto) on the relevant source and the applicability of the aggregation prohibition under CFTC regulation 43.6(h)(6) for such a swap that is not executed on or pursuant to the rules of a SEF or DCM. Such period of time should align with the compliance window provided for executing Required Transactions on or pursuant to the rules of a SEF[10] or DCM.[11]

In addition, to allow time for enhancement of a central source for data on Permitted Transactions and for the establishment of connectivity to SEFs and DCMs which may offer Permitted Transactions, ISDA respectfully requests that DMO provide no-action relief to Reporting Parties and other market participants until and including December 31, 2014[12] with respect to the aggregation prohibition under CFTC regulation 43.6(h)(6) for all Permitted Transactions. Such transactions should be eligible for block trade and notional cap treatment as large notional off-facility swaps until the Commission source for data is established and the reasonable implementation period has expired with respect to a particular Permitted Transaction. The no-action relief requested would not extend to Required Transactions.

[10] *See* CFTC regulation 37.12(a).
[11] See CFTC regulation 38.11(a).
[12] The proposed December 31, 2014 date is premised on the assumption that the enhanced Commission source for relevant data will be established sufficiently prior to such date.

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

Sincerely,

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

cc:

Laurie Gussow, Special Counsel, Division of Market Oversight, CFTC
David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC
Nancy Markowitz, Deputy Director, 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 April 3, 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,

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

December 10, 2012

Mr. Richard Shilts
Director
Division of Market Oversight
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Swap Allocation Report Timing

Dear Mr. Shilts:

The International Swaps and Derivatives Association, Inc. ("ISDA"), on behalf of its members that intend to register as swaps dealers ("SDs") or major swap participants ("MSPs") and other similarly situated persons, is writing to request no-action relief pursuant to Rule 140.99 with regard to the timing of reporting of allocation of swaps, as described below, under the Regulations of the Commodity Futures Trading Commission (the "Commission") contained in Part 45.

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.

Relief Requested

Rule 45.3(e) requires that an agent allocating a swap report its allocation to the reporting counterparty within 8 business hours, measured in the location of the reporting counterparty. The reporting counterparty then must report to a swap data repository as soon as technologically practicable after the agent's report. ISDA requests confirmation that the staff of the Division of Market Oversight (the "Division") will not recommend enforcement action against any agent or reporting counterparty that fails to adhere to the reporting timeframes of Rule 45.3(e)(ii), if the agent is located in a jurisdiction or time zone different from that of the reporting counterparty and (a) in the case of the agent, the agent reports its allocation as specified in Rule 45.3(e)(ii)(A) within 48 business hours next following the execution of the swap (the "Basic Allocation Period") plus an additional business day for each day of legal holiday in the agent's jurisdiction coincident with the Base Allocation Period and (b) in the case of the reporting counterparty, the reporting counterparty discharges its Rule 45.3(e)(ii)(B) further reporting obligation as soon as technologically practicable during business hours in its own location after receiving the required actual counterparty identification information from the agent. ISDA asks that the Division staff

International Swaps and Derivatives Association, Inc.
1101 Pennsylvania Avenue, NW, Suite 600
Washington, DC 20004
P 202 756 4500 **F** 202 756 7323
www.isda.org
704093139

NEW YORK WASHINGTON
LONDON BRUSSELS
HONG KONG SINGAPORE
TOKYO

maintain its no-action position until at least June 30, 2013 or such earlier time as the Commission, in consultation with affected market participants, shall have developed means to resolve the timing issues noted in this letter. We are not in this letter requesting relief from other requirements of Part 45 that pertain to the allocation of bunched trades.

Discussion

Rule 45.3(e) specifies that the agent with respect to a swap to be allocated inform the reporting counterparty of the identities of the actual counterparties to which the swap has been allocated as soon as technologically practicable, but not later than eight business hours after execution. Rule 45.1 makes clear that business hours are business hours in the location of the reporting counterparty.

Swaps may of course be transacted across different jurisdictions (with different business day/holiday calendars) and time zones. It is perfectly possible that an agent will be unable, as a result of those differences, to complete its task within the specified 8 business hours of the reporting counterparty.

In order to avoid situations where the agent's compliance is impossible without 24/7 staffing (including on public holidays), we urge the Division to provide no-action relief intended to create more flexibility for (i) an agent in a different jurisdiction or time zone from the reporting counterparty to report its allocation subject to holiday and time zone differences and (ii) the reporting counterparty to fulfill its following responsibilities within its own business hours.

Sincerely,

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 December 10, 2012 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,

ISDA Safe, Efficient Markets

17 CFR Part 45

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 45[1] (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 swap[2], 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 regulators[4]. 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 swaps[5]. 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 Technology[6], 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' requirements[8].

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 EMIR[11] 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 Authorité des Marches 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%20clean.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 Act [12].

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,

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,

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

June 21, 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 No-Action Relief – Parts 20, 45 and 46

Dear Mr. Shilts:

The International Swaps and Derivatives Association, Inc. ("**ISDA**"), on behalf of its members with reporting obligations under Part 20, Part 45 or Part 46 of the Regulations (collectively, the "**Reporting Rules**")[1] of the Commodity Futures Trading Commission (the "**Commission**") and other similarly situated persons, is writing to request, pursuant to Rule 140.99, an extension of the expiration date for the no-action relief provided under CFTC Letter No. 12-46, as described 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.

