CLIENT UPDATE

THREE NO-ACTION LETTERS ON SWAP REPORTING OBLIGATIONS

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On December 7, 2012, the Commodity Futures Trading Commission (the "CFTC") granted temporary no-action relief to "reporting counterparties" under Parts 45 and 46 of its Regulations ("Reporting Counterparties")[1] and to certain large trader "reporting entities" ("Reporting Entities")[2] under Part 20 of its Regulations from the requirements to report certain identifying information under Parts 45, 46 and 20. This no-action letter[3] (the "First ISDA No-Action Letter") was issued in response to a letter, dated December 3, 2012 (the "First ISDA Request Letter"), from the International Swaps and Derivatives Association ("ISDA") to the CFTC's Division of Market Oversight ("DMO") which raised concerns regarding potential conflicts between Parts 45, 46 and 20 and the privacy laws of certain foreign countries.

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1 For purposes of this client update, the term "Reporting Counterparty" has the meanings assigned in Regulations 45.1 and 46.1, as applicable, which define "reporting counterparty" as the counterparty required to report swap data selected as provided in Regulations 45.8 and 46.5, respectively.

2 Regulation 20.1 defines "reporting entity" as (1) a clearing member or (2) a swap dealer in one or more paired swaps or swaptions (as defined in Section 1a of the Commodity Exchange Act and the CFTC Regulations).

3 CFTC No-Action Letter No. 12-46.

On December 21, 2012, the CFTC also granted temporary no-action relief to Reporting Counterparties from the obligation to report certain non-Reporting Counterparty information that is not provided by the non-Reporting Counterparty and is otherwise unavailable to the Reporting Counterparty. This no-action letter[4] (the "Second ISDA No-Action Letter" and, together with the First ISDA No-Action Letter, the "ISDA No-Action Letters") was issued in response to a letter, dated December 7, 2012 (the "Second ISDA Request Letter"), from ISDA to DMO which raised concerns about the ability of Reporting Counterparties to obtain such information in certain instances before the relevant compliance deadlines.

Further, on December 21, 2012, the CFTC granted temporary no-action relief to entities that will be registered as swap dealers ("SDs") from certain reporting obligations under Parts 43, 45 and 46. This no-action letter[5] (the "Swap Dealer No-Action Letter") was granted in response to two letters, dated December 6 and December 12, 2012 (the "Swap Dealer Request Letters") from the Futures Industry Association, the Institute of International Bankers, the Securities Industry and Financial Markets Association (collectively, the "Swap Dealer Petitioners") to DMO which represented that a number of technological issues will prevent SDs from complying with these obligations on the applicable compliance dates.

BACKGROUND

Part 45 establishes general swap data recordkeeping and swap data repository ("SDR") reporting requirements, while Part 46[6] establishes similar requirements for pre-enactment[7] and transition swaps[8] (collectively, "historical swaps").

Both Parts 45 and 46 prescribe certain Minimum Primary Economic Terms ("PET") data fields which must be included in current and historical swap data reporting, respectively.[9] For all swaps subject to CFTC jurisdiction, each counterparty must be identified by means of a single legal entity identifier ("LEI")[10] in all swap data reporting pursuant to

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4 CFTC No-Action Letter No. 12-65.

5 CFTC No-Action Letter No. 12-66.

6 See client update http://www.debevoise.com/clientupdate20120615a/.

7 Pre-enactment swaps are swaps entered into prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the terms of which have not expired as of the date of enactment of the Dodd-Frank Act.

8 Transition swaps are swaps entered into on or after the enactment of the Dodd-Frank Act, but prior to the compliance date for reporting historical swaps of the asset class to which the swap belongs, pursuant to Part 46.

9 See Appendix 1 to Part 45, Exhibits A-D and Appendix 1 to Part 46, Exhibits A-D, respectively.

10 LEI is defined in Regulation 45.6. The current LEI designated by the CFTC is known as a CFTC Interim Compliant Identifier ("CICI"), but is referred to herein as an LEI for ease of reference. The relief granted by the First ISDA No-Action Letter applies both to CICIs and LEIs.

Regulation 45.6 (for current swaps reporting) and Regulation 46.4 (for historical swaps reporting).

