



## U.S. COMMODITY FUTURES TRADING COMMISSION

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000  
Facsimile: (202) 418-5521  
[www.cftc.gov](http://www.cftc.gov)

### Division of Market Oversight

CFTC Letter 18-03  
No-Action  
February 20, 2018  
Division of Market Oversight

#### **Re: Extension of No-Action Relief from Certain Reporting Obligations for Counterparties Clearing Swaps through Derivatives Clearing Organizations Acting Under Exemptive Orders or No-Action Relief**

Dear Mr. Young:

This letter responds to a request received by the Division of Market Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) from the International Swaps and Derivatives Association, Inc. (“ISDA”), pursuant to Commission Regulation 140.99.<sup>1</sup> ISDA has requested, on behalf of its members with swap data reporting obligations and other similarly situated persons, that the Division extend the no-action relief provided in CFTC Letter 16-85<sup>2</sup> regarding certain reporting obligations under Part 45 of the Commission’s regulations in connection with the clearing of swaps with derivatives clearing organizations (“DCOs”) acting pursuant to (a) exemptive orders issued by the Commission, or (b) no-action relief granted by the Commission’s Division of Clearing and Risk (“DCR”). ISDA has also requested the extension of certain no-action relief relating to the identification of swaps to be cleared with such DCOs in swap data reporting under Parts 43 and Part 45 of the Commission’s regulations.

#### **I. Definitions for No-Action Relief**

Exclusively for purposes of this letter, the Division will define the following terms:

- (a) **Relief DCO:** Any derivatives clearing organization or central counterparty acting pursuant to a current and valid exemptive order issued by the Commission, or a current and valid no-action letter issued by DCR. As of the date of this letter, there are four DCOs acting pursuant to exemptive orders: ASX Clear (Futures) Pty Limited, Japan Securities Clearing Corporation, Korea Exchange, Inc., and OTC Clearing Hong Kong

---

<sup>1</sup> See letter from Christopher Young, Head of U.S. Public Policy, ISDA, to Amir Zaidi, Director, CFTC Division of Market Oversight, dated January 30, 2018 (the “ISDA Letter”).

<sup>2</sup> CFTC Letter No. 16-85 (December 19, 2016), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/16-85.pdf>.

Limited. Additionally, there is one DCO acting pursuant to DCR no-action relief: Shanghai Clearing House.

- (b) Relief DCO Counterparty: Any market participant, not acting as a derivatives clearing organization or central counterparty, that is a counterparty to a swap cleared by a Relief DCO.
- (c) Relief DCO Original Swap: A swap reported or required to be reported pursuant to Part 45 of the Commission's regulations that is subsequently accepted for clearing by a Relief DCO.
- (d) Relief DCO Clearing Swap: Any swaps created pursuant to the rules of a Relief DCO between a Relief DCO and Relief DCO Counterparty.
- (e) Relief ITBC Swap: Any swap which, at the time it is executed, is intended by the counterparties to be cleared by a Relief DCO.

## II. **Background**

On June 27, 2016, the Commission published its final rule on Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (the "Cleared Swap Rule").<sup>3</sup> The Cleared Swap Rule amended Part 45 of the Commission's regulations to clarify certain reporting obligations, including the obligations for DCOs to (a) report the termination of swaps accepted for clearing by the DCO (defined as "original swaps" and known in the industry as "alpha swaps");<sup>4</sup> (b) report creation data and continuation data for swaps to which the DCO is a counterparty (defined as "clearing swaps")<sup>5</sup>; and (c) generate the unique swap identifier ("USI") for each clearing swap and transmit that USI to the DCO's counterparty.<sup>6</sup> The original compliance date for provisions amended by the Cleared Swap Rule was December 27, 2016.<sup>7</sup>

The Cleared Swap Rule defined "derivatives clearing organization" exclusively as a DCO registered with the Commission.<sup>8</sup> Because a Relief DCO would not be a "derivatives clearing organization" for purposes of the Cleared Swap Rule, a swap accepted for clearing by a Relief DCO would not be an "original swap" under § 45.4. Therefore, the obligation to terminate the Relief DCO Original Swap would not fall to the Relief DCO. Further, Relief DCO Clearing Swaps would not be considered "clearing swaps" for purposes of the Cleared Swap Rule. As a result, reporting obligations for Relief DCO Clearing Swaps may fall to the Relief DCO

---

<sup>3</sup> 81 FR 41736 (June 27, 2016).