In December 2012, the Commission's Division of Market Oversight ("**DMO**") issued CFTC Letter No. 12-46 in response to a request from ISDA expressing concern regarding conflicts between the privacy laws of non-US jurisdictions and the Reporting Rules. CFTC Letter No. 12-46 granted conditional and time-limited no-action relief that permits a reporting party to omit from reports made pursuant to the Reporting Rules the non-reporting party's LEI, the identity of the non-reporting party in specifically enumerated data fields and certain other terms that the reporting party reasonably believes would identify the non-reporting party (the information that may be omitted, "**Identity Information**"). In addition, the relief permits a reporting party to temporarily withhold reporting of Rule 45.3 confirmation images that include the covered Identity Information and would otherwise need to be manually redacted. The relief granted in CFTC Letter No. 12-46 expires on the earlier of (i) the reporting party's obtaining counterparty consent or regulatory authorization, as applicable, (ii) the reporting party no longer holding the

[1] The relief requested in this letter also encompasses CFTC Rules 23.204 and 23.205 insofar as the swap entity has complied with the conditions of the no-action relief with respect to the reporting required under such rules.

requisite reasonable belief regarding the privacy law consequences of reporting or (iii) 12:01 a.m. eastern daylight time on June 30, 2013.

ISDA requests that DMO extend the expiration date for the relief granted under CFTC Letter No. 12-46 with respect to reportable transactions for which the reporting of Identity Information is subject to statutory or regulatory prohibitions of one of the non-U.S. jurisdictions listed in the Annex (each, an "**Enumerated Jurisdiction**")[2] until the earlier of (i) the reporting party no longer holding the requisite reasonable belief regarding the privacy law consequences of reporting or (ii) 12:01 a.m. eastern daylight time on June 30, 2014.[3]

Based upon advice obtained by ISDA members, the Enumerated Jurisdictions fall into two categories: (i) those for which non-reporting party consent is not a viable solution to privacy law conflicts due to the legal requirements such consent must satisfy and (ii) those for which non-reporting party consent alone is not effective and regulatory authorization that would permit the reporting of Identity Information has not been available to affected market participants.

We note that the local law advice received by various ISDA member firms is not uniform. The differences in advice underscore the complexity and novelty of the issues the industry is now facing. While consensus generally exists around a majority of the "problematic jurisdictions", even competent counsel in each jurisdiction can have differing views as to the cross-border reach of local law and the effectiveness of consent. We note also that the laws in many jurisdictions apply differently based on an institution's presence in a given jurisdiction. What is a problematic jurisdiction for one member, therefore, is not for another. The purpose of this letter is to identify and seek relief for jurisdictions in which member firms reasonably believe that a standing blanket counterparty consent is insufficient to overcome relevant local data privacy concerns.

With respect to Enumerated Jurisdictions in the first category specified above, concerns include, for example, the revocability of consents, requirements that specific consent be given for each instance of disclosure, and legal standards that expose dealers to unacceptable risk that consent may later be found to be ineffective. Although the laws of certain Enumerated Jurisdictions would recognize consent given on a transaction-by-transaction basis, this means of overcoming privacy conflicts appears to be of limited practical utility. In a voice trading environment, questions remain as to whether oral consent is legally effective and whether the trading personnel with whom a firm interacts directly are authorized to provide it. Further, reliably controlling for and cataloguing such oral consent is difficult and would expose firms to operational and legal risks. With respect to electronic trading, the industry has had insufficient time to develop

[2] An Annex listing the Enumerated Jurisdictions, and describing briefly the applicable privacy law restrictions, is attached hereto. The Annex descriptions should be regarded as reasoned views of the operation of the cited provisions in the novel context of SDR reporting. An analysis of conflicts questions with regard to the disclosure of counterparty information for other regulatory purposes could yield different results. Accordingly, the list should not be regarded as a final and conclusive list of problematic jurisdictions. Industry participants have prioritized their review of international jurisdictions by relevance, and this list therefore includes jurisdictions in addition to those identified as problematic in ISDA's request for the relief granted in CFTC Letter No. 12-46. While reflective of the collective knowledge to date of ISDA members that have provided information, the list is not necessarily comprehensive.

[3] ISDA expects to submit a separate request letter addressing the practical difficulties of obtaining non-reporting party consent.

functionality for obtaining "click through" consents at the time of trade. Much electronic trading occurs through third-party information and communication services, whose cooperation would be required to develop such means of consent. Moreover, click-through consents could not be utilized in the case of automated trading, where there is no human interface.

With respect to Enumerated Jurisdictions in the second category, ISDA members have not identified any practicable means of resolving the conflict of laws short of statutory or regulatory changes in those jurisdictions. The issue of conflicts with privacy laws and blocking statutes has been recognized by international regulators as one of the implementation challenges for trade reporting, and dialogue is taking place to seek a resolution.[4]

Reporting party behavior in accordance with CFTC Letter No. 12-46 achieves substantially complete compliance with the Reporting Rules even after the omission of Identity Information from Part 20, 45 and 46 reports. Unless the relief with respect to Enumerated Jurisdictions is extended beyond June 30, registered swap dealers may not be able to continue participating in these markets, with concomitant negative impact on both the local markets and Commission registrants. Deferring the expiration date of the relief as requested would avoid this undesirable outcome and allow time for the affected jurisdictions to resolve cross-border conflicts associated with swap data reporting, an issue now prominently on the international regulatory agenda, as they implement their own data reporting frameworks. Accordingly, the requested relief is an appropriate extension of comity to these non-US jurisdictions, without detracting from the Commission's ability to achieve its objectives under the Reporting Rules.

For the foregoing reasons, ISDA requests that the staff of the Division of Market Oversight issue the no-action relief described above.

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

Sincerely,

Robert Pickel

[4] See, e.g., OTC Derivatives Market Reforms – Fifth Progress Report, Financial Stability Board (April 2013), pp.48-49 ("authorities reported that plans to adopt legislation and/or regulation that would allow for such reporting are underway ") (available at http://www.financialstabilityboard.org/publications/r_130415.pdf).

