



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Data

Tamara Roust
Chief Data Officer

Re: Request for Temporary No-Action Position With Respect to Certain Obligations Under Parts 43, 45, 46 and 49 of the Commission's Regulations, as Amended

Dear Mr. Young:

This letter responds to a request from the International Swaps and Derivatives Association, Inc. ("ISDA") and its member firms, including provisionally registered swap data repositories ("SDRs") DTCC Data Repository (U.S.) LLC, ICE Trade Vault, LLC, and CME Swap Data Repository, to the Commodity Futures Trading Commission's ("Commission") Division of Data ("Division") seeking a no-action position with respect to certain requirements of the swap data reporting rules set forth in Parts 43, 45, 46 and 49 of the Commission's regulations.¹ In your Letter, you request that the Division confirm that it will not recommend that the Commission take enforcement action against market participants for failing to comply with the recently adopted amendments to Parts 43, 45, 46 and 49.

I. Background

The Commission recently amended parts 43, 45, 46, and 49.² The Amendments, in part, defined swap data elements required to be reported to swap data repositories. While the Amendments significantly reduced the overall number of swap data elements required to be reported, they added several new swap data elements and revised many existing swap data elements. In addition, the Amendments created a new requirement that all swap data elements be reported to SDRs in the form and manner provided in a technical specification published by

¹ 17 C.F.R. Part 43; 17 C.F.R. Part 45; 17 C.F.R. Part 46; 17 C.F.R. Part 49; ISDA, DTCC Data Repository (U.S.) LLC, ICE Trade Vault, LLC, and CME Swap Data Repository, Letter Regarding a Request for an Extension of Compliance Date for Amendments to the Swap Data Reporting Rules – 17 CFR Parts 43, 45, 46, and 49, Jan. 20, 2022 ("Letter"), at 3.

² Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75503 (Nov. 25, 2020); Final Rule, *Real-Time Public Reporting Requirements*, 85 Fed. Reg. 75422 (Nov. 25, 2020); and Final Rule, *Certain Swap Data Repository and Data Reporting Regulations*, 85 Fed. Reg. 75601 (Nov. 25, 2020) (together the "Amendments").

the Commission (“Technical Specification”).³ The Commission published the Technical Specification concurrently with the publication of the Amendments.⁴

The Amendments were effective on January 25, 2021, and parties are required to comply with them by May 25, 2022; provided, however, that parties are not required to comply with the amendments to regulation 43.4(h) (Post-initial cap sizes) and regulation 43.6 (Block trades and large notional off-facility swaps) (collectively, “Block and Cap Amendments”) until May 25, 2023.⁵ The unified compliance date of May 25, 2022 reflected the Commission’s determination that the Amendments were significantly interrelated and should be implemented concurrently.⁶ The May 25, 2023 compliance date reflected the Commission’s determination that Block and Cap Amendments should be implemented one year after the other Amendments to provide adequate time for expected improvements in swap data quality to benefit the periodic Commission calculation of minimum block and cap sizes.⁷

When it issued the Amendments, the Commission discussed two other data standards: the data transmission standard ISO 20022 and the Unique Product Identifier (UPI).⁸ The Commission explained that while those standards were under development at that time, the Commission intended to require their use when they became available.⁹ In the 16 months since the Commission voted to approve the Amendments, the Division understands that development of the ISO 20022 and UPI standards has progressed. The Division now expects those standards to be available for implementation no later than Q4 2023.

II. Requested No-Action Position

The Letter describes certain operational and technological issues that ISDA members and SDRs have identified regarding market participants’ ability to comply with the Amendments. The Letter states that SDRs need additional time to develop their final message specifications to include changes made to the Technical Specifications on September 30, 2021, and to account for any changes currently being made that will be finalized in the SDR Guidebooks; and that, in the absence of such final SDR message specifications, market participants have not begun the review, design, build, and testing phases needed to modify their swaps reporting systems.¹⁰ The Letter represents that market participants need until December 5, 2022, to complete the build and

³ See 17 C.F.R. § 45.13(a)(1).

