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May 27, 2014

Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

**Re: Review of Swap Data Recordkeeping and Reporting Requirements, RIN 3038-AE12
(the "Comment Request")¹**

Secretary Jurgens:

HSBC Bank USA, N.A., a provisionally registered swap dealer and bank organized in the United States ("**HBUS**"), HSBC Bank plc, a provisionally registered swap dealer and bank organized in the United Kingdom ("**HBEU**"), and The Hongkong and Shanghai Banking Corporation Limited, a bank organized in Hong Kong ("**HBAP**" and together with HBEU and HBUS, "**HSBC**") welcome the opportunity to provide the Commodity Futures Trading Commission (the "**Commission**") with comments in response to the Comment Request.

I. Background and Summary

HSBC has been actively engaged in working groups organized by trade associations and other market participants to respond holistically to the important questions raised in the Comment

¹ 79 Fed. Reg. 16,689 (Mar. 26, 2014).



Request regarding the Commission's swap data reporting and recordkeeping requirements. In addition to its participation in these industry efforts, HSBC is providing the below responses to the Commission's specific questions regarding (i) reporting obligations relating to a change in a counterparty's status (Question 12) and (ii) requiring swap data repositories ("SDRs") to aggregate entities' number of transactions and the aggregate notional value of those transactions (Question 56).

With respect to Question 12, HSBC supports amendments to the Commission's regulatory reporting rules (the "**Part 45 Reporting Rules**")² and the issuance of related regulatory guidance clarifying the reporting obligations that apply in the event of a change in a counterparty's registration status.

With respect to Question 56, HSBC supports amendments to the Part 45 Reporting Rules, the Commission's rules regarding standards, duties and core principles for SDRs (the "**SDR Rules**") and related regulatory provisions that would allow market participants and the Commission to use and rely on the same aggregated SDR data in their swap dealer *de minimis* exception monitoring frameworks.

In each case, HSBC believes that market participants and SDRs would benefit from any such additional requirements taking effect through a phased approach alongside any other amendments.

II. Discussion

A. Clarifying reporting obligations after a change in registration status

Question 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), 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?

In light of HBAP's recent withdrawal from provisional registration as a swap dealer (the "**HBAP deregistration**"),³ HSBC has first-hand experience with the reporting challenges associated with a change in registration status and resultant technology and interpretive issues affecting a counterparty's ability to comply with the Part 45 Reporting Rules.⁴ Following the HBAP

² Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan. 13, 2012).

³ The HBAP deregistration took effect on January 16, 2014.

⁴ The Commission's reporting rules for pre-enactment and transition swaps also require continuation data reporting. The discussion and recommendations herein therefore also apply to those rules in addition to the Part 45 Reporting



deregistration, HSBC has experienced (i) uncertainty by HBAP and among HBAP's counterparties regarding whether the parties' reporting obligations have changed for swaps entered into prior to the HBAP deregistration and (ii) technology challenges associated with updating HBAP's reporting infrastructure to reflect new swap reporting obligations. As described in further detail below, technology challenges and uncertainty regarding the scope of reporting obligations such as those experienced by HSBC after the HBAP deregistration are likely to be substantially alleviated by appropriate Commission guidance, given sufficient notice and time for the market to adapt.

1. Continuation Data

To promote uninterrupted and accurate reporting to an SDR, the Commission should clarify the impact of deregistration on the reporting of swaps entered into prior to the effective date of a reporting party's change in registration status and for which continuation data reporting obligations remain.

Under the Part 45 Reporting Rules, reporting parties are required to report continuation data, including valuation data and either life cycle event data or daily state data, throughout the existence of the swap until its final termination.⁵ The Commission has not directly addressed, in the Part 45 Reporting Rules, the Commission's final cross-border guidance (the "**Guidance**")⁶ or elsewhere, whether continuation data reporting obligations would transfer to the other counterparty, or, in certain limited situations involving non-U.S. persons, cease after a change in the registration status of the reporting party.

Specifically, in the context of the deregistration of a non-U.S. person that had, prior to its change in registration status, served as reporting party for a swap with a U.S. counterparty, there is an open interpretive question regarding whether the responsibility for reporting continuation data transfers to the U.S. person counterparty, in accordance with the reporting hierarchy for swaps between U.S. persons and unregistered non-U.S. persons. Such a transfer of reporting responsibility would be analogous to the approach taken by the Part 45 Reporting Rules in connection with the assignment or novation of a swap, if one analogized a change in a reporting party's registration status to an assignment of the transaction from a registered counterparty to one that is not registered.⁷

Rules. *See* Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35,200 (June 12, 2012).

⁵ 17 C.F.R. § 45.4; *see also* 17 C.F.R. § 46.3(a)(2) (continuation data reporting requirements for certain pre-enactment and transition swaps).

⁶ Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 45,292 (July 26, 2013). For purposes of this letter, the terms "U.S. person," "conduit affiliate" and "guaranteed affiliate" are used as defined in the Guidance.

⁷ *See* 17 C.F.R. § 45.8(g).