Part 20 sets forth large trader reporting rules for physical commodity swaps, requiring routine swaps position reports from clearing organizations, clearing members and SDs and establishing certain non-routine reporting requirements for large swap traders. Part 20 requires, among other things, that a Reporting Entity disclose the identity of the counterparty in respect of which positional information is being reported in large swap trader reports and associated filings.

REQUESTS FOR RELIEF

In the First ISDA Request Letter, ISDA asserted that the privacy laws of some foreign countries may, in certain circumstances, restrict or prohibit the disclosure of the identifying information of a non-Reporting Counterparty or a non-Reporting Entity (collectively, "non-Reporting Parties"), and that, depending on the jurisdiction, disclosure of such information may require the consent of the non-Reporting Party, applicable regulatory authorization, or both. ISDA therefore requested relief from the requirements to report such information in circumstances where doing so would violate the privacy laws of a foreign country.

In the Second ISDA Request Letter, ISDA represented that it would not be possible for some Reporting Counterparties to report certain non-Reporting Counterparty identifying information by the relevant compliance deadlines for Parts 45 and 46 because they will be unable to obtain such information in some instances.

In the Swap Dealer Request Letters, the Swap Dealer Petitioners requested additional time under certain circumstances to comply with the following requirements with respect to swaps in the interest rate and credit asset classes ("Compliance Date 1 Swaps"): (1) reporting by branches located in emerging markets; (2) reporting of exotic/multi-leg swap transactions; (3) linking the unique swap identifier of certain subsequent transactions to the Unique Swap Identifier ("USI") of the previously reported initial swap; and (4) reporting of certain life cycle events of a swap, such as terminations, partial terminations, exercises, partial exercises, and credit events.

FIRST ISDA NO-ACTION LETTER

Identifying Information Required by Parts 45 and 46

No-Action Relief Granted

The First ISDA No-Action Letter provides that DMO will not recommend that the CFTC commence an enforcement action against a Reporting Counterparty for failure to report (1) the LEI of its non-Reporting Counterparty (the "Opposite LEI"), (2) "Other Enumerated Identifiers" (as defined below), and (3) "Other Identifying Terms" (as defined below) for any swap for which the Reporting Counterparty has:

- formed a reasonable belief that:
  - based on a written opinion of outside legal counsel, statutory or regulatory prohibitions in non-U.S. jurisdictions preclude the Reporting Counterparty from reporting the Opposite LEI, Other Enumerated Identifier(s), and/or Other Identifying Term(s) to a registered SDR as required by Part 45 and/or Part 46 (as applicable); or
  - (1) based on a written opinion of outside legal counsel, common law in a non-U.S. jurisdiction could expose the Reporting Counterparty to criminal or civil liability for reporting the Opposite LEI, Other Enumerated Identifier(s), and/or Other Identifying Term(s) to a registered SDR as required by Part 45 and/or Part 46 (as applicable); **and** (2) the Reporting Counterparty determines that there is a material risk that the non-Reporting Counterparty or regulatory authority may initiate litigation; and
- not yet obtained consent from such non-Reporting Counterparty or the relevant non-U.S. regulatory authorization with respect to such non-Reporting Counterparty, as applicable, to disclose the Opposite LEI, Other Enumerated Identifier(s), and/or Other Identifying Term(s); and
- made reasonable and demonstrable efforts to obtain such consent or regulatory authorization, as applicable.

The "Other Enumerated Identifiers" are: (1) the identity of the counterparty electing the clearing requirement exception in Section 2(h)(7) of the CEA[11] for all asset classes; (2) an indication of the counterparty purchasing protection or the counterparty selling protection (but not both) in the credit and equity asset classes; (3) the buyer or seller (but not both) in

[11] Unless otherwise indicated, Section references are to sections of the CEA.

the commodity asset class; and (4) for all asset classes, the internal identifier used by an SDR for a non-Reporting Counterparty, exclusively in those cases where such internal identifier directly identifies the non-Reporting Counterparty (*e.g.*, where the internal identifier is the name of the non-Reporting Counterparty).

