17 CFR Part 45
17 CFR Part 46

February 26, 2013

Via Electronic Mail: dmoletters@cftc.gov

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

Re: Request for No-Action Relief from the Division of Market Oversight Staff Pursuant to CFTC Regulation 140.99: End-User Reporting Requirements for Inter-Affiliate Swaps and Compliance Dates for End-User Reporting

Dear Mr. Shilts:

The Coalition for Derivatives End-Users (the "Coalition"), on behalf of end-users, both non-financial and financial, that are "reporting counterparties" as defined in Part 45[1] and Part 46[2] of the regulations of the Commodity Futures Trading Commission (the "Commission" or "CFTC"), hereby requests relief from certain reporting requirements for inter-affiliate swaps under Part 45 and Part 46 (collectively, the "Reporting Rules").

The Coalition represents end-user companies that use derivatives predominantly to manage risks. Hundreds of companies have been active in the Coalition throughout the legislative and regulatory processes, and our message is straightforward: Financial regulatory reform measures should promote economic stability and transparency without imposing undue burdens on end-users. Imposing unnecessary regulation on end-users, who did not contribute to the financial crisis, would create more economic instability, restrict job growth, decrease productive investment, and hamper U.S. competitiveness in the global economy.

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[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."

[2] 17 CFR Part 46 Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 Fed. Reg. 35200 (June 12, 2012). CFTC regulation 46.1 defines the term "reporting counterparty" to mean "the counterparty required to report swap data pursuant to this [Part 46], selected as provided in § 46.5."

The Coalition submitted comments related to the reporting of inter-affiliate swaps during the comment period for the proposed rule entitled "Clearing Exemption for Swaps Between Certain Affiliated Entities" (the "Inter-Affiliate Proposal").[3] The Coalition also has met with Commission staff, the Chairman and Commissioners to discuss the no-action relief we now seek.[4]

I. Discussion

The Coalition believes that regulation of inter-affiliate swaps should square with economic reality: inter-affiliate swaps do not increase systemic risk either by creating counterparty credit risk or increasing interconnectedness between major financial institutions. Instead, inter-affiliate swaps are used by end-users to transfer risk within a corporate group in order to manage it more effectively. Requiring entities to comply with the same reporting requirements for both external swaps and inter-affiliate swaps would create costs without any corresponding benefit and place substantial burdens on end-users and consumers.

The Coalition is comprised of both financial and non-financial end-user members, all of whom use swaps to hedge or mitigate risk associated with their businesses, not to create systemic risk through speculation. Financial end-users include entities such as mutual life insurance companies, pension plans and commercial companies with captive and non-captive finance arms. In short, financial and non-financial end-users use derivatives in the same ways, for the same purposes.

The Commission does not address inter-affiliate swaps in the Reporting Rules and accordingly the rules do not differentiate between market-facing swaps and inter-affiliate swaps or consider the costs versus the benefits for end-users to report inter-affiliate swaps.[5] The CFTC does, however, recognize and differentiate inter-affiliate swaps from market-facing swaps in the contexts of real-time reporting, clearing and swap dealer/major swap participant threshold calculations.[6]

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[3] See Proposed Rule, Clearing Exemption for Swaps Between Certain Affiliated Entities, 77 Fed. Reg. 50425 (August 21, 2012); see also, Comment Letter from Coalition for Derivatives End-Users (Comment No. 58816), pp. 16-17.

[4] On January 10, 2013, the Coalition met with Chairman Gensler, Commissioners O'Malia and Sommers, Commissioner Wetjen's staff and Commission staff about this issue. Additionally, on February 7, 2013, the Coalition met with Commissioner Chilton and his staff about this issue.

[5] Neither Part 45 nor Part 46 addresses "inter-affiliate" swaps or "affiliates" in the context of reporting.