There is also a question whether continuation data must be submitted for a swap between a non-U.S. person and a guaranteed or conduit affiliate if the non-U.S. person deregisters. Under this latter example, the swap, after the change in the reporting party's registration status, would be between an unregistered non-U.S. person and a guaranteed or conduit affiliate, a combination of counterparties to which the Commission has confirmed that the Part 45 Reporting Rules do not apply.⁸ Given that such a transaction would, following the non-U.S. person's deregistration, no longer be subject to any entity-level or transaction-level rules,⁹ the Commission's supervisory interest in receiving continuation data for events following the non-U.S. person's deregistration is minimal, at best. Yet, because of the technological linkages between reporting new trades and existing trades discussed below, requiring the non-U.S. person (or the guaranteed or conduit affiliate) to report continuation data for legacy transactions between the parties when new transactions between them are not subject to the Part 45 Reporting Rules would require market participants to make significant changes to their reporting infrastructure.

Without clarification of the uncertainties related to the reporting of continuation data described above, it is possible that the Commission will receive, out of an abundance of caution, two continuation data reports for the same swap.¹⁰

Recommendation

For the reasons described above, HSBC recommends that the Commission confirm that unregistered non-U.S. persons will not continue to be subject to Commission continuation data reporting requirements following deregistration, subject to our recommendation below regarding implementation timing. Where the counterparty to the swap is a U.S. person, the continuation data reporting responsibility should transfer to that U.S. counterparty. Where the counterparty to the swap is a guaranteed or conduit affiliate, all continuation data reporting requirements should cease.

2. Technology Issues and Implementation Timing

Following a change in the registration status of a reporting counterparty, both parties to the swap must update their static data and the related counterparty reporting logic to reflect new reporting

⁸ See Guidance at 45,364 ("With respect to swaps between two non-registrants where neither or only one party is a guaranteed or conduit affiliate, the Commission's policy is that the parties to the swap generally should not be expected to comply with the [non-registrant requirements, including real-time public reporting and SDR reporting]."). As no substituted compliance determinations have been issued with respect to the Part 45 Reporting Rules, it is also currently unclear whether such a swap could be reported under another regulatory regime in lieu of complying with the Commission's requirements.

⁹ The sole exception would be large trader reporting.

¹⁰ This result also serves as an answer to Question 21 of the Comment Request, where the Commissions asks if "there are 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?"

obligations. In certain instances, this process may involve updating configurations with third-party service providers (*e.g.*, Markitwire or DSMatch) and swap execution facilities.¹¹ As technology infrastructure has been designed to comply with Commission reporting rules that do not currently clarify respective reporting obligations following a change in a counterparty's registration status, it has been HSBC's experience that many reporting systems are not currently configured to maintain a different status for a counterparty for two separate time periods.

Further, in consideration of the current and developing regulatory reporting regimes across the many jurisdictions in which swap market participants operate, under which parties to a swap may have multiple and divergent reporting requirements for the same transaction, complexities associated with reporting technology will, over time, become even more pronounced. As reporting technology becomes more complex, it will become increasingly difficult to update regulatory reporting infrastructure to reflect new domestic and international reporting requirements while simultaneously ensuring that existing systems remain reliable and accurate during the lifetime of a swap. Any reporting solution that is developed to address a change to a reporting counterparty's registration status will need to be properly implemented to ensure that the solution can be maintained over time and does not affect previous system updates.

Recommendation

As a result of these technology issues, significant advance notice of one counterparty's change in registration status is necessary for both counterparties to update and test their static data, correctly reflect and test counterparty status and confidently update and test their reporting technology to ensure that it withstands expected future updates. To comply with the Part 45 Reporting Rules and ensure uninterrupted and accurate reporting to an SDR, HSBC recommends that the Commission clarify that a reporting party has 60 days following the receipt of notice that its counterparty's registration status has changed to implement necessary updates to its reporting infrastructure. During this 60-day period, there should be no change to either creation data or continuation data reporting obligations as in existence immediately prior to the change in registration status, even if this means that a newly deregistered non-U.S. person continues to be subject to reporting obligations during that period.

In addition, HSBC urges the Commission to work expeditiously to align its reporting standards with those of other jurisdictions. Aside from the numerous systemic risk supervision and transparency benefits that would result from harmonizing an otherwise fragmented global swaps reporting regime, the technology issues associated with a change in registration status can be mitigated if parties do not have multiple reporting requirements for the same swap. After a change in counterparty status, configuring reporting infrastructure will be especially challenging

¹¹ HSBC, like other market participants, relies on a rules engine that incorporates static data to automatically determine the identity of the reporting party. As per industry standard practices, HSBC does not manually confirm reporting responsibilities with its counterparties at the execution of a swap.

if reporting parties are required to submit different content at different times to multiple regulated data repositories for the same swap.¹²

B. Requiring SDRs to aggregate entities' notional value of swap transactions

Question 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)?