The "Other Identifying Terms" are terms of a swap that a Reporting Counterparty reasonably believes would identify a non-Reporting Counterparty if disclosed, and which are required to be reported pursuant to the following Part 45 data fields:

- For swaps in the Foreign Exchange asset class (other than cross-currency swaps), the "Any other term(s) of the trade matched or affirmed by the counterparties in verifying the trade" data field required by Appendix 1 to Part 45, Exhibit B;
- For swaps in the Interest Rate asset class (including cross-currency swaps) and swaps in the Other Commodity asset class, the "Any other term(s) of the swap matched or affirmed by the counterparties in verifying the swap" data fields required by Appendix 1 to Part 45, Exhibits C and D, respectively.

In cases where reporting confirmation data normalized in data fields is not yet technologically practicable, Regulation 45.3 permits Reporting Counterparties to report such data through an image of the document(s) constituting the confirmation for 180 days following the compliance date. The no-action relief described above also permits Reporting Counterparties to temporarily withhold reporting of such images ("Regulation 45.3 Images") in cases where they would include LEIs, Other Enumerated Identifiers and Other Identifying Terms that would otherwise require manual redaction.

Expiration of No-Action Relief

The First ISDA No-Action Letter provides that this relief will extend until the earlier of:

- such time as the Reporting Counterparty has obtained consent from such non-Reporting Counterparty or regulatory authorization, as applicable, to report the Opposite LEI, Other Enumerated Identifier(s), and/or Other Identifying Term(s);
- such time as the Reporting Counterparty no longer holds a reasonable belief that non-U.S. privacy law(s) preclude it from reporting the Opposite LEI, Other Enumerated Identifier(s), and/or Other Identifying Term(s); or
- 12:01 a.m. eastern time on June 30, 2013.

Conditions of No-Action Relief for LEIs and Other Enumerated Identifiers

In order to rely on the foregoing no-action relief from the requirement to report an Opposite LEI or Other Enumerated Identifiers, the Reporting Counterparty must:

- retain (1) written evidence of its reasonable and demonstrable efforts to obtain non-Reporting Counterparty consent or the relevant non-U.S. regulatory authorization, as applicable, and (2) a copy of the written opinion of outside legal counsel on which it based its reasonable belief regarding non-U.S. privacy law(s) as they pertain to reporting the Opposite LEI and Other Enumerated Identifier(s) to a registered SDR;
- include the Privacy Law Identifier (as defined below) with all swap data reported pursuant to Parts 45 and 46 in each instance in which it would otherwise have been required to report an Opposite LEI or Other Enumerated Identifier;
- within 30 days of the expiration of such no-action relief, correct all Privacy Law Identifiers previously submitted to an SDR pursuant to the First ISDA No-Action Letter, with the corresponding Opposite LEIs, Other Enumerated Identifiers and Regulation 45.3 Images,[12] and, prior to making such corrections, notify the relevant SDR.

The term "Privacy Law Identifier" means a single identifier used by all Reporting Counterparties, that is not an LEI, and that consists of free text communicating that information has been withheld due to privacy law.

Conditions of No-Action Relief for Other Identifying Terms

In order to rely on the foregoing no-action relief from the requirement to report Other Identifying Terms, the Reporting Counterparty must:

- retain (1) written evidence of its reasonable and demonstrable efforts to obtain non-Reporting Counterparty consent or the relevant non-U.S. regulatory authorization, as applicable, and (2) a copy of the written opinion of outside legal counsel on which it based its reasonable belief regarding non-U.S. privacy law(s) as they pertain to reporting the Other Identifying Term(s) to a registered SDR;
- include all terms, which are not an Other Identifying Term, required to be reported pursuant to Part 45; and

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[12] If reporting confirmation data normalized in data fields is technologically practicable at the time a Reporting Counterparty submits a corrected Privacy Law Identifier, then such Reporting Counterparty must submit its correction(s) in an electronic format as required by Part 45.

- within 30 days of the expiration of such no-action relief, correct all Other Identifying Terms previously omitted or submitted in a masked form to an SDR pursuant to the First ISDA No-Action Letter, with the corresponding Other Identifying Term(s) and Regulation 45.3 Images,[13] and, prior to making such corrections, notify the relevant SDR.

