



U.S. COMMODITY FUTURES TRADING COMMISSION

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CFTC Letter No. 12-50
No-Action
December 13, 2012
Division of Market Oversight

Robert Pickel
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Washington, DC 20004

Time-Limited No-Action Relief for Agents from the Post-Allocation Swap Timing Requirement of § 45.3(e)(ii)(A) of the Commission's Regulations

Dear Mr. Pickel,

This is in response to your December 10, 2012 letter (the "Letter") to the Division of Market Oversight (the "Division") of the Commodity Futures Trading Commission (the "Commission"). By the Letter, you requested, pursuant to § 140.99 of the Commission's regulations, on behalf of your members that intend to register as swap dealers and major swap participants and other similarly situated persons, no-action relief with regard to the timing requirements for reporting post-allocation swaps under Part 45 of the Commission's regulations.¹

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")² added to the Commodity Exchange Act (the "CEA") provisions requiring the retention and reporting of data related to swap transactions. Section 728 of the Dodd-Frank Act added CEA Section 21(b), which directs the Commission to prescribe standards for swap data recordkeeping and reporting. Pursuant to CEA section 21(b), the Commission added to its regulations Part 45,³ which establishes swap data recordkeeping and swap data repository ("SDR") reporting requirements.

Section 45.3(e) of the Commission's regulations sets forth the swap data reporting requirements for swaps involving allocations. Typically, allocations are post-trade events whereby an agent (usually an asset manager) allocates a portion of an executed swap to clients who are the actual

¹ The no-action relief provided in this Division letter applies to all agents, regardless of whether they are members of ISDA or intend to register with the Commission as swap dealers and major swap participants.

² Pub. L. 111-203, 124 Stat. 1376 (2010).

³ 77 Fed. Reg. 2136 (January 13, 2012).

counterparties to the original transaction.⁴ For swaps involving allocation under section 45.3(e)(ii), the agent⁵ must inform the reporting counterparty⁶ of the identities of the allocated entities (the reporting counterparty's actual counterparties) resulting from allocation, as soon as technologically practicable after execution, but not later than eight business hours (measured in the location of the reporting counterparty)⁷ after execution.⁸ The reporting counterparty must in turn report all required swap creation data for each swap resulting from allocation, to the same SDR to which the initial swap transaction is reported, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties.⁹

In the Letter, you note that swaps may be transacted across different jurisdictions (with different business day/holiday calendars) and time zones. You represent that, due to business day/holiday calendar and time zone differences, it is possible that an agent allocating such a swap will be unable to inform the reporting counterparty of the identities of the allocated entities (the reporting counterparty's actual counterparties) resulting from allocation within eight business hours after execution, as measured in the location of the reporting counterparty, and as required by Part 45 of the Commission's regulations.

In light of your concerns, you request confirmation that the Division will not recommend an enforcement action against any agent or reporting counterparty that fails to adhere to the reporting timeframes set forth in § 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 § 45.3(e)(ii)(A) within 48 business hours 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 Basic Allocation Period and (b) in the case of the reporting counterparty, the reporting counterparty discharges its § 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. You request that Division staff maintain such no-action position until at least June 30, 2013, or such earlier time as the Commission, in consultation with affected market participants,

⁴ "Frequently Asked Questions (FAQ) on the Reporting of Cleared Swaps" (October 10, 2012), issued by Division of Market Oversight staff, http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/clearedswapreporting_faq_final.pdf.

⁵ Agent has the meaning contemplated in § 45.3(e) of the Commission's regulations.

⁶ Reporting counterparty is defined in § 45.1 of the Commission's regulations.

⁷ Throughout this Division letter business day and business hours have the meanings assigned in § 45.1, which defines business day as "the twenty-four hour day, on all days except Saturdays, Sundays, and legal holidays, in the location of the reporting counterparty or registered entity reporting data for the swap" and business hours as "consecutive hours during one or more consecutive business days."

⁸ Section 45.3(e)(ii)(A) sets forth the duties of the agent for post-allocation swaps. *See also* note 7, *supra*.

⁹ Section 45.3(e)(ii)(B) sets forth the duties of the reporting counterparty for post-allocation swaps.

shall have developed means to resolve the timing issues noted in the Letter.¹⁰ You urge the Division to provide no-action relief sufficient to allow: (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 subsequent responsibilities within its own business hours.

For the purposes of this Division letter, a “Cross-Jurisdiction Allocation Swap” is a swap that involves allocation under § 45.3(e)(ii) of the Commission’s regulations and for which: (1) the agent is located¹¹ in a jurisdiction other than the jurisdiction where the reporting counterparty is located and (2) the difference between the Greenwich Mean Time (GMT) in the location of the agent and the location of the reporting counterparty is greater than 4 hours.

