



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Market Oversight

CFTC Letter No. 13-36
No-Action
June 27, 2013
Division of Market Oversight

Re: Extension of Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from the Reporting Requirements of Part 45 for CDS Clearing-Related Swaps

On December 19, 2012, the Division of Market Oversight (“DMO”) of the Commodity Futures Trading Commission (“Commission”) granted time-limited no-action relief to swap dealers (“SDs”) and major swap participants (“MSPs”) with respect to certain off-facility, cleared credit default swaps (“CDS”) that are entered into pursuant to a derivatives clearing organization’s (“DCO”) rules related to its price submission process for determining end-of-day settlement prices for cleared CDS (“CDS Clearing-Related Swaps”).¹ DMO granted a request from the International Swaps and Derivatives Association, Inc. (“ISDA”),² on behalf of its members and other similarly situated persons that intended to register as SDs or MSPs, for no-action relief with respect to enforcement actions against an SD or MSP reporting counterparty for failure to comply with the obligations to report swap data for CDS Clearing-Related Swaps under part 45 of the Commission’s regulations. The no-action relief in CFTC Letter No. 12-59 expires on June 30, 2013.

CDS Clearing-Related Swaps are swaps that are entered into by clearing members of a DCO, pursuant to the DCO’s rules regarding its price submission process for determining end-of-day settlement prices for cleared CDS. Each of the Commission’s registered DCOs that are eligible to clear CDS³ have unique policies and procedures in place to ensure accurate and reliable end-of-day pricing for cleared CDS products.⁴ Generally speaking, under the rules of the DCO, clearing members are required to submit price quotes for any cleared CDS product in which the clearing member, or the clearing member’s customers, has an open interest at the end of each day. The DCO relies on these quotes in setting the end-of-day settlement prices for all cleared CDS positions. For the purposes of this relief, this settlement price process is referred to as the “CDS Settlement Price Process.”

¹ CFTC Letter No. 12-59 (December 19, 2012).

² ISDA submitted its request for no-action relief pursuant to Commission regulation 140.99 by letter on December 13, 2012.

³ Under the provisions of regulation 39.5(a), three registered DCOs are eligible to clear CDS at this time. Those DCOs are CME Clearing, ICE Clear Credit, and ICE Clear Europe.

⁴ See, e.g., ICE Clear Europe Clearing Rules 401(a)(xi) and 503(g); and ICE Clear Europe’s CDS Procedures Paragraph 8.

In order to ensure that the prices submitted by clearing members as part of the CDS Settlement Price Process are reliable and accurate, from time to time, DCOs require their clearing members to enter into “firm or forced trades” that result in cleared CDS positions. Requiring clearing members to enter into CDS Clearing-Related Swaps encourages the best quality submissions and ensures that clearing members provide only actionable quotes for purposes of the CDS Settlement Price Process.

Pursuant to newly added provisions of the Commodity Exchange Act (“CEA”),⁵ the Commission adopted implementing regulations under part 45, which establish swap data recordkeeping and swap data repository (“SDR”) reporting requirements.⁶ Among other things, part 45 requires the reporting of both swap creation data and continuation data to SDRs, and establishes a hierarchy for determining which counterparty to a swap is the “reporting counterparty.”⁷ Moreover, the reporting burden of a reporting counterparty under part 45 is dependent on whether the swap is executed on-facility or off-facility, and whether the swap is cleared. Under certain circumstances described in part 45, SDs and MSPs are required to report primary economic terms data for off-facility swaps that are cleared by a DCO.⁸ SDs and MSPs also are required to report valuation data for all swaps for which they are the reporting counterparty.⁹

Based on market participant concerns and the facts and circumstances described by ISDA in its December 13, 2012 letter, the Division will not recommend that the Commission take enforcement action against a reporting counterparty¹⁰ for failure to comply with its obligations to report swap data as required by part 45 for CDS Clearing-Related Swaps, subject to the following conditions:

1. The reporting counterparty, as defined in part 45, must be a clearing member of a DCO that is eligible to clear CDS indices and must participate in that DCO’s CDS Settlement Price Process.

⁵ Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”)⁵ added to the CEA provisions requiring the retention and reporting of data relating to all swap transactions. New CEA Section 2(a)(13)(G) requires that all swaps, both cleared and uncleared, be reported to a registered swap data repository (“SDR”). New CEA Section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.

⁶ 76 Fed. Reg. 2197 (Jan. 13, 2012).

⁷ Required swap creation data means all primary economic terms (PET) data and all confirmation data for a swap. Required swap continuation data means all changes to PET data and all valuation data. 17 C.F.R. §§ 45.1, 45.8.

⁸ 17 C.F.R. § 45.3

⁹ 17 C.F.R. § 45.4(b)(2)(ii).

¹⁰ The Commission is using the term “reporting counterparty” as that term is defined under part 45. The relief provided by this letter is available to SDs and MSPs that are reporting counterparties with respect to CDS Clearing-Related Swaps.

2. The no-action relief shall apply only to CDS Clearing-Related Swaps arising from, or entered into pursuant to, a DCO's CDS Settlement Price Process, as required by the DCO's rules and procedures.
3. The reporting counterparty and DCO agree, as evidenced by private agreement or pursuant to a DCO's rules, that the DCO shall fulfill all of the reporting counterparty's obligations with respect to reporting CDS Clearing-Related Swaps pursuant to part 45.
4. The no-action relief shall expire on **December 31, 2013**.¹¹

This letter, and the no-action position taken herein, represent the views of the Division of Market Oversight only, and do not necessarily reflect the views of the Commission or 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 promulgated thereunder. This position is based upon the representations contained in ISDA's December 13, 2012 request letter and it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this no-action letter void. Finally, as with all no-action letters, the Division of Market Oversight retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

If you have any questions concerning the content of this staff no-action letter, please contact Stuart Armstrong, Attorney Advisor, Division of Market Oversight, at (202) 418-5095.

Sincerely,

Rick Shilts
Acting Director
Division of Market Oversight

¹¹ Should the Commission promulgate additional swap data reporting rules applicable to the subject matter covered herein during the pendency of this no-action relief, such rules could supersede the relief granted herein.