Counterparty Information Required by Part 20

No-Action Relief Granted

The First ISDA No-Action Letter also provides that DMO will not recommend that the CFTC commence an enforcement action against a Reporting Entity for failure to report Part 20 Identifying Information (as defined below) for any submission under Regulation 20.4 or 20.5 for which the Reporting Entity has:

- formed a reasonable belief that:
  - based on a written opinion of outside legal counsel, statutory or regulatory prohibitions in non-U.S. jurisdictions preclude the Reporting Entity from submitting Part 20 Identifying Information for such counterparty to the CFTC; or
  - (1) based on a written opinion of outside legal counsel, common law in a non-U.S. jurisdiction could expose the Reporting Entity to criminal or civil liability for submitting Part 20 Identifying Information for such counterparty to the CFTC; **and** (2) the Reporting Entity determines that there is a material risk that the individual counterparty or regulatory authority may initiate litigation; and
- not yet obtained consent for the disclosure of Part 20 Identifying Information from such counterparty or the relevant non-U.S. regulatory authorization with respect to such counterparty, as applicable; and
- made reasonable and demonstrable efforts to obtain such consent or regulatory authorization, as applicable.

"Part 20 Identifying Information" means (1) the counterparty name field in Regulation 20.4 submissions and (2) the following information included in a 102S filing pursuant to Regulation 20.5: Name, Address (other than the country of the counterparty), Contact Name, Contact Job Title, Contact Phone and Contact Email.

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[13] If reporting confirmation data normalized in data fields is technologically practicable at the time a Reporting Counterparty submits a corrected Other Identifying Term, then such Reporting Counterparty must submit its correction(s) in an electronic format as required by Part 45.

DMO notes that this relief does not alter the responsibility of a Reporting Entity to make reports required by Regulation 20.4 and to make 102S filings pursuant to Regulation 20.5, even if information in such filing is masked pursuant to the foregoing no-action relief.

Expiration of No-Action Relief

The First ISDA No-Action Letter provides that this relief will extend until the earlier of:

- such time as the Reporting Entity has obtained consent from such counterparty to disclose Part 20 Identifying Information or regulatory authorization, as applicable, for such counterparty;
- such time as the Reporting Entity no longer holds a reasonable belief that non-U.S. privacy law(s) preclude it from disclosing the Part 20 Identifying Information; or
- 12:01 a.m. eastern time on June 30, 2013.

Conditions of No-Action Relief for Part 20 Identifying Information

In order to rely on the foregoing no-action relief from the requirement to report Part 20 Identifying Information, the Reporting Entity must:

- retain (1) written evidence of its reasonable and demonstrable efforts to obtain non-counterparty consent or the relevant non-U.S. regulatory authorization, as applicable, and (2) a copy of the written opinion of outside legal counsel on which it based its reasonable belief regarding non-U.S. privacy law(s) as they pertain to submitting Part 20 Identifying Information for such counterparty to the CFTC;
- make a Form 102S filing for the counterparty in accordance with Regulation 20.5, which filing must include the country of such counterparty and an indication of the Part 20 Identifying Information of the counterparty redacted pursuant to the First ISDA No-Action Letter;
- report that information has been withheld due to privacy law for each Part 20 Identifying Information field not reported pursuant to the First ISDA No-Action Letter; and
- within 30 days of the expiration of such no-action relief, make a corrective Part 20 data submission for all Part 20 Identifying Information that was previously withheld or submitted in a masked form pursuant to the First ISDA No-Action Letter, and, prior to making such corrective data submission, contact the CFTC's Office of Data and Technology ("ODT").

The First ISDA No-Action Letter also provides that the corrective Part 20 data submission must be in a form and manner acceptable to ODT.

Miscellaneous Notes Regarding the First ISDA No-Action Letter

The First ISDA No-Action Letter provides that, for purposes of the relief described above, "reasonable and demonstrable efforts" includes direct efforts by a Reporting Counterparty or Reporting Entity, as applicable, to obtain the consent of a non-Reporting Party and that, while Reporting Counterparties may exercise reasonable reliance upon the initiatives of industry associations, such reliance will not be deemed an acceptable substitute for reasonable and demonstrable efforts directly by a Reporting Counterparty where such initiatives fail to obtain the consent of individual non-Reporting Parties prior to the expiration of such no-action relief.

