



# **Implementing Dodd-Frank: The CFTC's Moderating Actions, as of December 16, 2012 – ISDA's Requests**

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# ISDA's Requests – Business Conduct Rules

- Deferral of compliance dates for swap trading relationship documentation and portfolio reconciliation rule – [deferral to July 1, 2013](#)
- Deferral of compliance date for external business conduct rules covered in ISDA August DF Protocol – [deferral to May 1, 2013](#)
- Deferral of compliance dates for confirmation rule for paper-confirmed swaps – pending
- Pre-trade mid-market mark deemed available for certain liquid classes of interest rate and credit swaps – pending

# ISDA's Requests - Reporting

- Deferral of compliance date for equity, FX and other commodity swaps – [CFTC Letters 12-32 and 12-41](#)
- Masking of counterparty identity in trade reporting when non-US privacy law conflicts are present – [CFTC Letter 12-46](#)
- Reporting of bespoke or complex swaps – [CFTC Letter 12-39](#)
- Compliance with “single -SDR” rule when first report is made by the CCP - [CFTC Letter 12-55](#)

# ISDA's Requests - Reporting (cont'd) and Registration

- Timing of swap allocation reports when swap dealer (“SD”) and asset manager are in different jurisdictions – CFTC letter 12-50
- Allocation of reporting responsibilities between prime broker and executing dealer for swap prime brokerage – CFTC Letter 12-53
- Clearing-created swaps – pending
- Swap dealer registration in connection with wind down of legacy swaps – pending

# SD Registration and Business Conduct Timing

- Registration deadline for SDs that exceed de minimis threshold in October – December 31, 2012 (see [CFTC staff press release, September 10, 2012](#))
- Exclusion of swaps with certain “non-US” persons from SD de minimis and MSP thresholds, through December 31 ([NAL 12-22](#))
- External Business Conduct – January 1, 2013 compliance date for SDs required to register by that date, except that certain requirements (including daily mark, anti-fraud and fair and balanced communications) apply upon earlier registration ([deferral to May 1, 2013](#))
- Trading relationship documentation – compliance dates staged by counterparty category: ([deferral to July 1, 2013](#))
- Confirmation rule – compliance upon SD registration, if after November 13, 2012 (*ISDA NAL request pending* for paper-confirmed trades); phasing in of progressively shorter timeframes between execution and confirmation

# SD Business Conduct NALs

- Pre-trade mid-market mark for highly liquid interest rate and credit swaps (*ISDA interpretive/NAL request pending*)
- Pre-trade mid not required for certain physically-settled, short-term FX forwards, swaps and vanilla options on BIS 13 currencies, subject to real-time electronic availability of tradable bids and offers and counterparty written consent; without fixed expiry date ([NAL 12-42](#))
- Additional time to comply with requirements for recordkeeping on pre-execution oral communications, identification and searchability, and certain other aspects of daily trading records; through March 31 ([NAL 12-29](#))

# Swap Reporting - Background

- Part 43 – real-time public reporting
- Part 45 – swap data reporting and recordkeeping
- Part 46 – historical swaps
- Part 20 – large-trader reporting

# Swap Reporting – Compliance Date NALs

- Part 43 and 45 SD reporting of credit and interest rate swaps
  - ❖ Original compliance date upon SD registration filing
  - ❖ Now December 31, 2012 reporting start date (See [NAL 12-32](#), decoupling reporting start date from SD registration.)
- Part 46 SD reporting of historical credit and interest rate swaps
  - ❖ Originally same as Part 45
  - ❖ Now January 30, 2012 (See [NAL 12-32](#), responding to ISDA concerns regarding large volume of historical swaps)
- Part 43 and 45 SD reporting of equity, FX and other commodity swaps
  - ❖ Originally January 10, 2013
  - ❖ Now February 28, 2013 (See [NAL 12-41](#), deferring compliance date due to effects of Hurricane Sandy, year-end code freezes. ISDA/GFXD request)
- Part 46 SD reporting of historical equity, FX and other commodity swaps
  - ❖ March 30, 2013 (See [NAL 12-41](#))