[6] See Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182, 1187 (Jan. 9, 2012) ("The Commission concurs that publicly disseminating swap transaction and pricing data

[Footnote continued on next page]

Because the Reporting Rules do not differentiate between inter-affiliate swaps and market-facing swaps, all end-users will have to report data to a swap data repository ("SDR") in the same form and manner for both market-facing swaps and inter-affiliate swaps. This means that even if an end-user is not a reporting counterparty for its market-facing swaps, and therefore is not required to report market-swap data to an SDR, it would nonetheless still be a reporting counterparty with respect to its inter-affiliate swaps and would have to report inter-affiliate swap data to an SDR. In other words, many end-users would become reporting counterparties solely because they use inter-affiliate swaps as part of a prudent risk management program. The Reporting Rules suggest that the Commission intended to lessen the burden of reporting swap data for end-users by limiting the situations in which an end-user is the reporting party for market-facing swaps. However, the lack of a differentiation in the Reporting Rules between market-facing swaps and inter-affiliate swaps prevents the reporting burden from being lessened for end-users that employ inter-affiliate swaps.

Compliance with the Reporting Rules for inter-affiliate swaps is proving to be difficult for end-users since they do not have the resources and dedicated staff of swap dealers, major swap participants or even large hedge funds. Ironically, end-users are required to comply with the Reporting Rules on the same date as many swap dealers, major swap participants and hedge funds. For example, swap dealers that do not cross the *de minimis* threshold of $8 billion until February 2013 (and are therefore not required to register until April 30, 2013) will be given the same time to report their external swaps (until April 10, 2013) as end-user companies that use swaps to hedge or mitigate their companies' risks are being given to report inter-affiliate swaps.[7]

Because end-users use inter-affiliate swaps to manage the internal risks of the commercial enterprise and, hence, are able to net swaps on an enterprise basis, the number of inter-affiliate transactions can significantly exceed the company's market-facing swaps, which adds to the reporting burdens on end-users. For example, some Coalition companies have indicated that they engage in thousands or even tens of thousands of inter-affiliate swaps per year but that these net down to a far smaller number of market-facing swaps. Ironically, while their swap dealer counterparties would report many (if not all) of the market-facing swaps, the end-users are left to report the significantly greater number of inter-affiliate swaps.

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related to certain swaps between affiliates would not enhance price discovery, as such swap transaction and pricing data would already have been publicly disseminated in the form of the related market facing swap."); see also, 77 Fed. Reg. 50425 (Proposing an exemption from clearing requirements for inter-affiliate swaps); see also, Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant", 77 Fed. Reg. 30596 (May 23, 2012) (Excluding swaps and security-based swaps between majority-owned affiliates from the swap dealer and major swap participant threshold determinations).

[7] See infra note 21.

Further, the data fields required to be reported under the Reporting Rules when multiplied by the number of inter-affiliate swaps, creates a drain on the internal resources of end-user companies. For example, Coalition members have indicated that the submission of interest rate swap data to an SDR, requires their internal systems to account for 787 data fields (240 primary economic terms fields, 525 snapshot fields and 22 valuation fields). While many fields would be "not applicable" or left blank,[8] the required coding nonetheless will have to account for all 787 fields, regardless of whether all fields actually apply.

With respect to Part 45 requirements, the simple fact is that reporting inter-affiliate swaps within the timeframes described in Part 45 (i.e., 48 business hours the first year, 36 business hours the second year and 24 business hours thereafter) will be extremely costly. Almost all end-users that allocate risk among affiliates will need to implement reporting programs only with respect to their inter-affiliate swaps, as virtually all market-facing swaps are executed with swap dealers and major swap participants. Further, end-users will have to comply with Part 45's recordkeeping requirements for their inter-affiliate swaps, and the Commission can request the inter-affiliate swap data from the end-user.

End-users also will have to retain records and report data to an SDR relating to historical inter-affiliate swaps (i.e., inter-affiliate swaps that were "live" after July 21, 2010) pursuant to Part 46 of the Commission's regulations. The Part 46 requirements for end-users to report historical inter-affiliate swap data to an SDR will be extremely costly and, like the Part 45 requirements, were not specifically addressed in the final Part 46 rulemaking. As with Part 45, end-users must comply with the recordkeeping requirements of Part 46 for their inter-affiliate swaps, and the Commission can request the inter-affiliate swap data from the end-user.