ANNEX

Enumerated Jurisdictions – summary of privacy restrictions

i. France

Trade Participants may only disclose Trade Data involving a counterparty if the disclosure is made: (i) pursuant to a list of statutory exemptions or (ii) the counterparty delivers its consent to the disclosing Trade Participant each time the latter intends to make a disclosure. Relevant provisions of French law include: (i) Article L. 511-33 et seq. of the French Code monétaire et financier for credit institutions and (ii) Article L. 531-12 et seq. of the same code for investment firms.

Trade Data reporting to SDRs may not qualify for any statutory exemption and transaction-by-transaction consent is not a feasible solution for high-volume activity and would certainly result in delayed reporting. Consent that is to be obtained via an industry protocol such as the ISDA August 2012 Dodd Frank Protocol or via a single side letter may not be sufficient for this reason. Requests for disclosure by foreign legal or regulatory authorities—without instruction from a French authority—are similarly insufficient. Potential liabilities for violations of local privacy law in France include fines of up to €75,000 for legal persons and €15,000 for natural persons, action for damages, suspension of operations, withdrawal of business licenses and, for natural persons involved in a violation, imprisonment of up to one year.

The French blocking statute (Law 68-678 of 26 July 1968) applies to any person / entity located in France, or even located outside of France, when there is an action taken with the purpose to obtain from a French company or individual any information which is economic, commercial, industrial, financial or technical nature tending to constitute evidence in view of foreign judicial or administrative proceedings or in the framework of such proceedings, even if such disclosure is made with the approval of the relevant counterparty.

ii. Korea

Trade Participants may not be able to disclose any Trade Data about their respective counterparties unless the disclosures in question are made at the order of Korean regulators, the Financial Services Commission or Governor of the Financial Supervisory Service or otherwise qualify for an exemption under the Real Name Act. Relevant provisions of the Real Name Act include: (i) Article 3 and (ii) Article 4.1. Disclosures which include personal data relating to natural persons are also governed by the Personal Information Protection Law.

Written consent may also need to be obtained each time disclosure is sought. Accordingly, the use of an industry protocol to report Trade Data, or consent via a side letter, would not satisfy the statute's requirements. Members have been informed that the Financial Services Commission has indicated that broad consent provisions granting consent for all future transactions would not meet the requirements of the Real Names Act. Further the obligations of confidentiality under the Real Names Act cannot be excluded through contractual terms. There are limited exceptions to the Real Names Act which permit disclosure in the absence of client consent but these are not applicable. Disclosures made upon the request of foreign legal or regulatory authorities would

similarly be in violation of local law. Violations of local law in Korea under the Real Name Act can trigger fines of up to 100 million Korean won and, for natural persons, imprisonment of up to five years. Under the Capital Market Act, fines can range up to 200 million Korean won and imprisonment of natural persons for five years. The Personal Information Protection Law has very specific consent requirements which include an obligation to inform the data subject of the disadvantages of granting consent, and failure to comply with the statute may result in imprisonment of up to five years or a fine.

iii. Luxembourg

Trade Participants may not be able to disclose Trade Data unless the relevant disclosure requirement is under applicable local law. Luxembourg requires that any consent delivered by a counterparty must satisfy the standards set forth by Luxembourg's Comité des juristes (the "**CODEJU**"), which is an advising committee of the Luxembourg finance sector regulator, the Commission de Surveillance du Secteur Financier. Relevant provisions of Luxembourg law include: (i) Articles 37-1(1), 41(1) through (5bis) of the Luxembourg law of 5 April 1993 on the financial sector and (ii) Articles 111-1(2) to 111-1(8) of the law of 6 December 1991 on the insurance sector.

A counterparty's consent to disclosure of Trade Data to an SDR may not be covered by a statutory exemption and the use of an industry protocol to deliver consent may not satisfy the CODEJU's standards. Disclosures made upon the request of foreign legal or regulatory authorities may also not qualify for a statutory exemption nor satisfy the CODEJU standards. The CODEJU's standards may include the requirement for such consent to be revocable (as a matter of public policy) and to relate to a disclosure which is in the best interests of the consenting party. Furthermore, the consent must be specific as to the information that may be disclosed, the identity of the person to whom the information may be disclosed, the intended aim of the disclosure, and the time period for which the consent is valid. Violations of Luxembourg law can trigger a range of penalties, including fines of up to €5,000 for natural persons and €10,000 for legal persons, contractual damages, injunction orders, withdrawal of licenses, suspension or prohibition of business activities, professional bans and imprisonment of natural persons for a period of up to six months.

iv. People's Republic of China

Trade Participants may disclose Trade Data at the instruction of the Chinese regulatory authorities pursuant to the state's Regulations on Financial Institutions" Anti-money Laundering. Trade Participants may also make disclosures as required by a foreign legal or regulatory authority, *provided* that local law permits the disclosure or the disclosure requirement is otherwise consistent with local law—which arguably would not be the case for disclosure of Trade Data under the Reporting Rules as there is no direct local equivalent. To the extent that Chinese law does not authorize disclosure of Trade Data, Trade Participants subject to such law would not be permitted to make any disclosures, regardless of a foreign law requirement or the consent of a counterparty. Potential liabilities for violation of Chinese privacy law include fines of up to RMB 500,000, suspension of operations and withdrawal of business licenses.

There is a prohibition on the disclosure of State Secrets (Law of the PRC on the Preservation of State Secrets effective October 1st 2010) and the definition of State Secrets is wide: " any information concerning national security and interest which, once disclosed, may impair the security and interest in the areas of politics, economy and national defence". Consent of a client will not overcome this prohibition.

