



## U.S. COMMODITY FUTURES TRADING COMMISSION

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### Division of Market Oversight

CFTC Letter No. 12-59  
No-Action  
December 19, 2012  
Division of Market Oversight

Mr. Robert G. Pickel  
Chief Executive Officer  
International Swaps and Derivatives Association, Inc.  
1001 Pennsylvania Avenue, NW, Suite 600  
Washington, D.C. 20004

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

Dear Mr. Pickel,

On December 13, 2012 the International Swaps and Derivatives Association, Inc. (“ISDA”), on behalf of its members, and similarly situated persons, that intend to register as Swap Dealers (“SDs”) and Major Swap Participants (“MSPs”), sent a letter to the Division of Market Oversight (“Division”) of the Commodity Futures Trading Commission (“Commission”) requesting no-action relief. ISDA requested that the Division state that it will not recommend that the Commission take enforcement action against SDs and MSPs that do not comply with reporting obligations for certain off-facility swaps that do not exist prior to the time they are accepted for clearing.

As discussed below, the proposed relief would grant SDs and MSPs no-action relief from the reporting obligations under part 45 of the Commission’s regulations for 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”), subject to the conditions of this letter.

#### Factual Background and Request for No-action Relief

ISDA has more than 800 members, representing a broad range of OTC derivatives market participants including, among others, international and regional banks, asset managers, energy commodities firms, government and supranational entities, insurers and diversified financial

institutions, exchanges, clearinghouses and other service providers. ISDA requests no-action relief pursuant to regulation 140.99 of the Commission's regulations on behalf of its members and other similarly-situated persons with obligations under part 45, with regard to reporting CDS Clearing-Related Swaps.

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 CDS<sup>1</sup> have unique policies and procedures in place to ensure accurate and reliable end-of-day pricing for cleared CDS products.<sup>2</sup> 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 letter, this settlement price process is referred to as the "CDS Settlement Price Process."

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.

ISDA requests that the Commission grant no-action relief for SDs and MSPs with respect to their reporting obligations under part 45 for those CDS Clearing-Related Swaps that SDs or MSPs are required to enter into pursuant to DCO rules. ISDA represents that two DCOs have indicated their willingness to accept responsibility for reporting CDS Clearing-Related Swaps pursuant to part 45. ISDA requests relief until such time as the Commission promulgates a rule specifically addressing CDS Clearing-Related Swaps.

#### Applicable Regulatory Requirements and Analysis

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")<sup>3</sup> added to the Commodity Exchange Act ("CEA")<sup>4</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> See, e.g., ICE Clear Europe Clearing Rules 401(a)(xi) and 503(g); and ICE Clear Europe's CDS Procedures Paragraph 8.

<sup>3</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>4</sup> 7 U.S.C. §§ 1, *et seq.*

repository (“SDR”). New CEA Section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.

Pursuant to these new provisions of the CEA, the Commission adopted implementing regulations under part 45 of its regulations, which establishes swap data recordkeeping and SDR reporting requirements.<sup>5</sup> 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.”<sup>6</sup> 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 registered DCO.<sup>7</sup> SDs and MSPs also are required to report valuation data for all swaps for which they are the reporting counterparty.<sup>8</sup>

Absent relief, the initial compliance date applicable for reporting under part 45 is December 31, 2012 for SDs, and for MSPs, February 28, 2013.<sup>9</sup>

#### Grant of Time-Limited No-Action Relief

Based on the facts and circumstances described by ISDA, the Division will not recommend that the Commission take enforcement action against a reporting counterparty<sup>10</sup> 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 registered DCO that is eligible to clear CDS indices and must participate in that DCO’s CDS Settlement Price Process.
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.

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<sup>5</sup> 76 Fed. Reg. 2197 (Jan. 13, 2012).

<sup>6</sup> 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.

<sup>7</sup> 17 C.F.R. § 45.3(b)(1); (c)(1)(i), (c)(2)(i).

<sup>8</sup> 17 C.F.R. § 45.4(b)(2)(ii).

<sup>9</sup> Part 45 became effective on March 13, 2012. The applicable compliance date is as described in the Federal Register release issuing the part 45 rules, subject to any additional no-action letter or other guidance provided by the Division or the Commission. *See* 76 Fed. Reg. 2197.

<sup>10</sup> 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 all SDs and MSPs that are reporting counterparties for purposes of part 45.

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 June 30, 2013.<sup>11</sup>

This letter, and the no-action position taken herein, represent the views of the Division 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. Because this position is based upon the representations contained in ISDA's letter, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter no-action void. Finally, 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, in its discretion.

If you have any questions concerning the content of this staff no-action letter, please contact Nadia Zakir, Associate Director, at (202) 418-5720.

Sincerely,

Rick Shilts  
Acting Director

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<sup>11</sup> 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.