Finally, the Coalition does not believe that inter-affiliate swap data will be useful to the Commission since it is used only for managing a company's internal risk, and, indeed, could distort the market picture for derivatives. For example, some Coalition member companies book inter-affiliate foreign exchange transactions at daily or period-ending accounting rates which they also use for other inter-affiliate cross-currency transactions and company-wide financial statement translation. The inclusion of such inter-affiliate swap data with these rates in the SDR could distort the data when comparing to other market-facing swaps.

II. Request for Relief from Reporting Rules for Inter-Affiliate Swap Reporting

A. Scope and Duration of Request

[8] Coalition members have indicated that based on data formats received from the Depository Trust & Clearing Corporation ("DTCC") staff there are 787 input fields for interest rate swaps for which internal systems must account.

The scope of the relief requested in this Section is limited and would apply to "derivatives end-users" that are "reporting counterparties" as defined in the Reporting Rules with respect to reporting "inter-affiliate swaps" under certain regulations in the Reporting Rules (as described below). The Coalition requests relief beginning on the date of this letter and continuing in perpetuity.

For the purposes of this request, "derivatives end-users" are those market participants that are:

> (a) not persons or entities described in Sections 2(h)(7)(C)(i)(I)–(VI) of the Commodity Exchange Act, unless such persons or entities meet the limitation in Section 2(h)(7)(C)(iii) of the Commodity Exchange Act;[9] and
> (b) using swaps (including inter-affiliate swaps) to "hedge or mitigate commercial risk" as defined in CFTC regulation 50.50(c).[10]

For the purposes of this request, "inter-affiliate swap" means a swap where (a) one counterparty directly or indirectly holds a majority ownership interest in the other counterparty (or a third party directly or indirectly holds a majority ownership interest in both counterparties), and (b) the financial statements of both counterparties are reported on a consolidated basis. A counterparty or third party directly or indirectly holds a majority ownership interest in an entity if it directly or indirectly holds a majority of an entity's equity securities, or the right to receive upon dissolution, or contribution of, a majority of the capital of a partnership.[11]

The specific CFTC regulations from which this request seeks relief are as follows: 45.3(d)(1), 45.3(d)(3), 45.4(c)(1)(ii), 46.3(a) and 46.3(b). The related Commodity Exchange Act sections are 4r and 21(b).

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[9] Pursuant to the CEA and CFTC regulations, hedge funds and certain private equity funds that trade in commodity interests would be considered "commodity pools" (even if the operators of such entities claim an exemption from registration as a commodity pool operator). Accordingly, hedge funds and certain private equity funds would not be included in the definition of "derivatives end-users" and would not be eligible for the requested no-action relief. Further, private funds as defined in section 202(a) of the Investment Advisers Act or 1940 (15 U.S.C. 80-b-2(a)) would not be included in the definition of "derivatives end-users."

[10] See End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42559 (July 19, 2012); see also, Clearing Requirement Determination under Section 2(h) of the CEA, 77 Fed. Reg. 74284, 74314, 74337-38 (December 13, 2012) (The Commission recodifies CFTC regulation 39.6 as CFTC regulation 50.50 "so that market participants are able to locate all rules related to the clearing requirement in one part of the Code of Federal Regulations.").

[11] This definition of "inter-affiliate swap" is consistent with the Commission's proposed definition of "Affiliate Status" in the Inter-Affiliate Proposal. See proposed CFTC regulation 39.6(g)(1). 77 Fed. Reg. at 50442.

B. Part 45 Request for Relief from Inter-Affiliate Reporting

The Coalition requests that the Division of Market Oversight staff grant no-action relief to derivatives end-users for the reporting of inter-affiliate swaps from the timing requirements under Part 45 and requests that end-users instead be required to report the swap data required under Part 45 to an SDR no later than 60 days following the end of each fiscal year.[12] Accordingly, to be eligible for the no-action relief, derivatives end-users would be required to report inter-affiliate swap data to an SDR annually.