Additionally, the Notice on Protection of Personal Financial Information by Banking Financial Institutions published by the Peoples Bank of China prohibits the disclosure of Personal Financial Information to foreign institutions. Personal Financial Information includes any information regarding an individual's identification, assets, credit status, financial transactions and even information derived from processing or analysing the individual's consumption habits or investment intention. The only exception to this is where the local banking branch needs to provide the Personal Financial Information to overseas affiliates in order to provide the services and further that the client has consented to the disclosure. Such exception does not apply in the present circumstances.

v. Switzerland

Swiss privacy rules, such as Article 47 of the Swiss Federal Act on Banks and Saving Institutions of 8 November 1934 (the "**Swiss Banking Act**"), prohibit banks from disclosing any client information to any third party. Additionally, under Swiss data protection law, the transfer of any personal data of third parties abroad is closely restricted and requires, inter alia, the relevant person's consent. This prohibition includes client and employee information. Under Article 271, any action undertaken for a foreign authority is prohibited if the action undertaken in Switzerland is by its nature an official or sovereign act whose performance is reserved to a Swiss authority and is performed without the involvement or authorization of the competent Swiss authority, irrespective of whether the action is undertaken by a private person or directly by the foreign authority.

Article 271 separately prohibits the facilitation of any action, such as disclosure of restricted information, undertaken in the interest of a foreign authority, if such action is considered under Swiss law an act that would have to be undertaken by a competent Swiss authority. In relation to financial institutions, the Federal Finance Department ("**FFD**") is authorized to provide an exemption under Article 271 to permit disclosure of client information. The FFD may submit the case to the Swiss Federal Government. In taking its decision, the Swiss Federal Government will weigh the public and private interests involved, particularly the protection and safeguarding of the rights of third parties (e.g., clients and employees). Penalties for violations of Article 271 include significant fines and imprisonment of up to three years for any natural person violating the law.

vi. Taiwan

Under Article 48 of the Taiwan Banking Act, licensed banks in Taiwan must keep counterparties' information confidential unless the disclosure is permitted by the laws or regulations of Taiwan or is otherwise "stipulated" by the Taiwan Financial Supervisory Commission ("**Taiwan FSC**"). Guidance issued by the Taiwan FSC expressly permits banks to release the counterparty data to (i) Taiwanese agencies (e.g., tax authorities, prosecutor offices),

(ii) home country regulators of a Taiwan branch of a foreign bank pursuant to home country regulation or (iii) approved outsourcing service providers. Thus, for a non-U.S. bank branch, swap data reporting to a CFTC-registered SDR does not fall into any of the current exemptions. Penalties for violations may include administrative fines, damages, and potential criminal liability if the disclosed information is considered a "business secret."

vii. Belgium

To the extent that Identity Information includes Personal Data (meaning any information relating to an identified or identifiable natural person), consent of the data subject will not be effective to overcome the restrictions. The Act of December 8, 1992 on Privacy Protection in relation to the Processing of Personal Data, as amended by the Act of 11 December 1998 and the Act of 29 February 2003, as well as supplemented by the Royal Decree of 13 February 2001 (the "**Data Protection Act**") governs the disclosure of such personal data.

The Data Protection Act prohibits transfer of data to U.S authorities and the view is that such a transfer is illegal and cannot be legalized by consent of the data subject (Article 29 Working Party Opinion 15/2011 of 13 July 2011 and also Council Decision 2010/412/EU of 13 July 2010).

viii. India

The Reserve Bank of India ("**RBI**") sets out confidentiality obligations of a bank toward its clients in its Master Circular on Customer Service in Banks, which provides that:

The scope of the secrecy law in India has generally followed the common law principles based on implied contract. The bankers' obligation to maintain secrecy arises out of the contractual relationship between the banker and customer, and as such no information should be divulged to third parties except under circumstances which are well defined. The following exceptions to the said rule are normally accepted:

(i) Where disclosure is under compulsion of Indian law;
(ii) Where there is duty to the public to disclose;
(iii) Where interest of bank requires disclosure; and
(iv) Where the disclosure is made with the express or implied consent of the customer.

However, there is no specific provision in the RBI's regulatory circulars permitting reporting of data pertaining to Indian banks or branches to non-Indian regulators. In a circular relating to retention of data offshore, the RBI has stated that non-Indian regulators should not have access to Indian branch data stored overseas. The RBI has advised member firms operating in India that prior approval must be obtained from the RBI in order to report or disclose branch information to the CFTC. The RBI's position prohibits any reporting of transactions booked in a firm's Mumbai branch to an SDR located outside of India, notwithstanding clauses (i) and (iii) referenced immediately above.

Thus, absent affirmative consent from the RBI and customer consent, a firm cannot report swaps booked in its Mumbai branch, even with counterparty-identifying information redacted.

ix. Algeria

Reporting to an SDR may implicate Algerian bank secrecy rules under Article 117 of Ordinance 03-11 of 26 August 2003 on the currency and credit.

Professional secrecy obligations under penalty of sanctions under the criminal code are binding on:

- any member of a Board of Directors, any external auditor and any person who participates or has participated to the management of a bank or financial institution or who is or was employed by them; and
- any person who participates or who participated in the control of banks and financial institutions.