<sup>4</sup> § 45.4(c).

<sup>5</sup> § 45.3(e) (creation data for clearing swaps); § 45.4(b) (continuation data for clearing swaps).

<sup>6</sup> § 45.5(d).

<sup>7</sup> The compliance date for all provisions amended by the Cleared Swap Rule, except for the removal of reporting obligations for valuation data on clearing swaps, was 180 days following publication of the release, which would have been December 24, 2016. However, because December 24, 2016 fell on a Saturday, and the following Monday was the federal holiday observing Christmas Day, the first business day for compliance was December 27, 2016.

<sup>8</sup> See § 45.1 ("derivatives clearing organization"). See also Cleared Swap Rule, 81 FR at 41739 (declining to extend the definition of "derivatives clearing organization" to include exempt DCOs).

Counterparty (either a swap dealer (“SD”), major swap participant (“MSP”), or non-SD/MSP counterparty) by operation of the reporting hierarchy under § 45.8.

While not subject to reporting obligations imposed on registered DCOs under the Cleared Swap Rule, the exemptive and no-action relief granted to Relief DCOs requires Relief DCOs to fulfill many of the same obligations. As noted above, there are currently four DCOs acting under exemptive orders issued by the Commission<sup>9</sup> and an additional DCO, Shanghai Clearing House, acting pursuant to no-action relief from DCR (“Shanghai NAL”).<sup>10</sup>

Each of the exemptive orders includes the following requirement:

(10) Swap Data Recordkeeping and Reporting Requirements. If a clearing member clears through [Relief DCO] a swap that has been reported to a Commission-registered swap data repository (“SDR”) pursuant to Part 45 of the Commission’s regulations, then [Relief DCO] must report to an SDR, pursuant to this Order, data regarding the two swaps resulting from the novation of the original swap that had been submitted to [Relief DCO] for clearing. [Relief DCO] must also report the termination of the swap accepted for clearing by [Relief DCO], to the SDR to which the swap was originally reported. In order to avoid duplicative reporting for such transactions, [Relief DCO] shall have rules that prohibit the Part 45 reporting of the two new swaps by the original counterparties to the original swap.<sup>11</sup>

While the exemptive orders and Shanghai NAL place certain reporting obligations on the Relief DCOs, neither the exemptive orders nor Shanghai NAL provide any relief to the Relief DCO Counterparty for any reporting obligations.

The Cleared Swap Rule’s definition of “derivatives clearing organization” also impacts certain data elements that must be reported for Relief ITBC Swaps. Part 45 of the Commission’s regulations requires certain primary economic terms (“PET”) data to be reported for every swap. Two PET data fields, “Clearing indicator” and “Clearing venue,” reference derivatives clearing organizations.<sup>12</sup> As Relief DCOs would not be “derivatives clearing organizations” for purposes of those data fields, absent relief any entity reporting a Relief ITBC Swap should indicate that the swaps are not intended to be cleared under the terms of the Cleared Swap Rule.

Additionally, Part 43 of the Commission’s regulations requires certain data to be reported for every publicly reportable swap transaction, including whether the swap is “Cleared or Uncleared” with a “derivatives clearing organization.”<sup>13</sup> The term “derivatives clearing organization” is not defined in Part 43 of the Commission’s regulations. Division staff notes that

---

<sup>9</sup> ASX Clear (Futures) Pty Limited, Japan Securities Clearing Corporation, Korea Exchange, Inc., and OTC Clearing Hong Kong Limited.

<sup>10</sup> See CFTC Letter No. 16-56 (May 31, 2016), available at <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/16-56.pdf>.

<sup>11</sup> See, e.g., <http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/asxclearamdorderdcoexemption.pdf> (ASX exemptive order). The Shanghai NAL includes similar language.

<sup>12</sup> See Appendix 1 to Part 45.