The data reported pursuant to this relief would cover the inter-affiliate swaps executed during the previous year,[13] including any newly executed inter-affiliate swaps, early terminations of existing inter-affiliate swaps and other reportable life cycle events. The annual report would contain creation data for new swaps executed during the previous year as well as any continuation data required to be reported on existing swaps. The Coalition requests that any inter-affiliate swap reports that derivatives end-users submit need not include data on inter-affiliate swaps that terminate on their scheduled end-date since the SDR will have a record of the scheduled end-date. We note that the annual reporting requirement should commence after the applicable compliance date. For example, if the compliance date for derivatives end-users to report inter-affiliate swaps to an SDR is October 10, 2013, then the first year of reporting Part 45 data could be a shortened timeframe since it would cover swaps executed from October 10, 2013 – December 31, 2013 and would be reported to the SDR within 60 days after the end of the year. Within these limitations, the specific regulations from which we are requesting no-action relief include CFTC regulations 45.3(d)(1), 45.3(d)(3) and 45.4(c)(1)(ii).

C. Part 46 Request for Relief from Inter-Affiliate Reporting

The Coalition requests the Division of Market Oversight staff grant no-action relief for the reporting of all historical inter-affiliate swaps that have been terminated, closed-out or otherwise ended as of the first date that a derivatives end-user reports historical swap data under Part 46.[14] With respect

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[12] While the Coalition suggested quarterly reporting of Part 45 data in its comment to the Inter-Affiliate Proposal, Coalition members have indicated that as they have been attempting to comply with the reporting of inter-affiliate swaps, it has become apparent that quarterly reporting of inter-affiliate swaps will prove to be difficult and costly. Accordingly, we are requesting no-action relief to permit reporting to an SDR on an annual basis.

[13] In the first year, the first Part 45 data report for inter-affiliate swaps would need to be sent within 60 days following the end of the fiscal year in which end-users are first required to report inter-affiliate swap data.

[14] The Coalition recognizes that Part 45 and Part 46 set a compliance date of April 10, 2013; however, the Coalition is requesting relief from this compliance date in Section II.D. below. In any event, the Coalition realizes that derivatives end-users may choose to voluntarily report

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to inter-affiliate swaps that exist on the first date that a derivatives end-user must report historical swap data under Part 46, derivatives end-users would still be required to report to an SDR the data required for historical swaps under Part 46. The Coalition recognizes that Part 45 requires the reporting of continuation data for existing historical inter-affiliate swaps. Therefore, if a derivatives end-user reports historical swap data for a swap that exists on the first date that the end-user reports such data, the SDR will be assured of having a record of the historical inter-affiliate swap to which continuation data can be attributed. With these qualifications, the specific regulations from which the Coalition requests no-action relief include CFTC regulations 46.3(a) and 46.3(b).

D. Relief from April 10, 2013 Compliance Date for Inter-Affiliate Swap Reporting Under Parts 45 and 46

In addition to other no-action relief requested herein, the Coalition requests the Division of Market Oversight staff grant no-action relief for the reporting of all inter-affiliate swap data until October 10, 2013. As described in Section I above, derivatives end-users that use swaps to hedge or mitigate commercial risk do not have the same internal infrastructure or staff as swap dealers and other entities that make markets in swaps and/or trade swaps for profit. Accordingly, derivatives end-users need extra time to connect to SDRs, allocate resources and engage in appropriate testing.

Coalition members have indicated that SDRs are facing a capacity issue, which is slowing the process of connecting and onboarding derivatives end-users. According to some Coalition members, SDRs have been directing their attention to connecting and testing for swap dealers, major swap participants and active funds. Accordingly, derivatives end-users have not been receiving the attention they need to put reporting processes in place and engage in appropriate testing. Since end-users do not have the internal infrastructure or available resources of swap dealers, derivatives end-users may require more attention from SDRs to connect and begin to engage in reporting.