Subject to the express provisions of law, the bank secrecy is enforceable against all authorities except:

- towards the public authorities which appoint administrators of banks and financial institutions
- towards the judicial authority acting in the framework of criminal procedures;
- towards the public authorities required to communicate information to international institutions entitled, particularly in the context of the fight against corruption, money-laundering and the financing of terrorism;
- towards the Bank of Algeria or the banking committee at the bank of Algeria, which may transmit information to the authorities responsible for the supervision of banks and financial institutions in other countries, subject to reciprocity and provided that these authorities are subject to the professional secrecy with the same guarantees as in Algeria.

x. Singapore

Trade Participants may only be entitled to disclose Trade Data to local regulatory authorities as required by Singapore law. Under Regulation 47(2) of the Securities and Futures (Licensing and Conduct of Business) statute (the "**SFR**"), Trade Data may only be able to be disclosed at the instruction of the Monetary Authority of Singapore (the "**MAS**"). Therefore, many Trade Participants may not be able to disclose Trade Data at the request or demand for disclosure by a foreign authority or an SDR unless such disclosure has been otherwise authorized by the MAS—even upon the consent of the applicable counterparty. Trade Participants' accession to an industry protocol that contains provisions to obtain consent to disclose Trade Data may not be effective absent approval of the MAS. Although firms have received indications that such approval may be forthcoming, some firms are continuing to redact Identity Information until such time as the MAS may make an official public announcement.

Violations of Singapore privacy law can trigger civil and criminal liabilities, including fines (up to $S125,000 for natural persons and $S250,000 for legal persons), damages in tort, revocations of licenses and imprisonment of up to three years for natural persons.

xi. Bahrain

If a firm has a local office or presence or conducts data collection in Bahrain, consent is not effective. If no swap dealer office or presence in the jurisdiction, reporting is permitted. In the former instance, exploitation or misuse of personal information is governed by Art.l58 of the Civil Code of Bahrain. If a reporting party was considered negligent in transferring data and if the individual suffered damage as a result of the transfer damages apply.

xii. Argentina

Local laws should not apply if the reporting party has no Local Presence. The Financial Entities Law 21,526 (the "**FEL**") applies to activities performed in Argentina. In addition, the Personal Data Protection Law 25,326, as amended (the "**PDPL**"), applies to databases or registries that include personal data. Although the law makes no express reference to location, provisions in principle apply to databases located in Argentina.

Data Regulations which prohibit or restrict the disclosure of Data to an SDR.

(i) the FEL, and

(ii) the PDPL.

The FEL prohibits Financial Entities to disclose information on transactions carried out for, or data received from, their customers. This prohibition is, however, limited to transactions that are registered as "Liabilities" in the financial statements of the Financial Entity. Additionally, the Financial Entities have no duty of confidentiality regarding those operations registered as "off-balance sheet" activities, such as securities custody services. Despite the foregoing, certain government agencies, including the tax authorities, anti-money laundering agencies and the Central Bank of the Republic of Argentina (the "**CBRA**"), may require Financial Entities to disclose such information. The above mentioned prohibition does not apply to customers of a Financial Entity, who have full access to their own information, nor to the agents or representatives of the customers in their relationship with the Financial Entity. Legal commentators also include within this exception the employees of a customer, acting in the course of their employment for the customer. On the other hand, the PDPL provides that any information relating to and identified or identifiable individual –natural person or legal entity– is considered personal data ("**Personal Data**"). In addition, the PDPL states that Personal Data is subject to confidentiality obligations on the holder of such data.

Disclosure to the SDR or the CFTC-express consent of the swap counterparty.

The consent of the data owner is not included in the FEL among the exceptions to the confidentiality/secrecy obligation. Basically, exceptions relate to petition made by courts, tax

authorities and the CBRA. We understand however that if we were to assume that the confidentiality/secrecy obligation is aimed to protect the data owner's privacy right; then, as beneficiary of such right, the data owner should be able to waive it. On the contrary, it could be argued that the waiver of the confidentiality/secrecy obligation made by the data owner does not release the obligation imposed by the FEL. In this regard, the BCRA may not be opened to accept that the data owner has the authority to modify the content of the FEL; in other words, the BCRA may resolve that the Financial Institution is not released from the confidentiality/secrecy obligation even when the customer has authorized it to disclose information. Counsel not aware of judicial precedents, therefore it is difficult to predict how a court will resolve this conflict of different rights/obligations.

One of the exceptions to the confidentiality/secrecy obligation is where the Financial Entity obtained previous authorization from the BCRA to disclose certain information. Counsel believe that the Financial Entity could inform the BCRA the reasons why it needs to disclose certain information, explain that it has obtained the authorization of the data owner to disclose such information, and request the BCRA´s authorization. Under this scenario, BCRA may be willing to authorize the Financial Entity to disclose the information.

Potential criminal and civil penalties for non-compliance.

The Criminal Code, in Section 157 bis, provides that it shall be subject to imprisonment from one (1) month to two (2) years, the person which (i) knowingly or unlawfully, or in violation of confidentiality and data security systems, has access, in any way, to a personal database; or (ii) reveals to a third party information recorded in a personal database whose secrecy should be preserved as provided by law. In the event that the author is a public officer, an additional sentence of one (1) to four (4) years special disqualification shall apply. The FEL provides for different sanctions that may be applicable by the CBRA, including (a) warning, (b) fines, (c) suspension, or (d) revocation of the corresponding license. The PDPL in turn, provides for a number of sanctions of different types and degrees according to the seriousness of the offense incurred by the controllers or users of the databases. The Data Protection Authority, through its Regulation 1/2003 defined the offenses as serious and very serious. Administrative sanctions may include (a) warning, (b) suspension, (c) fines ranging between AR$1,000 (equivalent to US$200), and AR$100,000 (US$20,000); and (d) closure or cancellation of the file, register or database.

xiii. Hungary

Consent is not effective for Natural Person ECPs; Consent is effective for Corporate ECPs. Disclosure for Natural Person ECPs is not permissible without consent with full probative force as demonstrated by notary certifications and other formalities. Presence or local office implicates local statute and common law. Certain provisions of Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers and on the Regulations Governing their Activities (the "**Investment Services Act**") may be applicable to investment service providers which provide investment services in Hungary on a cross-border basis, even if such investment service provider does not have an office, or license, or personnel or representatives physically present in Hungary. Investment service providers that are registered in one of the European Economic

Community ("**EEC**") countries are entitled to provide investment services in Hungary on a cross border basis in accordance with the provisions of the Investment Services Act (based on Directive 2004/39/EC). In all other cases, a foreign investment service provider is entitled to provide investment services in Hungary only through its Hungarian registered and licensed subsidiary or branch office. Restrictions apply to disclosure of Data to the SDR.