The Commission's final rules further defining the term "swap dealer" (the "**Entity Definitions**")¹³ provide that an entity shall be deemed not to be a swap dealer if its swap dealing activity—and the activity of any other entity controlling, controlled by or under common control with the entity¹⁴—over the preceding 12 months results in swap positions with an aggregate notional amount of no more than \$3 billion (subject to a phase-in level of \$8 billion), and an aggregate gross notional amount of no more than \$25 million with regard to swaps with a "special entity."¹⁵ As this *de minimis* threshold is linked directly to an entity's aggregate notional amount of swap dealing positions over a preceding 12 months, monitoring the current calculation of this number is necessary for an entity to ensure that it does not inadvertently exceed the registration threshold, as well as for the Commission to identify entities that may, in the near future, be required to register or have the option to deregister.

Currently, aggregated SDR data is not available to assist an entity in its own internal calculation of its aggregate gross notional amount of swap dealing activity. There is also no assurance that the un-aggregated SDR data to which the entity has access through a set of standard positional reports provided by the SDR matches the records of the Commission.

¹² In particular, HSBC supports the Financial Stability Board ("FSB"), Committee on Payment and Settlement Systems and International Organization of Securities Commissions' work to develop a global reporting aggregation mechanism. See FSB Consultation Paper, "*Feasibility study on approaches to aggregate OTC derivatives data*" (Feb. 4, 2014).

¹³ Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 77 Fed. Reg. 30,596 (May 23, 2012).

¹⁴ The Commission has also clarified that the aggregation of swap dealing positions applies to both U.S. and non-U.S. persons with respect to all of their U.S. and non-U.S. affiliates, except that swaps of an affiliate that is a registered swap dealer are excluded. See Guidance at 45,323.

¹⁵ 17 C.F.R. § 1.3(ggg)(4).

Recommendation

HSBC supports amendments to the SDR Rules and related regulatory provisions that would 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 positions during the preceding 12 months if such aggregated data is subsequently made available to both the Commission and the entity.¹⁶ To ensure that consistent data is made available to both the entity and the Commission, HSBC recommends that entities, through a user interface, be provided with access to the same aggregated data to which the Commission has access. Providing access in this manner would allow any inconsistencies or inaccuracies in the data to be identified and appropriate corrective action taken.¹⁷

While acknowledging that such aggregated data will not necessarily lead to a conclusive determination of the *de minimis* calculation,¹⁸ aggregated data¹⁹ delivered in this manner will provide entities and the Commission with common positional information that can be incorporated into a control framework designed to monitor levels of swap “dealing” activity over a rolling 12 month period.²⁰ As an ancillary benefit of this transparency, there are likely to be fewer entities that register as a result of inadvertently exceeding the *de minimis* registration threshold and then seek to deregister thereafter. Fewer deregistrations will minimize the related reporting and technology issues highlighted in HSBC's response to Question 12 above.

¹⁶ HSBC notes that any amendment to Commission regulations should include language that allows a person who disagrees with an SDR's calculation to meaningfully dispute the data.

¹⁷ There are numerous methods by which portfolio reconciliations are performed for individual swap transactions, such as the portfolio reconciliation exercises performed pursuant to the Commission's portfolio reconciliation rules. See 17 C.F.R. § 23.502. These reconciliations can be used to verify the accuracy of data maintained at each SDR for individual swap transactions. However, as noted above, HSBC does not have access to aggregated data or assurances that an SDR's positional reports match the records of the Commission.

¹⁸ For example, such data would currently exclude a swap between a guaranteed affiliate that benefits from a guarantee from a U.S. person that is a financial entity and an unregistered non-U.S. person. Such swaps count toward the *de minimis* calculation of each party but are not required to be reported under the Part 45 Reporting Rules and the Guidance. Further, depending on whether substituted compliance is made available, swaps between two non-U.S. persons that are not included in the *de minimis* calculation may in the future be reported to U.S.-registered SDRs.

¹⁹ Such data should include both swaps entered into in the entity's capacity as a “dealer” and “non-dealer.” As defined in the Entity Definitions, only swaps that are connected to swap “dealing” activity are included in the calculation to determine whether or not the *de minimis* threshold has been exceeded. See Entity Definitions at 30,631 (“[T]o the extent that a particular swap or security-based swap position is not connected to dealing activity under the applicable interpretation of the statutory dealer definition, it will not count against the *de minimis* thresholds.”).

²⁰ For example, market participants currently do not have visibility into data held at an SDR for expired swaps that existed within the rolling 12 month period for purposes of the *de minimis* calculation. The aggregated data referenced above would include such expired swaps.



* * *

Thank you for your attention to HSBC's responses to the Comment Request. Should you have any questions, please contact Mark Steffensen, General Counsel, HSBC Global Banking & Markets (Americas), at (212) 525-8119, or Christine Calarco, Head of Regulatory Change, HSBC Global Markets (Americas), at (212) 525-2234.

Sincerely,

A handwritten signature in black ink, appearing to be "Stuart Alderort", written over a diagonal line that extends from the bottom left towards the signature.

Stuart Alderort
Senior Executive Vice President and General Counsel
HSBC North American Holdings Inc.