Additionally, the First ISDA No-Action Letter provides that, with respect to the jurisdictions listed in Appendix A to ISDA's "Comment Letter on the Cross-Border Application of Certain Swap Provisions of the Commodity Exchange Act," dated August 27, 2012 (the "ISDA Cross-Border Comment Letter"), excluding the United States,[14] Reporting Counterparties and Reporting Entities relying on the relief described above must be in possession of the necessary written opinions of outside legal counsel at such time as they avail themselves of such relief. With respect to other jurisdictions, Reporting Counterparties and Reporting Entities may avail themselves of such relief immediately and are not required to obtain the necessary written opinions until January 31, 2013.

The relief provided in the First ISDA No-Action Letter is premised on the representations made in the First ISDA Request Letter (which makes reference to the ISDA Cross-Border Comment Letter), as well as ISDA's July 3, 2012 letter to Chairman Gensler ("CFTC Reporting Rules – Compliance Challenges") and the legal analysis attached thereto.

SECOND ISDA NO-ACTION LETTER

Generally

Based on the representation in the Second ISDA Request Letter that Reporting Counterparties will be unable to obtain certain identifying information of non-Reporting Counterparties in some instances by the relevant compliance deadlines for Parts 45 and 46, the Second ISDA No-Action Letter grants temporary no-action relief to Reporting

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[14] These jurisdictions are: Australia, Bermuda, Brazil, Ontario, Quebec, Cayman Islands, France, Germany, Hong Kong, India, Ireland, Italy, Japan, Korea, Luxembourg, Netherlands, People's Republic of China, Singapore, Spain, Switzerland, Taiwan and the United Kingdom.

Counterparties from the obligation to report the following non-Reporting Counterparty information, only to the extent that such information is not provided by the non-Reporting Counterparty and is otherwise unavailable to the Reporting Counterparty, after a good faith effort to obtain such information:

- With respect to Parts 45 and 46, an indication of whether the non-Reporting Counterparty is:
  - a major swap participant ("MSP") with respect to the swap;
  - a financial entity, as defined in Section 2(h)(7)(C);
  - a U.S. person; and
- With respect to Part 45 only, the identity of the counterparty electing the clearing requirement exception in Section 2(h)(7)(C).

Moreover, the Second ISDA No-Action Letter provides that, based on the same representation in the Second ISDA Request Letter, DMO will not recommend that the CFTC commence an enforcement action against Reporting Counterparties for failure to report such identifying information, pursuant to Parts 45 and 46, only to the extent that such information is not provided by the non-Reporting Counterparty and is otherwise unavailable to the Reporting Counterparty, until as soon as such previously omitted identifying information becomes available to the Reporting Counterparty or April 10, 2013, whichever occurs first.

Conditions of No-Action Relief

The following conditions apply to the no-action relief provided by the Second ISDA No-Action Letter:

- Any Reporting Counterparty relying upon such relief must begin reporting in full compliance with the CEA and the Regulations as soon as the previously omitted identifying information becomes available to the Reporting Counterparty, even if such information becomes available prior to the applicable no-action relief expiration date;
- Should the CFTC promulgate additional swap data reporting rules applicable to the subject matter covered by the Second ISDA No-Action Letter during the pendency of the no-action relief period set forth above, such rules could supersede such no-action relief;
- During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the applicable SDR(s), the Reporting Counterparty must retain records with respect to all transactions covered by the

foregoing no-action relief and make such records available to the CFTC for inspection and production immediately upon request;

- Any Reporting Counterparty relying upon the foregoing no-action relief must complete the SDR reporting records with respect to the identifying non-Reporting Counterparty data not reported pursuant to such no-action relief as soon as the previously omitted identifying information becomes available to such Reporting Counterparty, but in no case later than April 30, 2013; and
- If any representation by ISDA in the Second ISDA Request Letter ceases to be true or materially changes with respect to any no-action position contained in the Second ISDA No-Action Letter, that no-action position is void.
- In order to allow Reporting Counterparties sufficient time to update their SDR reporting records with respect to the non-Reporting Counterparty identifying data not reported pursuant to the foregoing no-action position, the CFTC will allow for the backloading of the unreported data to the applicable SDR(s) until April 30, 2013.