Pursuant to Section *4 paragraph (2) and point 27 of the Investment Services Act*, "securities secrets" mean and includes all data and information that is at the disposal of an investment firm, an operator of multilateral trading facilities or a commodity dealer, concerning each specific client relating to its/his/her personal information, financial standing, business operations or investments, ownership or business relations, or its/his/her contracts or agreements with any investment firm or commodity dealer, or to the balance or money movements on its/his/her accounts. Said information qualifies as a "securities secret" irrespective of whether that information relates to (i) a human being, "Eligible Contract Participant ("**ECP**")", or (ii) an Institution, Corporation, Partnership, Hedge Fund or other type of non-human person.

Pursuant to *Section 118 (1) of the Investment Services Act*, investment firms and commodity dealers, and the executive officers and employees of investment firms and commodity dealers, and any other person affected, must keep confidential any securities secrets made known to them in any way, without any limitation in time.

Pursuant to *Section 118 (2) of the Investment Services Act*, investment firms and commodity dealers may disclose securities secrets to third parties, notifying the client affected, only if:

a) so requested by the client to whom the information pertains, or his legitimate representative, in an authentic instrument or in a private document with full probative force, expressly indicating the particular data, which are considered securities secrets, to be disclosed;
b) the regulations contained in Subsections (3)-(4) and (7) of section 118 the Investment Services Act, provide an exemption from the requirement of confidentiality concerning securities secrets; or
c) the disclosure is deemed necessary in light of the interests of the investment service provider or commodity dealer in selling its receivables due from the client or for the enforcement of its outstanding receivables.

Pursuant to *Section 118 (3) of the Investment Services Act*, the confidentiality requirement under *Section 118 (1) of the Investment Services Act* shall not apply to:

a) the Hungarian Financial Supervisory Authority, the Investor Protection Fund of Hungary, the National Deposit Insurance Fund of Hungary, the Hungarian National Bank, the State Audit Office and the Economic Competition Office of Hungary when acting within the scope of their powers and duties;
b) operators on the regulated markets, operators of multilateral trading facilities, bodies providing clearing or settlement services, the central depository, the Government oversight agency exercising its supervisory competence specified in Subsection (1) of Section 63 of the Act on State Budged Management, and the

European Anti-Fraud Office ("**OLAF**") monitoring the protection of the European Community's financial interests, when the above are acting within the scope of their duties conferred by law;

c) notaries public in connection with probate proceedings, and the guardian authority acting in an official capacity;
d) bankruptcy trustees, liquidators, financial trustees, bailiffs and receivers, in connection with bankruptcy proceedings, liquidation proceedings, judicial enforcement procedures, local government debt consolidation procedures, and in connection with a voluntary dissolution proceeding;
e) investigating authorities acting within the scope of criminal procedures in progress and when investigating charges, and the public prosecutor acting in an official capacity;
f) the court acting in criminal or civil cases, bankruptcy and liquidation proceedings and in the framework of local government debt consolidation procedures;
g) the agencies authorized to use secret service means and to conduct covert investigations if the conditions prescribed in specific other legislation are provided for;
h) the national security service acting within the scope of duties conferred upon it by law, based upon the special permission of the director-general;
i) tax authorities and the customs authorities in the framework of their procedures to monitor compliance with tax, customs and social security payment obligations, and for the implementation of an enforcement order issued for such debts;
j) the commissioner of fundamental rights when acting in an official capacity;
k) the Nemzeti Adatvédelmi és Információszabadság Hatóság (*National Authority for Data Protection and Freedom of Information*) acting in an official capacity;

when these bodies make written requests to the investment firm or commodity dealer concerned.

Pursuant to *Section 118 (4) of the Investment Services Act*, the confidentiality requirement under *Section 118 (1) of the Investment Services Act* shall not apply:

a) where the state tax authority makes a written request for information from an investment firm or commodity dealer on the strength of a written request made by a foreign tax authority pursuant to an international agreement, provided that the request contains a confidentiality clause signed by the foreign authority;
b) where the Hungarian Financial Supervisory Authority requests or supplies information in accordance with a cooperation agreement with a foreign supervisory authority, provided that the cooperation agreement or the foreign supervisory authority's request contains a signed confidentiality clause;
c) where the Hungarian law enforcement agency makes a written request for information from an investment firm or commodity dealer in order to fulfill the written requests made by a foreign law enforcement agency, provided that the request contains a confidentiality clause signed by that foreign law enforcement agency;
d) with respect to data supplied by the Investor Protection Fund of Hungary to foreign investor protection schemes and foreign supervisory authorities in the

manner specified in cooperation agreements if they guarantee equivalent or better legal protection for the processing and use of such data than the protection afforded under Hungarian law;

e) in respect of information provided by an investment firm or commodity dealer the Act on Tax Administration in relation to deceased persons.

Pursuant to *Section 118 (7) of the Investment Services Act*, the confidentiality requirement under *Section 118 (1) of the Investment Services Act* shall not apply where an investment firm or commodity dealer complies with the obligation of notification prescribed in the Act on the Implementation of Restrictive Measures Imposed by the European Union Relating to Liquid Assets and Other Financial Interests.