I. Agent Reporting Obligations under § 45.3(e)(ii)(A) of the Commission’s Regulations.

Based upon your representations,¹² the Division believes that time-limited relief for agents from the timing requirements of § 45.3(e)(ii)(A) of the Commission’s regulations is warranted under specific conditions.¹³

Accordingly, for any agent with reporting duties for a Cross-Jurisdiction Allocation Swap, the Division will not recommend that the Commission commence an enforcement action against the agent for failure to timely inform the reporting counterparty of the identities of the allocated entities (the reporting counterparty’s actual counterparties) resulting from allocation pursuant to § 45.3(e)(ii)(A), if the agent informs the reporting counterparty of the identities of such allocated entities as soon as technologically practicable, but no later than 48 business hours¹⁴ after execution of the Cross-Jurisdiction Allocation Swap, plus an additional 24 business hours¹⁵ for each day of legal holiday¹⁶ in the agent’s jurisdiction occurring during such period. Such no-action relief is subject to the requirement that the agent retain, as part of its compliance with

¹⁰ In the Letter you note that you are not requesting relief from other requirements of Part 45 that pertain to the allocation of bunched trades.

¹¹ For purposes of this Division letter, the agent’s location is the location where the systems and/or personnel of the agent required to consummate the allocation of the swap reside.

¹² Specifically, the relief provided in this Division letter is premised on the representations made in your December 10, 2012 Letter.

¹³ The no-action relief in this Division letter applies only to the timing requirements of § 45.3(e)(ii)(A). Nothing in this Division letter should be interpreted as altering the responsibility of an agent to otherwise comply with any of the requirements of § 45.3(e)(ii)(A) or any other requirement of Part 45 of the Commission’s regulations.

¹⁴ See note 7, *supra*.

¹⁵ *Id.*

¹⁶ For the purposes of this Division letter, a legal holiday is a public holiday recognized by the national government in the jurisdiction of the agent’s location and for which the agent’s offices are closed.

Commission recordkeeping requirements, a record of the time that it was notified of the need to inform the reporting counterparty of the identities of the actual counterparties resulting from allocation and the time that it provided such actual counterparty identification information to the reporting counterparty.

II. Reporting Counterparty Reporting Obligations under § 45.3(e)(ii)(B) of the Commission's Regulations.¹⁷

As noted above, you request confirmation that the Division will not recommend an enforcement action if the reporting counterparty discharges its § 45.3(e)(ii)(B) 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. Section 45.3(e)(ii)(B) requires a reporting counterparty to report all required swap creation data for each swap resulting from allocation, to the same SDR to which the initial swap transaction is reported, as soon as technologically practicable after it is informed by the agent of the identities of its actual counterparties. As the timing relief granted to agents in section I of this Division letter provides a deadline for informing the reporting counterparty of the identities of the allocated entities (the actual counterparties) that is measured in the business hours in the location of the reporting counterparty, it permits the reporting counterparty to fulfill its reporting obligations during business hours, measured in the reporting counterparty's own location under Part 45. Accordingly, the reporting obligations of a reporting counterparty under § 45.3(e)(ii)(B) remain unchanged by the no-action relief provided to agents in this Division letter.

The no-action relief provided in this Division letter is time-limited, and expires no later than **12:01 a.m. eastern daylight time June 30, 2013**. It applies to the timing requirements of § 45.3(e)(ii)(A) regarding agents only and with respect to Cross-Jurisdiction Allocation Swaps only. Further, the no-action relief provided herein applies to agents, regardless of whether they are members of ISDA or intend to register with the Commission as swap dealers and major swap participants.

The no-action relief provided herein contains a collection of information, as that term is defined in the Paperwork Reduction Act. Therefore, a control number for the collection must be obtained from the Office of Management and Budget ("OMB"). In accordance with 44 U.S.C. § 3507(d) and 5 C.F.R. §§ 1320.8 and 1320.10, the Division will, by separate action, prepare an information collection request for review and approval by OMB, and will publish in the Federal Register a notice and request for public comments on the collection burdens associated with the no-action relief. If approved, an agent may not rely on the Division's determination not to recommend enforcement action to the Commission unless it provides the information the Division has determined is essential to the provision of no-action relief.

¹⁷ Nothing in this Division letter should be interpreted as altering any obligation of a reporting counterparty under § 45.3(e)(ii).

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

If you have any questions concerning this correspondence, please contact Stuart Armstrong, Attorney Advisor, Division of Market Oversight, at (202) 418-5095.

Sincerely yours,

Richard A. Shilts
Acting Director
Division of Market Oversight