Application of ISDA No-Action Letters to SDs and MSPs

Both of the ISDA No-Action Letters provide that, to the extent Regulation 23.204 requires SDs and MSPs to comply with Part 45, that provision is incorporated by reference into the relief granted by such no-action letters.

SWAP DEALER NO-ACTION LETTER

Reporting by Branches Located in Emerging Markets

Based on the Swap Dealer Petitioners' representation that swap dealers need additional time to establish reporting infrastructure in, or migrate trading activity from, certain branches in Emerging Market Jurisdictions[15], the Swap Dealer No-Action Letter provides that, subject to certain conditions set forth below, for Compliance Date 1 Swaps, DMO will not recommend that the CFTC commence an enforcement action against an SD for failure to comply with certain reporting requirements under Parts 43, 45 and 46 with respect to swaps executed by any branch (*i.e.*, any office or location) in such Emerging Market Jurisdictions until the earlier of:

- the resolution of the technological issues preventing timely compliance (at which time SDs must begin reporting as soon as technologically practicable); or

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[15] The "Emerging Market Jurisdictions" include all countries in the world other than the United States, members of the European Union, Switzerland, Canada, Japan, Hong Kong, Singapore and Australia.

- 12:01 a.m. eastern time on April 30, 2013.

In order to rely on this no-action relief, the following conditions must be satisfied:

- The SD's chief information officer ("CIO") (or equivalent) must document and, immediately upon the CFTC's request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with the swap reporting requirements of Parts 43, 45 and 46 by the relevant compliance deadlines for each branch in an Emerging Market Jurisdiction for which relief is sought;
- The SD must update its technological systems at the subject branches to begin reporting in full compliance with Parts 43, 45 and 46 as soon as technologically practicable upon resolution of the technological issues preventing compliance, or April 30, 2013, whichever occurs first, or otherwise cease to execute swap transactions at those branches;
- The SD must begin reporting swaps covered by the foregoing relief as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by April 30, 2013, whichever occurs first;[16]
- The SD must backload and report previously unreported swaps as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by May 30, 2013, whichever occurs first; and
- During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, the SD must retain records for each branch for all transactions covered by the foregoing relief and, immediately upon the CFTC's request, make such records available for production and inspection.

DMO notes that the no-action relief provided in the Swap Dealer No-Action Letter differs from the relief previously provided in certain no-action letters provided to individual SDs and confirms that the relief provided in the Swap Dealer No-Action Letter does not impact or limit in any way the relief previously provided to those individual SDs.

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[16] As an example, if an SD becomes technically able to comply with the Part 45 reporting requirements at a certain point during the relief period, but is not yet capable of complying with Parts 43 and 46, it must begin to report swap data pursuant to Part 45.

Reporting of Exotic/Multi-Leg Swap Transactions

Generally

An "exotic/multi-leg swap transaction" is a transaction involving a single executed swap having compound swap features that, by convention or for technological or operational reasons, cannot be entered directly into by the SD's trade capture interface for reporting purposes as a single swap, but is disaggregable into two or more swaps or other products that can be individually entered into such system(s) for reporting purposes. The Swap Dealer Petitioners represented that in many but not all cases, such transactions involve swaps with more than one underlying price reference. For instance, if an SD has separate systems for monitoring foreign exchange risk and commodities risk, the SD might enter a swap payable in Euro that is based on the U.S. dollar price appreciation of oil as a U.S. dollar-Euro foreign exchange forward and a U.S. dollar-denominated oil swap.

An exotic-multi-leg swap transaction could also include a transaction with multiple economic components belonging to the same asset class. As an example, if an SD does not have an existing template in its trade capture system for Bermuda swaptions[17], the SD entering into a Bermuda swaption might enter the transaction as a bullet swap (*i.e.*, a swap with a constant notional principal reflecting a constant risk-offset requirement with full repayment of principal at maturity) and a call option. These transactions comprise less than 3% of the swaps reportable under Parts 43 and 45.