Disclosure to the SDR or the CFTC or other US regulator IS permissible with the express consent of the swap counterparty if the consent is provided in the appropriate form and is specific as to the information to be disclosed. Pursuant to Section 118 (2) of the Investment Services Act, investment firms and commodity dealers may disclose securities secrets to third parties, upon notifying the client affected, only if so requested by the client to whom the information pertains, or its/his/her legitimate representative in an authentic instrument or in a private document with full probative force, expressly indicating the particular data which is considered as a securities secrets and which may be disclosed.

Consent language is *not* sufficient to constitute express consent. Pursuant to Section 118 (2) of the Investment Services Act, the consent to disclose a securities secret(s) must expressly indicate the particular scope of the data which may be provided to the third party. Discussions with the relevant Hungarian regulators (the Hungarian Financial Supervisory Authority and the Data Protection Authority) would be required to determine whether the language contained in the 2012 ISDA Protocol would be considered as fulfilling the statutory requirement that the consent "expressly indicates the particular scope of the data" which otherwise constitutes a securities secret(s) and which may be disclosed. The express consent must be in an authentic instrument or in a private document with full probative force. Pursuant to Hungarian international private law and the Act III of 1952 on the Code of Civil Procedure (the "Civil Procedure Code"), if the ISDA agreement is duly signed by two legal entities, such agreement will qualify as a private document with full probative force. Pursuant to Civil Procedure Code, if the ISDA agreement is signed by an "Eligible Contract Participant (ECP)", such agreement will qualify as a private document with full probative force if:

a) the document is signed by two witnesses to verify that the document was transcribed by others and signed by the ECP in front of them, or that the signatory declared in front of the witnesses that the signature appearing on the document was the signatory's own. Said document must indicate the witnesses' permanent residence (home address) and signed and printed name as well;
b) the ECP's signature or initial has been certified on the document by a court or by a notary public;
c) an attorney (legal counsel) provides a document - duly signed by the attorney - to verify that the document was transcribed by others and signed by the ECP in front of him, or that the signatory declared the signature in front of the witness as being

the signatory's own, or that the electronic document executed by the ECP's certified electronic signature contains the same information as the electronic document made by the attorney;

d) the electronic document is executed by the ECP's certified electronic signature or advanced electronic signature attested by a qualified certificate.

Pursuant to Section 195 of the Civil Procedure Code, a paper-based or electronic document qualifies as an authentic instrument, if such document has been issued by a court, a notary public or another authority, or an administrative body within its sphere of authority, and in the prescribed form. Furthermore, a document recognized by another regulation as an authentic instrument shall also be deemed to have probative force.

- Potential criminal and civil penalties, where applicable, for non-compliance with each Data Regulation and/or common law obligation identified in 3(a) above (e.g., fines of [X] amount; imprisonment for [X] months, etc.).

  - fines from HUF 100,000 up to HUF 2,000,000,000 may be imposed by the Hungarian Financial Supervisory Authority;
  - imprisonment up to three years by the Hungarian criminal courts if the committing the crime of "breach of trade secret" (Criminal Code Section 300) is proved (in accordance with Hungarian criminal law / criminal procedure law);
  - civil law claim by the counterparty for damages and other legal remedy(ies) may be pursued before Hungarian civil courts on the basis of unpermitted discourse of data provided that the unpermitted disclosure and the amount of the damages caused by such disclosure are proved (in accordance with Hungarian civil law / civil procedure law); and
  - the Data Protection Authority my impose a fine of up to HUF 10 million if an inadequate level of information is provided to the data subject about the occurrence of the processing of his/her/its personal data. Both Hungarian Financial Supervisory Authority and Data Protection Authority are entitled to impose fines (based on different legal ground) and one authority imposing a fine does not prohibit the other authority to do the same. The above amounts of fines are the maximum amounts and the authorities have the right to determine the amount of the fine in each case based on their free evaluation of the facts and circumstances of the specific infringement.

xiv. Samoa

Data Regulations prohibit or restrict disclosure of Data to the SDR. The International Companies Act 1988, International Trusts Act 1988, International Partnership and Limited Partnership Act 1998 (ie legislation governing entities in Samoa's offshore or tax haven jurisdiction which can only operate outside of Samoa). Of these entities, by far the most common is an international company. There are very few international trusts, international partnerships and limited partnerships created in Samoa. There are no applicable Data Regulations for any other "domestic" (ie non-tax haven) entities incorporated and doing business in Samoa, or individuals

resident in Samoa. Disclosure is permitted for international companies, international partnerships and limited partnerships with express consent of an officer of the entity, subject to the proviso that the disclosure is not for compliance with a demand for information by a government, court or tribunal that will or is likely to result in the payment of any tax, penalty or fine. Disclosure is not permitted for international trusts. Potential criminal and civil penalties for non-compliance with each Data Regulation- For non-permitted disclosures relating to:

- International companies: criminal offence punishable by a maximum fine of WST50,000 (approx USD22,700) and/or 2 years imprisonment for the 1st offence; each of the 2nd and subsequent offences penalized by a maximum fine of WST100,000 (approx USD45,400) and/or 5 years imprisonment.
- International partnerships/limited partnerships: criminal offence punishable by a maximum fine of WST50,000 (approx USD22,700) and/or 5 years imprisonment.
- International trusts: criminal offence punishable by a maximum fine of WST50,000 (approx USD22,700) and/or 5 years imprisonment.

xv. Austria

Local laws should not apply if the reporting party has no Local Presence, and has not pass ported its license into Austria for purposes of the swap transactions. If there is activity or presence in Austria, the Austrian Data Protection Act 2000 applies to an entity (1) established in Austria; or (2) processing personal data is carried out in Austria or (3) in the case that the entity has no establishment in the EU, the reporting party uses processing equipment, e.g. a data center, located in Austria.