Many Coalition members have indicated that there are additional hurdles associated with connecting to registered SDRs. For example, for derivatives end-user inter-affiliate swaps, the uniform swap identifier ("USI") must be generated by the SDR. Derivatives end-users will initially submit data without a USI, and then the SDR will generate the USI for each trade and communicate the USI back to the derivatives end-user. Going-forward, the derivatives end-user will have to report the trade with the USI included which will create a completely different level of complication. Companies that use treasury systems with straight-through processing will have difficulty inputting the USI into their treasury applications against each particular trade and reporting it going-forward after execution. There are both control implications (i.e., the need to amend the trade after it has been signed-off in the system) and accounting implications (i.e., if by

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their historical swap data prior to the compliance date, as described in CFTC regulation 46.3(c). If historical swap inter-affiliate data is voluntarily reported prior to the required compliance date, the requested relief would require the reporting all historical inter-affiliate swap data that are in existence on the date that the data is reported to the SDR.

amending the trade the deal number changes, FAS accounting documentation would have to be updated).

We request relief until October 10, 2013, which will allow enough time for derivatives end-users to connect to SDRs, engage in testing and report inter-affiliate swap data to an SDR. The six months of relief from the April 10, 2013 compliance date will also allow for USI and similar issues to be resolved by SDRs before inter-affiliate swap reporting is required.

III. Request for Time-Limited No-Action Relief from Reporting Rules for Swaps with Non-U.S., Non-Registered Counterparties

A. Scope and Duration

The scope of this relief request in Section III is limited and would apply to "derivatives end-users" that (1) are "U.S. persons" as defined in the CFTC's Final Order (defined in Section III.B. below); (2) are "reporting counterparties" as defined in the Reporting Rules; and (3) enter into swaps with non-U.S. persons that are not registered with the CFTC as swap dealers or major swap participants. We request relief beginning on the date of this letter and lasting until October 10, 2013.

For the purposes of this request, "derivatives end-users" are those market participants that are:

> (a) not persons or entities described in Sections 2(h)(7)(C)(i)(I)–(VI) of the Commodity Exchange Act, unless such persons or entities meet the limitation in Section 2(h)(7)(C)(iii) of the Commodity Exchange Act;[15] and
> (b) using swaps (including inter-affiliate swaps) to "hedge or mitigate commercial risk" as defined in CFTC regulation 50.50(c).[16]

For the purposes of this request, "non-U.S. person" means a person or entity that is not a "U.S. person" as defined in the CFTC's Final Order (defined in Section III.B. below).

The specific CFTC regulations from which we seek relief are as follows: 45.3(d)(1), 45.3(d)(3), 45.4(c)(1)(ii), 45.4(c)(2)(ii), 46.3(a) and 46.3(b). The related Commodity Exchange Act sections are 4r and 21(b).

B. Relief from April 10, 2013 Compliance Date for Reporting of Swaps with Non-U.S., Non-Registered Counterparties

For an off-facility, uncleared market-facing swap (i.e., a swap not executed on a swap execution facility or designated contract market) between a "U.S. person" that is a derivatives end-user ("U.S.

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[15] See supra note 9.

[16] See supra note 10.

End-User") and a non-U.S. person not registered as a swap dealer or major swap participant, the U.S. End-User would have to report all data pertaining to the swap to an SDR beginning on April 10, 2013. For example, a U.S. End-User could enter into an off-facility, uncleared swap with a non-U.S. person that deals in swaps but is not required to register with the CFTC.[17] Under the Reporting Rules, the U.S. End-User would have to report new swap data and historical swap data for the swap (and for all other swaps with the same counterparty).[18]

On December 21, 2012, the CFTC approved a Final Exemptive Order Regarding Compliance with Certain Swap Regulations ("Final Order") granting temporary conditional relief from certain provisions of the Commodity Exchange Act and the Commission's regulations with respect to non-U.S. persons and foreign branches of U.S. persons in the swap dealer and major swap participant context.[19]

The Final Order requires a non-U.S. swap dealing entity to count only its swaps with U.S. persons to determine if its swap activity falls under the *de minimis* threshold for swap dealer registration.[20]

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[17] The non-U.S. person may not have to register with the CFTC, for example, if its transactions with U.S. persons do not exceed the *de minimis* threshold required for swap dealer registration.