The Swap Dealer Petitioners represented that, because SDs' reporting systems are often triggered by the entry of transactions into their trade capture systems, SDs will most likely report real-time and PET data for these exotic/multi-leg transactions under Parts 43 and 45, respectively, by reporting each component of the transaction separately. However, the Swap Dealer Petitioners also noted that, because the pricing for the components is determined on an aggregate basis through negotiation of a single, integral transaction, the price reported for each component would be "off market" relative to other swaps that were not components of an exotic/multi-leg swap transaction.

Temporary No-Action Relief

Based on the limited number of swaps at issue and the Swap Dealer Petitioners' representation that SDs have not developed the technological ability to report the composite multi-leg trade executed at a single price within the time frames specified in Regulations 43.3 and 45.3, the Swap Dealer No-Action Letter provides that an SD may

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[17] Options that give the holder the right to enter into an interest rate swap on any one of multiple predetermined dates.

separately report the real-time and PET data for each component of exotic/multi-leg transactions.

The Swap Dealer No-Action Letter further provides that, subject to certain conditions, DMO will not recommend that the CFTC commence an enforcement action against an SD for failure to fulfill its reporting obligations with respect to Compliance Date 1 Swaps that are exotic/multi-leg swap transactions within the time frames specified in Regulations 43.3 and 45.3 until the earlier of:

- the resolution of the technological issues preventing timely compliance (at which time the SD must begin reporting as soon as technologically practicable); or
- 12:01 a.m. eastern time on April 30, 2013.

In order to rely on this no-action relief, the following conditions must be satisfied:

- The SD's CIO (or equivalent) must document and, immediately upon the CFTC's request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with the swap reporting requirements under Regulations 43.3 and 45.3 by the relevant compliance deadlines;
- The SD must report real-time and PET data for each component of an exotic/multi-leg swap transaction pursuant to Regulations 43.3 and 45.3;
- The SD must update its technological systems to enable it to report the exotic/multi-leg transaction on a composite basis in full compliance with Regulations 43.3 and 45.3 as soon as technologically practicable upon resolution of the technical issues preventing compliance, or April 30, 2013, whichever occurs first;
- The SD must begin reporting the aggregate pricing applicable to the composite exotic/multi-leg swap transaction as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by April 30, 2013, whichever occurs first;
- The SD must backload and report any corrections necessary to the applicable SDR(s) for previously unreported or misreported data as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by May 30, 2013, whichever occurs first; and
- During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, the SD must retain records with respect to all transactions covered by the foregoing relief and, immediately upon the CFTC's request, make such records available for production and inspection.

Linking Unique Swap Identifier to Previously Reported Initial Swap

Based on the Swap Dealer Petitioners' representation that the systems of some SDs are unable to link the report made for subsequent trades, including swaps resulting from post-trade allocation of a bunched trade ("post-trade allocations"),[18] compressions,[19] or novations,[20] to the USI of the previously reported original trade, the Swap Dealer No-Action Letter provides that, subject to certain conditions, DMO will temporarily not recommend that the CFTC commence an enforcement action against an SD for failure to fulfill its reporting obligations under Part 45 due to reporting a post-trade allocation, a compression or a novation to the USI of the original trade of a Compliance Date 1 Swap without appending the USI of the original trade. This relief will extend until the earlier of:

- the resolution of the technological issues preventing timely compliance (at which time the SD must begin linking the subsequent trades as soon as technologically practicable); or
- 12:01 a.m. eastern time on April 30, 2013.

In order to rely on this no-action relief, the following conditions must be satisfied:

- The SD's CIO (or equivalent) must document and, immediately upon the CFTC's request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with Part 45 by the relevant compliance deadlines with respect to the linkage of a report made for a post-trade allocation, a compression or a novation to the USI of the previously reported trade;
- The SD must update its technological systems to enable full compliance with Part 45 with respect to the required linkage as soon as technologically practicable upon resolution of the technical issues preventing compliance, or April 30, 2013, whichever occurs first;
- The SD must begin linking the subsequent trades described above to the initial transaction in accordance with Part 45 as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by April 30, 2013, whichever occurs first;

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[18] A "swap resulting from post-trade allocation of a bunched trade" is defined as any swap that is treated as a "post-allocation" swap under Regulations 45.3(e)(ii) and 45.5(d)(2) and the Exhibits to Part 45, where the agent informs the Reporting Counterparty of the identities of its actual counterparties after execution of the initial swap between the Reporting Counterparty and the agent.