(a) Austrian Banking Act- banking secrecy obligation as stipulated in the Austrian Banking Act applies if:

- it is an Austrian credit institution (including investment management companies) licensed under the Austrian Banking Act;
- it is an Austrian branch of a non-EEA credit institution licensed under the Austrian Banking Act;
- it is a licensed EEA credit or financial institution (including investment management companies) or a licensed EEA investment firm that has pass ported its license into Austria in accordance with Section 9, 11 or 12 of the Austrian Banking Act or in accordance with Section 12 of the Austrian Securities Supervision Act; in this case, the licensed entity has to observe Section 38 Austrian Banking Act to the extent that it is conducting its services cross-border into Austria or through an Austrian branch.

Banking secrecy is not restricted to the licensed entity itself but also has to be observed by its shareholder(s), members of governing bodies, employees or by other persons/entities acting on behalf of such licensed entities (e.g. tax advisors, tied agents or third parties to which activities have been outsourced).

(b) Other Laws- Austrian Securities Supervision Act, the Austrian Payment Services Act and the Austrian E-Money Act contain secrecy obligations in relation to customer data. These provisions will apply to an entity that is established in Austria and that is:

- licensed as an investment firm (*Wertpapierfirma*) or an investment services provider (*Wertpapierdienstleistungsunternehmen*) in accordance with Section 3 or 4 of the Securities Supervision Act;
- licensed as a payment institution (*Zahlungsinstitut*) pursuant to the provisions of the Austrian Payment Services Act or
- licensed as an e-money institution (*E-Geld Institut*) pursuant to the provisions of the E-Money Act.

Secrecy obligations under these laws are not restricted to the licensed entity itself but also have to be observed by its employees or by other persons/entities acting on behalf of such licensed entities (e.g. tied agents or third parties to which activities have been outsourced).

The relevant regulations are:

- Austrian Data Protection Act 2000 (hereinafter "**DPA**"),
- Austrian Banking Act (hereinafter "**BWG**"), Section 38,
- Austrian Securities Supervision Act (hereinafter "**WAG**"), Section 7,
- Austrian Payment Services Act (hereinafter "**ZaDiG**"), Section 19 Para 4,
- Austrian E-Money Act (hereinafter "**E-GeldG**"), Section 13 Para 2.

For obtaining consent under the respective laws, the following has to be observed: The BWG requires that the entity bound by Section 38 BWG has to obtain the express and written consent of the customer to the disclosure of data protected by banking secrecy (Section 38 Para 2 Item 5 BWG). The WAG, the ZaDiG and the E-GeldG require that the entity bound the respective secrecy obligation needs to obtain written consent of the customer to the disclosure of the protected data.

- For consent to be sufficient, consent must b clear regarding the country to which the swap counterparty's personal data will be exported. Unless the receiving Swap Data Repository has obtained a certification under the Safe Harbor agreement (see http://safeharbor.export.gov/list.aspx) – the data export to the U.S. would require the prior approval of the Austrian Data Protection Commission which typically takes many months to obtain. An express consent language that would eliminate the prior approval requirement under the DPA would have to specifically refer to the fact that the receiving legal or regulatory authority or the trade repository are located in the United States. For obtaining consent under the BWG, the WAG, the ZaDiG or the E-GeldG, protocol consent language is not sufficiently clear. Consequently, there is the risk that this language will be unenforceable in Austria due to a lack of transparency. Language should explicitly state that the party whose data have

to be reported waives its right to secrecy under the BWG, the WAG, the ZaDiG or the E-GeldG, respectively, to the extent that parties have to meet reporting obligations to the SDR in accordance with the Dodd-Frank Act.

- Potential criminal and civil penalties for non-compliance-
    - Under the DPA, a data export without the prior approval of the Austrian Data Protection Commission (or the data subject's consent regarding the country in question) is subject to an administrative fine of up to EUR 10,000 (DPA § 52(2)(2)). This penalty would, in principle, be imposed on the members of management board of the reporting party entity in question, while the entity would be jointly and severally liable for any such fines (§ 9 of the Austrian Administrative Criminal Code).
    - Violations of Section 38 BWG (banking secrecy) constitute criminal offenses and are punishable with imprisonment of up to one year or a monetary fine of up to 360 daily rates. A daily rate is calculated on the basis of the personal and economical background of the offender at the time the judgment is passed. The judge may determine the daily rate in a range between EUR 4 and EUR 5,000 (Section 19 Austrian Penal Code). Further, the offender may become subject to damage claims.

Violations of Section 7 WAG, Section 19 Para 4 ZaDiG or Section 13 Para 2 E-GeldG constitute criminal offenses and are punishable with imprisonment of up to six months or a monetary fine of up to 360 daily rates. Further, the offender may become subject to damage claims.

xvi. Pakistan

Trade Participants may not be able to disclose any Trade Data about their respective counterparties unless (i) the prior written permission of the State Bank of Pakistan (the "**SBP**") has been obtained; or (ii) it is required by Pakistan law. The relevant provisions of Pakistan law include (a) Section 12 of the Banking Companies Ordinance, 1962 (the "BCO"); and (b) Section 33 of the BCO.

Accordingly, the use of an industry protocol to report Trade Data, or consent via a side letter, would not satisfy the statute's requirements. Disclosures made upon the request of foreign legal or regulatory authorities would similarly be in violation of local law. Potential liabilities for breaching Pakistan data privacy laws include damages, injunctive relief, action taken by the SBP (including cancellation of banking licence, penalties, removal of managerial personnel and prosecution of key officers) and criminal proceedings.

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 June 21, 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,

Robert Pickel