[18] See CFTC regulations 45.8(e), 45.8(g)(3), 46.5(a)(5) and 46.5(c)(3). The CFTC explained that "[i]n cases where both counterparties are non-SD/MSP counterparties and only one counterparty is a U.S. person, [P]art 45 requires the U.S. person to be the reporting counterparty, which is necessary in such situations because the non-U.S. non-SD/MSP counterparty will not be required to register with the Commission. … [T]he Commission has determined that [Part 46] will follow [P]art 45, as set forth above with respect to determination of the reporting counterparty in this context." 77 Fed. Reg. at 35211-12.

[19] See Final Exemptive Order Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 858 (Jan. 7, 2013). The exemptive relief granted in the Final Order expires on July 12, 2013.

[20] The Final Order defines "U.S. person" to mean "(i) A natural person who is a resident of the United States; (ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) effective as of April 1, 2013 for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States; (iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity; (iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or (v) An individual account

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This means that certain non-U.S. swap dealing entities will effectively receive delays in registration until sometime after April 10, 2013 since their swap dealing activities with "U.S. persons" would not exceed the $8 billion threshold until sometime in February 2013 or later.[21] Accordingly, such non-U.S. swap dealing entities would have to register no earlier than April 30, 2013 (and later in certain circumstances). The Final Order also provides that non-U.S. swap dealers and non-U.S. major swap participants that are not part of an affiliated group can delay compliance for SDR reporting for swaps with non-U.S. persons until July 12, 2013.

The relief in the Final Order, when viewed in connection with the Reporting Rules, creates an anomalous result for U.S. End-Users. U.S. End-Users will have to invest time, resources and money to connect to SDRs and develop internal systems to report swaps for non-U.S. swap dealers that have not yet registered. And this is the case even though the obligation to report may eventually shift to the non-U.S. person once the non-U.S. person registers as a swap dealer (which, as described above, could be after April 10, 2013). The U.S. End-User will have invested considerable time, resources and costs to comply with a temporary reporting obligation that will last for a mere few months or even weeks before the obligation shifts to the non-U.S. swap dealing entity.[22]

We recognize that a U.S. End-User's non-U.S., non-registered swap dealing counterparty may offer to provide third-party reporting services to the U.S. End-User until such non-U.S., non-registered swap dealing entity registers with the CFTC as a swap dealer; however, the regulatory obligation to comply with the Reporting Rules would still fall on the U.S. End-User. Many U.S. End-Users

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or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above. Any person not listed in (i) to (v) above is a ''non-U.S. person'' for purposes of this Final Order." 78 Fed. Reg. at 879.

[21] The CFTC has explained in CFTC regulation 1.3(ggg)(4)(iii) and related guidance that a swap dealing entity that exceeds the *de minimis* threshold in a given month will have until the end of the second month following the end of the month in which it exceeds the *de minimis* threshold to register as a swap dealer. See CFTC Staff Responds to Questions on Timing of Swap Dealer Registration Rules, Release: PR6348-12 (September 10, 2012), available at: http://www.cftc.gov/PressRoom/PressReleases/pr6348-12.

[22] The Coalition recognizes that non-U.S., non-registered swap dealers may offer to report swap data to an SDR as a service to their end-user counterparties; however, the Commission makes it explicit that the reporting obligations fall on the reporting counterparty. See, e.g., 77 Fed. Reg. at 2167 ("The Commission recognizes, as stated in the NOPR, that while the various reporting obligations established in the final rule fall explicitly on registered entities and swap counterparties, efficiencies and decreased cost may in some circumstances be gained by engaging third parties to facilitate the actual reporting of information.").

require board approval and have very strict guidelines with respect to their hedging programs and therefore may not be comfortable with a third party reporting arrangement that still leaves a regulatory obligation on the U.S. End-User. Further, it may not even be feasible to use a third party entity to assist with reporting historical swap data under Part 46 since the data in the reporting counterparty's possession is the data that must be reported to the SDR pursuant to Part 46.[23]

Accordingly, the Coalition requests that the Division of Market Oversight grant no-action relief for the reporting obligations under the Reporting Rules for swaps between U.S. End-Users and non-U.S., non-registered counterparties on a time-limited basis. Since the *de minimis* threshold for swap dealer registration is calculated based on the preceding 12 months, six months of relief from the April 10, 2013 compliance date will allow U.S. End-Users to have a better grasp on whether their non-U.S. non-registered swap dealing counterparties will register with the CFTC as swap dealers before they unnecessarily incur costs to connect to an SDR to report under Parts 45 and 46.[24] Such no-action relief would expire on October 10, 2013.