# Swap Reporting – Other NALs

- Bespoke or complex swaps ([NAL 12-39](#), response to ISDA)
  - ❖ No-action relief for failure to report certain data elements that currently are not represented electronically in FpML
  - ❖ “Bespoke or complex swap”: not listed on a DCM; not available to be traded on a SEF; not eligible to be cleared by a DCO; and not represented in FpML
  - ❖ Specifically lists “Unrepresented Part 43 Fields” and “Unrepresented Part 45 Fields”
  - ❖ Part 45 confirmation data for uncleared inter-affiliate swaps for which paper confirmations are not generated
  - ❖ Applies until earlier of June 30, 2013 or time when the relevant data elements can be electronically represented in FpML

## Swap Reporting – Other NALs (cont'd)

- Timing of allocations by agents (e.g., asset managers) in a different jurisdiction than the reporting counterparty (e.g., SD) ([NAL 12-50](#), response to ISDA)
  - ❖ Rule 45.3(e)(ii) - Eight business hours after execution in location of the reporting counterparty
  - ❖ NAL relief for “Cross-jurisdiction Allocation Swaps” (> 4 hours time zone difference) – 48 business hours in location of the reporting counterparty plus an additional 24 business hours for each day of legal holiday in agent’s jurisdiction
  - ❖ Subject to agent recordkeeping requirements
  - ❖ Expires no later than 12:01 a.m. eastern daylight time June 30, 2013

## Swap Reporting – Other NALs (cont'd)

- SDs and MSPs not required to report cleared swap valuation data under regulation 45.4(b)(2)(ii) until expiry of relief on June 30, 2013 (See [NAL 12-55](#), responding to ISDA concerns that market participants may lack data connections to the SDR to which the derivatives clearing organization reports the swap)
- The application of Parts 43 and 45 to prime-brokered swaps is not entirely clear and raises practical difficulties.
  - ❖ [NAL 12-53](#) (responding to FMLG and ISDA) addresses the allocation of reporting responsibilities between the PB and ED, the timing of the PB's Part 45 reporting of the offsetting swap and the inclusion in that report of the Unique Swap Identifier ("USI") of the related ED-PB swap. Part 43 (real-time) reporting of the PB's offsetting swap is excused in many instances.
  - ❖ Conditions include that each of the PB and ED is a registered SD
  - ❖ Expires on or before June 30, 2013 (or for the USI relief earlier time when the needed functionality is built)

# Swap Reporting – Data Privacy (NAL 12-46, response to ISDA)

- Time-limited relief permits masking in Party 45 and 46 reports of non-reporting party LEI, identity of non-reporting party in specifically listed fields and, in limited circumstances, certain other terms that the reporting party reasonably believes would identify the non-reporting party
- Also covers Rule 45.3 confirmation images that include the covered identifying information and would otherwise need to be manually redacted
- Requires reasonable belief based on written outside counsel opinion that:
  - ❖ Statutory or regulatory prohibition precludes reporting; or
  - ❖ Common law could expose the reporting party to civil or criminal liability and (based on reporting party determination) material risk that the non-reporting party or regulatory authority may initiate litigation

## Swap Reporting – Data Privacy (cont'd)

- Reporting party has not yet obtained non-reporting party consent or relevant non-US regulatory authorization, as applicable
- Requires reasonable and demonstrable efforts (including direct efforts) to obtain non-reporting party consent or regulatory authorization, as applicable
- Other conditions include recordkeeping, inclusion of “Privacy Law Identifier” and correction of reports no later than 30 days following expiration of relief
- Expires on earlier of (i) obtaining consent or regulatory authorization, as applicable, (ii) reporting party no longer holds reasonable belief or (iii) 12:01 a.m. eastern daylight time on June 30, 2013