[19] A "compression" is defined as either a "bilateral portfolio compression exercise (as defined by Regulation 23.500(b)) or a "multilateral portfolio compression exercise" (as defined by Regulation 23.500(h)).

[20] A "novation" is defined as a transfer to a third party of one counterparty's rights and obligations under a swap.

- The SD must submit amended reports to the applicable SDR(s) reflecting the USI of the prior trade as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by May 30, 2013, whichever occurs first; and
- During the pendency of remediation efforts, and prior to completing or correcting all required swap transaction data records in the SDR, the SD must retain records with respect to all prior USIs and, immediately upon the CFTC's request, make such records available for production and inspection.

Withholding Reporting of Certain Life Cycle Events

Based on the Swap Dealer Petitioners' representation that some SDs' systems currently treat certain life cycle events (such as terminations, partial terminations, exercises, partial exercises, and credit events) as new trades and/or terminations with new USIs, and therefore do not support the linkage of the reporting of such events to original trades, the Swap Dealer No-Action Letter provides that DMO will temporarily not recommend that the CFTC commence an enforcement action against an SD for failure to fulfill Parts 43 and 45 as a result of an SD's non-reporting of life cycle events or incorrectly reporting such events as new trades. This relief will extend until the earlier of:

- the resolution of the technological issues preventing timely compliance (at which time the SD must begin reporting as soon as technologically practicable); or
- 12:01 a.m. eastern time on April 30, 2013.

DMO notes that the foregoing no-action relief is warranted to prevent over-reporting of publicly disseminated data as required in Regulation 43.3 to the extent that a new swap would be reported under the SD's system solely as a result of the occurrence of a life cycle event, rather than due to the creation of a new swap.

The Swap Dealer No-Action Letter clarifies that, where an SD's system cannot distinguish swaps that are improperly classified as new swaps from actual new swaps, the SD should attempt to withhold reporting of these life cycle events altogether, in which case DMO will not recommend that the CFTC commence an enforcement action against the SD for under-reporting such continuation data.[21] However, if withholding the reporting of affected life cycle events is technologically impracticable, the Swap Dealer No-Action Letter provides that DMO will not recommend that the CFTC commence an enforcement action against an SD for failure to fulfill its reporting obligations under Parts 43 and 45 by incorrectly reporting certain life cycle events as new swaps under new USIs.

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[21] If such a temporary solution is possible, then the SD must update its SDR reporting records as soon as technologically practicable upon resolution of the issue preventing reporting of life-cycle events as part of the initial swap, as required under Parts 43 and 45.

In order to rely on this no-action relief, the following conditions must be satisfied:

- The SD's CIO (or equivalent) must document and, immediately upon the CFTC's request, make available for production and inspection an internal determination that technical difficulties result in an inability to comply with Parts 43 and 45 by the relevant compliance deadlines due to life cycle events being reported as new trades;
- The SD must update its technological systems to enable full compliance with Parts 43 and 45 with respect to the covered swaps as soon as technologically practicable upon resolution of the technical issues preventing compliance, or April 30, 2013, whichever occurs first;
- For any life cycle events not reported to an SDR pursuant to the foregoing no-action relief, the SD must report such life cycle events pursuant to the applicable Part 43 and 45 regulations as soon as technologically practicable upon resolution of the technological issues preventing timely compliance after such a determination is made, or by May 30, 2013, whichever occurs first;
- For any life cycle events incorrectly reported as new swaps under new USIs, the SD must backload and report any corrections necessary to the applicable SDR(s) for previously misreported data as soon as technologically practicable upon resolution of the technological issues preventing timely compliance, or by May 30, 2013, whichever occurs first; and
- During the pendency of remediation efforts, and prior to reporting all required life cycle events to the applicable SDR(s), the SD must retain records with respect to such events covered by the foregoing relief and, immediately upon the CFTC's request, make such records available for production and inspection.

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Please do not hesitate to contact us if you have any questions.

January 7, 2013