IV. Final Rule Regarding the Inter-Affiliate Clearing Exemption

The Coalition recognizes that the Commission will soon be considering a rule that finalizes the inter-affiliate clearing exemption that was originally proposed in the Inter-Affiliate Proposal. The Coalition asks Division of Market Oversight staff and the Commission to ensure that the final rule relating to the inter-affiliate clearing exemption and related discussions would not conflict with the Division of Market Oversight's ability to grant the relief requested herein.

V. Conclusion

The reporting of inter-affiliate swaps as required under the Reporting Rules is proving to be extremely difficult and expensive for end-users with little if any corresponding benefit. Without relief from Division of Market Oversight staff, derivatives end-users that are reporting counterparties for inter-affiliate swaps will be forced to make costly investments and in many cases

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[23] See CFTC regulation 46.6 which explains that "[c]ounterparties required by this part 46 to report swap data for any pre-enactment or transition swap, while remaining fully responsible for reporting as required by this part 46, may contract with third party service providers to facilitate reporting." See also, CFTC regulations 46.3(a)(1) and 46.3(b) which provide that the reporting counterparty shall report to an SDR data and information that were in the reporting counterparty's possession.

[24] See CFTC regulation 1.3(ggg)(4); see also, 77 Fed. Reg. at 30744.

may not be able to comply with the existing rules within the timelines as currently written.[25] Further, U.S. End-Users that are reporting counterparties for external swaps with non-U.S., non-registered counterparties may be forced to incur costs to comply with the Reporting Rules for such external swaps, only to have the reporting burden permanently shift to the non-U.S., non-registered counterparties in a short period of time, incurring potentially unnecessary costs as a result. Relief from the Division of Market Oversight staff would provide needed, additional time for end-users to connect to SDRs and test their reporting, avoid the unnecessary burden of 24- to 48-hour reporting of inter-affiliate swaps, provide a clearer view of reporting obligations for swaps with non-U.S. persons and reduce the potential for unnecessary and costly investments to report data to SDRs—money that could otherwise be used to create jobs or build new facilities.

The Coalition is committed to working with the Division of Market Oversight staff and the Commission to ensure that end-users are able to continue to hedge their risks without being forced to endure unnecessary costs and that the Division of Market Oversight and the Commission receive the data that they need to conduct their oversight of the swaps market. Pursuant to Commission regulation 140.99(c)(7), the Coalition asks that if no-action relief under this request is denied in whole or in part, the Division of Market Oversight staff consider granting alternative relief for end-users that are reporting counterparties, under the facts and circumstances described in this request.

Thank you for your consideration of these very important reporting issues to derivatives end-users. Please contact Michael Bopp at 202-955-8256 or mbopp@gibsondunn.com if you have any questions or concerns.

Yours sincerely,

Agricultural Retailers Association
Business Roundtable
Commodity Markets Council
Financial Executives International
National Association of Corporate Treasurers
National Association of Manufacturers
U.S. Chamber of Commerce

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[25] We note that there are no publicly available Letters issued by the Commission in response to circumstances similar to those surrounding this request (including adverse Letters). Accordingly, no such Letters are cited in this request as described in CFTC regulation 140.99(c)(6).

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required pursuant to Commission regulation 140.99(c)(3), I hereby certify that the material facts set forth in the attached letter dated February 26, 2013 are true and complete to the best of my knowledge.

Michael Bopp
Gibson, Dunn & Crutcher LLP
On behalf of the Coalition for Derivatives End-Users