<sup>13</sup> See Appendix A to Part 43.

confusion could potentially arise in regards to whether a Relief ITBC Swap is “Cleared or Uncleared” for the purposes of reporting pursuant to Part 43 of the Commission’s regulations.

### **III. Requested Relief**

ISDA originally requested two types of no-action relief regarding reporting obligations for counterparties facing Relief DCOs.<sup>14</sup> ISDA has now requested an extension of the relief provided in CFTC Letter 16-85.

First, ISDA requested that reporting counterparties that are neither DCOs nor central counterparties be relieved of the following reporting obligations:

1. Reporting swap continuation data for alpha swaps that have been accepted for clearing by a Relief DCO;<sup>15</sup>
2. Reporting any creation data and continuation data for swaps resulting from novation of an alpha swap accepted for clearing by a Relief DCO, as well as any related swaps which may be entered into as part of post-trade activities including netting or compression exercises or novations; and
3. Generating USIs for swaps created through the process of clearing a swap with a Relief DCO.

ISDA noted that the exemptive orders and Shanghai NAL both include provisions requiring the Relief DCOs to fulfill the obligations to terminate the Relief DCO Original Swaps and to report all creation and continuation data on Relief DCO Clearing Swaps.

Second, ISDA requested that reporting counterparties be allowed to report the “Clearing indicator” and “Clearing venue” PET data fields for swaps intended to be cleared by a Relief DCO as if those swaps would be cleared by a registered DCO. ISDA has represented to the Division that it would be simpler and more efficient for reporting entities to design systems that treat all original swaps in the same manner, whether intended to be cleared with Commission-registered DCOs or Relief DCOs.

Division staff notes that this relief would also be relevant to reporting entities other than the counterparties to a Relief DCO Original Swap, such as swap execution facilities (“SEFs”) and designated contract markets (“DCMs”). Division staff also notes the potential for confusion regarding the proper reporting of the “Cleared or Uncleared” indicator to be reported under Part 43 of the Commission’s regulations for a swap intended to be cleared by a Relief DCO.

The Division provided relief in response to ISDA’s original request in CFTC Letter 16-85 on December 19, 2016. The relief provided in CFTC Letter 16-85 expired on January 31, 2018.

---

<sup>14</sup> See letter from Tara Kruse, Co-Head, Reporting & FpML, ISDA, to Vincent McGonagle, Director, CFTC Division of Market Oversight, dated December 1, 2016.

<sup>15</sup> ISDA requested certain relief relating to swaps intended to be cleared with central counterparties exempted by the Commission (“Exempt DCOs”) and central counterparties that received no-action letters from DCR (“No-Action DCOs”). The Division has combined these two types of central counterparties as “Relief DCOs” for purposes of CFTC Letter 16-85 and this letter.

ISDA has now requested that the Division renew identical relief, for the same reasons that prompted the initial relief request: to provide certainty as to the obligations to report data related to swaps for the relevant market participants and to resolve the potentially conflicting reporting obligations of Relief DCOs and Relief DCO Counterparties. In order to continue to provide certainty and resolve the potentially conflicting obligations, the Division will extend the relief originally provided in CFTC Letter 16-85 as follows.

#### **IV. Time Limited No-Action Relief**

##### *A. Certain Reporting Obligations*

Based on the facts presented and the representations that ISDA has made, the Division grants time-limited no-action relief to Relief DCO Counterparties, solely from the following reporting obligations:

- a. Reporting continuation data pursuant to § 45.4 on Relief DCO Original Swaps after the acceptance of such Relief DCO Original Swaps for clearing by the Relief DCO, including reporting the termination of the Relief DCO Original Swap;
- b. Reporting creation data pursuant to § 45.3 and continuation data pursuant to § 45.4 on Relief DCO Clearing Swaps;
- c. Generating USIs for Relief DCO Clearing Swaps pursuant to § 45.5.

This relief is subject to the condition that the Relief DCO Counterparty must provide to the Relief DCO all information on the Relief DCO Original Swap required by the Relief DCO in its clearing agreement.