⁴ The Commission also published a revised final version of the Technical Specification during September 2021. See CFTC Technical Specification, Part 43 and 45 swap data reporting and public dissemination requirements, Version 3.0 (Sept. 30, 2021), *available at* https://www.cftc.gov/media/6576/Part43_45TechnicalSpecification093021CLEAN/download.

⁵ Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. at 75503; Final Rule, *Real-Time Public Reporting Requirements*, 85 Fed. Reg. at 75422; and Final Rule, *Certain Swap Data Repository and Data Reporting Regulations*, 85 Fed. Reg. at 75601.

⁶ See, e.g., Final Rule, *Certain Swap Data Repository and Data Reporting Regulations*, 85 Fed. Reg. at 75545.

⁷ See 17 C.F.R. § 43.6(g)(1).

⁸ See Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. at 75536 (concluding that the Commission will mandate ISO 20022 “when the standard is developed”) and 75540 (noting that “the Commission is currently heavily involved in international efforts to introduce UPIs ... [and] [t]he Commission expects UPIs will be available [for implementation] within the next two years”).

⁹ *Id.*

¹⁰ Letter at 2.

testing of their modified swaps reporting systems to a level sufficient to ensure compliance with the Amendments. In light of these concerns, the Letter requests a no-action position with respect to compliance with the Amendments until December 5, 2022, and with the Block and Cap Amendments until December 4, 2023.

The Division has reviewed and considered the issues raised in the Letter. The Division finds that the particular operational and technological issues caused by the timing of the Commission's changes to the Technical Specification do not lend themselves to prompt resolution before the May 25, 2022 compliance date. The Division is cognizant that any further delay in the implementation of the Amendments will cause a corresponding delay in the realization of the expected benefits of those rulemakings. However, the Division believes that a no-action position is desirable in light of the significant issues identified in the Letter. The Division expects that the issuance of this letter will ensure adequate testing and preparation by market participants in order to meet their compliance obligations under the Amendments.

With respect to the ISO 20022 and UPI data standards, the Division does not believe that this no-action letter necessitates any change to the Commission's previously noted intention to require the use of those standards when they become available.¹¹ The Division currently expects the use of those standards to be required by the Commission in Q4 2023.

III. No-Action Position

Based on the representations in the Letter, the Division believes that a no-action position is warranted, and is providing such no-action position with respect to those certain amended obligations under Parts 43, 45, 46, and 49. Specifically, the Division will not recommend the Commission commence an enforcement action against an entity for failure to comply with the Amendments before December 5, 2022, and for failure to comply with the Block and Cap Amendments before December 4, 2023, provided that the entity comply with the Parts 43, 45, 46, and 49 regulations that were in effect on January 1, 2021.

This letter, and the no-action position taken herein, represent the views of the Division only, and do not necessarily represent the position or view of the Commission or of any other office or division of the Commission. The no-action position taken herein does not bind the Commission or Commission staff outside of the Division, nor does it excuse persons relying on it from compliance with any other applicable requirements contained in the Commodity Exchange Act or in Commission regulations. Further, this letter and the positions taken herein are based upon the facts and circumstances presented to the Division. Any different, changed, or omitted material facts or circumstances might render the relief provided by this letter void. As with all staff letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of relief provided herein, in its discretion.

¹¹ See *supra* n.8; see also, e.g., 17 C.F.R. § 45.7(b)(2) (“When the Commission determines that . . . a unique product identifier and product classification system is available, the Commission shall designate the unique product identifier and product classification system to be used in recordkeeping and swap data reporting pursuant to this part . . .”).

If you have any questions concerning this correspondence, please contact, Tom Guerin, Special Counsel, Division of Data, at (202) 836-1933 or tguerin@cfc.gov, Paul Chaffin, Special Counsel, Division of Data, at (202) 418-5185 or pchaffin@cfc.gov, or Owen Kopon, Associate Director, Division of Data, at (202) 418-5360 or okopon@cfc.gov.

Sincerely,

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Division of Data