

April 27, 2016

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Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW.  
Washington, DC 20581

**Re: Request for Extension of No-Action Relief Provided in CFTC Letter No. 15-48**

Ladies and Gentlemen:

The International Swaps and Derivatives Association, Inc. (ISDA)<sup>1</sup> is writing to request extension of the no-action relief provided in CFTC Letter No. 15-48<sup>2</sup> for transaction-level requirements for certain transactions of non-U.S. swap dealers.

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<sup>1</sup> Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members comprise a broad range of derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure, such as exchanges, intermediaries, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: [www.isda.org](http://www.isda.org).

<sup>2</sup> CFTC Letter No. 15-48, Extension of No-Action Relief: Transaction-Level Requirements for Non-U.S. Swap Dealers (August 13, 2015), available at: <http://www.cftc.gov/idc/groups/public/@lrllettergeneral/documents/letter/15-48.pdf>.

On November 14, 2013, the CFTC issued Staff Advisory No. 13-69<sup>3</sup> that would require non-U.S. swap dealers to comply with the transaction-level requirements outlined in the CFTC Cross-Border Guidance<sup>4</sup> if such non-U.S. swap dealers regularly use personnel or agents located in the United States to arrange, negotiate or execute swap transactions with non-U.S. persons.<sup>5</sup> The CFTC has helpfully issued no-action relief with respect to these requirements in a series of no-action letters, the last of which was CFTC Letter No. 15-48,<sup>6</sup> which extended no-action relief until the earlier of: (1) September 30, 2016; or (2) the effective date of any CFTC action addressed in response to the CFTC's request for comment regarding Staff Advisory No. 13-69.<sup>7</sup>

On January 3, 2014, the CFTC requested comment on all aspects of Staff Advisory No. 13-69. As of today, the CFTC is still considering the comments and has not publicly addressed them.

While the Commission continues to consider a policy approach relating to the matters addressed in Staff Advisory No. 13-69, and for some reasonable implementation period following the issuance of any such policy approach, we respectfully request that the Commission allow non-US swap dealers to continue to rely on the no-action relief provided in CFTC Letter No. 15-48. As we have noted in our prior submissions, reorganizing non-U.S. swap dealers' internal policies and procedures and numerous, complex operational workflows to meet the requirements of Staff Advisory No. 13-69 will be difficult and costly, and will involve months of planning and effort.

Given that, because the no-action relief provided in Staff Letter 15-48 will expire in just over five months, non-U.S. swap dealers must again immediately focus on the essential planning and work that would be required to comply with Staff Advisory should the Commission choose to

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<sup>3</sup> CFTC Staff Advisory No. 13-69, Division of Swap Dealer and Intermediary Oversight Advisory: Applicability of Transaction-Level Requirements to Activity in the United States (Nov. 14, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>.

<sup>4</sup> The CFTC Cross-Border Guidance defines transaction-level requirements to include: (i) required clearing and swap processing; (ii) margining (and segregation) for uncleared swaps; (iii) mandatory trade execution; (iv) swap trading relationship documentation; (v) portfolio reconciliation and compression; (vi) real-time public reporting; (vii) trade confirmation; (viii) daily trading records; and (ix) external business conduct standards. 78 Fed. Reg. 144 (July 26, 2013) at 45333.

<sup>5</sup> CFTC Staff Advisory No. 13-69, Division of Swap Dealer and Intermediary Oversight Advisory: Applicability of Transaction-Level Requirements to Activity in the United States (Nov. 14, 2013), available at <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-69.pdf>.

<sup>6</sup> CFTC Letter Nos. 13-71, 14-01 and 14-74, 14-140, 15-48 the last of which is scheduled to expire on September 30, 2016.

<sup>7</sup> See Request for Comment on Application of Commission Regulations to Swaps between Non-U.S. Swap Dealers and Non-U.S. Counterparties Involving Personnel or Agents of the Non-U.S. Swap Dealers Located in the United States, 79 Fed. Reg. 1347 (Jan. 8, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-01-08/pdf/2014-00080.pdf>.

allow the existing no-action relief to expire with no further action. That said, to require non-U.S. swap dealers to make significant investment in planning, systems and technologies today based on the Staff Advisory and an expiring Staff No-Action Letter, and not on a final Commission policy determination, would result in great deal of uncertainty, cost and disruption without advancing identifiable Commission policy objectives.

Given the high level of uncertainty that exists in the face of soon-to-expire time-limited no-action relief, the long-time frame required for compliance and the absence of a final Commission policy determination, we believe that the Commission should immediately issue no-action relief that is not time-limited, but that expires on a specified compliance date associated with a final Commission policy determination (similar to the no-action relief provided in Staff Letters 15-15 and 15-65)<sup>8</sup>. This approach would result in a more efficient and orderly process because it is only after the Commission addresses the comments received in response to its January 2014 Comment Request, finalizes its policy on these issues and provides for an appropriate implementation period that compliance with a final Commission policy can reasonably be expected.

For the foregoing reasons, we request that the Divisions extend the no-action relief provided in CFTC Letter No. 15-48 and provide for a phased-in compliance period following the issuance of a final Commission policy.

Sincerely,



Bella Rozenberg

Senior Counsel/Head of Regulatory and Legal Practice Group

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<sup>8</sup> As we have noted in our prior submissions, to the extent that the CFTC decides to adopt any approach on this topic, we believe it is critical that the Commission articulate its cross-border policy through a rulemaking process, subject to the requirements of the Administrative Procedure Act (See 5 U.S.C. § 553(b)(requiring federal agencies to publish, prior to promulgating a rules, a notice of proposed rulemaking and give interested persons an opportunity to comment) and the cost-benefit analysis requirements under the Commodity Exchange Act (CEA § 15(a)).