For Relief DCO Original Swaps and Relief DCO Clearing Swaps, the relief granted in this section will continue until the earlier of (a) February 19, 2021; (b) the effective date of any Commission regulation altering the reporting obligations of any entities with respect to the reporting of Relief DCO Original Swaps or Relief DCO Clearing Swaps; or (c) the revocation or expiration of the exemptive order or no-action letter issued to the relevant Relief DCO. Relief DCO Counterparties retain all other reporting obligations for which they are responsible under Parts 43 and 45 of the Commission's regulations, and would be relieved of no obligations if the Relief DCO rejects the swap for clearing.

##### *B. Certain Reporting Data Fields in Parts 43 and 45*

Based on the facts presented and the representations that ISDA has made, the Division grants time-limited no-action relief to entities reporting Relief ITBC Swaps<sup>16</sup> with respect to the reporting of the PET data elements "Clearing indicator" and "Clearing venue," pursuant to Part 45 of the Commission's regulations. The Division will not recommend enforcement action against an entity reporting Relief ITBC Swaps for identifying such swaps as intended to be

---

<sup>16</sup> ISDA's relief request on the PET fields related to swaps intended to be cleared with a Relief DCO. Should the Relief DCO reject such swaps from clearing, the swaps would not be "Relief DCO Original Swaps" under the terms of this letter. Therefore, the Commission uses the term Relief ITBC Swaps to clarify that the relief relating to data fields would apply even if the Relief DCO rejects the swap for clearing.

cleared in the “Clearing indicator” PET data field, or for identifying the LEI of the Relief DCO in the “Clearing venue” PET data field.

In order to avoid any potential confusion over the requirements to report certain data fields for Relief ITBC Swaps pursuant to Part 43 of the Commission’s regulations, the Division also clarifies that it will not recommend enforcement action against an entity reporting Relief ITBC Swaps for identifying such swaps as intended to be cleared in the “Cleared or Uncleared” data field to be reported pursuant to Part 43.

This relief is subject to the condition that the entity reporting a Relief ITBC Swap must populate all “Clearing indicator” PET fields in Part 45 reporting, and all “Cleared or Uncleared” fields in Part 43 reporting, for all swaps intended to be cleared through the relevant Relief DCO. To comply with this relief, the entity reporting such swap must report all swaps intended to be cleared by a particular Relief DCO as being intended for clearing in both Part 43 and Part 45 reporting.

This relief is subject to the additional condition that the entity reporting a Relief ITBC Swap must report the LEI of the relevant Relief DCO with all Part 45 reports for all swaps intended to be cleared with that Relief DCO.

For all Relief ITBC Swaps, the relief granted in this section will continue until the earlier of (a) February 19, 2021; (b) the effective date of any Commission regulation altering or amending the “Clearing indicator” or “Clearing venue” PET data fields in Part 45 of the Commission’s regulations, or the “Cleared or Uncleared” data field in Part 43 of the Commission’s regulations; or (c) the revocation or expiration of the exemptive order or no-action letter issued to the relevant Relief DCO.

Market participants should be aware that the no-action positions taken herein do not excuse affected persons from compliance with any other applicable requirements of the CEA or the Commission’s regulations thereunder, in particular, the applicable swap reporting requirements and clearing requirements.<sup>17</sup> This letter, and the no-action positions taken herein, represent the views of the Division only, and do not necessarily represent the positions or views of the Commission or of any other division or office of the Commission’s staff. As with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate or otherwise restrict the terms of the no-action relief provided herein, at its discretion.

---

<sup>17</sup> The applicable swap reporting requirements are set forth under Parts 43, 45, 46, and 50 of the Commission’s regulations. The applicable clearing requirements are set forth under CEA section 2(h)(1) and Part 50 of the Commission’s regulations.

If you have any questions concerning this correspondence, please contact Daniel Bucsa, Deputy Director, Division of Market Oversight, at (202) 418-5435 or [dbucsa@cftc.gov](mailto:dbucsa@cftc.gov), or Benjamin DeMaria, Special Counsel, Division of Market Oversight, at (202) 418-5988 or [bdemaria@cftc.gov](mailto:bdemaria@cftc.gov).

Sincerely,

Amir Zaidi  
Director  
Division of Market Oversight