

October 11, 2016

Mr. Christopher Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for Commission Action – Part 50

Dear Mr. Kirkpatrick:

The International Swaps and Derivatives Association, Inc. (“**ISDA**”),¹ on behalf of its members and other market participants that engage in inter-affiliate swaps, is writing to request that the Commodity Futures Trading Commission (the “**Commission**”) exercise its authority pursuant to section 4(c) and other applicable provisions of the Commodity Exchange Act (“**CEA**”) to extend existing relief from certain conditions of the exemption from clearing for certain inter-affiliate swaps pursuant to Commission Regulation 50.52 (the “**Inter-affiliate Clearing Exemption**”).

Specifically, we request that the Commission allow market participants relying on the Inter-affiliate Clearing Exemption to comply with the conditions set forth in paragraph (b)(4)(ii) or (iii) of Regulation 50.52 for an additional period of time, beyond the December 31, 2016 expiration date of relief provided pursuant to CFTC Letter No.15-63, in lieu of complying with the “outward-facing clearing” condition set forth in paragraph (b)(4)(i) of regulation 50.52. The relief provided under CFTC Letter No. 15-63 should be extended by further no-action relief in order to allow time for the Commission to evaluate whether mandatory clearing obligations implemented in other jurisdictions are comparable and comprehensive to CFTC clearing requirements.

¹ Since 1985, ISDA has worked to make the global derivatives markets safer and more efficient. Today, ISDA has over 800 member institutions from 68 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, clearing houses 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.

Background

In April 2013, the Commission exercised its Section 4(c) authority to promulgate the Inter-affiliate Clearing Exemption based on the Commission's findings that the exemption is appropriate for the transactions at issue, promotes responsible financial innovation and fair competition, and is consistent with the public interest.² As one of the conditions of the exemption, each "eligible affiliate counterparty" that enters into a swap that is subject to the Commission's clearing mandate under section 2(h) of the CEA with an unaffiliated counterparty must (i) comply with the mandate or with an exception under section 2(h)(7) of the CEA, (ii) comply with a foreign jurisdiction's clearing mandate that the Commission has determined is comparable to, and as comprehensive as, the Commission's mandate, or with an exception from such mandate that the Commission has determined is comparable to the exceptions under section 2(h)(7) of the CEA, or (iii) clear the swap through a registered derivatives clearing organization or a clearing organization that is subject to supervision by appropriate government authorities in its home country and has been assessed to be in compliance with the Principles for Financial Market Infrastructures.

In response to concerns that the outward-facing clearing condition should have a transition period to allow other jurisdictions to implement their own G-20 clearing mandates and that adverse competitive effects on U.S.-based groups would result if the condition were imposed before other jurisdictions' mandates were implemented,³ the Commission made available, until March 11, 2014, alternative compliance mechanisms under paragraphs (b)(4)(ii) and (iii) of Regulation 50.52.⁴

The March 11, 2014 sunset date for the alternative compliance mechanisms was subsequently extended through a number of no-action letters to December 31, 2016.⁵ In granting this relief, DCR took note of the difficulties cited by market participants in meeting the requirements of the outward-facing clearing condition because the Commission had not yet announced that any non-U.S. jurisdiction had promulgated a comparable and comprehensive clearing requirement. Further, DCR recognized the

² 78 Fed. Reg. 21750, 21754 (April 11, 2013).

³ 78 Fed. Reg. 21778.

⁴ These alternatives require the payment and collection of daily variation margin, either within the affiliated group or from unaffiliated counterparties, except as provided in paragraph (b)(4)(ii)(B) in the case of certain non-financial groups. The alternative under paragraph (b)(4)(ii) applies, without quantitative limitations, with respect to eligible affiliate counterparties in the EU, Japan or Singapore. The alternative under paragraph (b)(4)(iii) applies, subject to a quantitative limit based on aggregate notional value, with respect to swaps between an eligible affiliate counterparty located in the United States and other eligible affiliate counterparties located in jurisdictions other than the United States, EU, Japan or Singapore. Adjustments to this aggregate notional limitation may be appropriate in light of future extensions of the clearing mandate to new product classes. ISDA is considering this issue and may raise it with Commission staff in future discussions.

⁵ CFTC NAL No. 14-135, <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/14-135.pdf>, and CFTC NAL 15-63, <http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-63.pdf>.

benefits of additional time for an orderly transition period with regard to the timing and sequencing issues associated with the implementation of mandatory clearing regimes in non-U.S. jurisdictions, some of which are already in effect or are about to come into effect, as outlined by the Commission in the final rules recently issued to expand the Commission's interest rate swap clearing mandate.

Discussion

As a general matter, ISDA strongly supports the Commission's efforts to harmonize derivatives regulations across jurisdictions. In particular, we appreciate the Commission's engagement with European regulators to formulate a common approach for transatlantic CCPs. However, ISDA submits that as other jurisdictions now begin to implement their own mandatory clearing obligations, it's important to extend the relief for inter-affiliate trades until such time when the Commission makes a comparability determination for these jurisdictions. Continued relief is essential in ensuring that counterparties efficiently and effectively mitigate credit risk, a primary purpose behind inter-affiliate swaps.

Extending the period of availability of the alternative compliance mechanisms would also help forestall market uncertainty as the expiration of the current no-action relief is fast approaching. As it is not possible to predict the precise timing of when the Commission will be able to make the requisite comparability determinations or when access to clearing will be widespread enough to enable an orderly transition to the application of the outward-facing clearing condition in non-U.S. jurisdictions, ISDA suggests that the end of calendar year 2017 is an appropriate expiration date for the extended relief, subject to any earlier announcement by the Commission that it has made the requisite comparability determinations.

This date presents a prospect that the implementation timing for market-wide mandatory clearing can be judged with greater certainty, especially in significant non-U.S. markets. This expiration date, of course, may need to be reassessed in the future, and further extensions may be warranted, in particular to accommodate phase-in schedules for non-financial counterparties.⁶

Accordingly, ISDA requests that the Commission extend the availability of the alternative compliance mechanisms contained in paragraphs (b)(4)(ii) and (iii) of Regulation 50.52 until the earlier of (i) December 31, 2017 or (ii) with respect to a particular jurisdiction, 90 days after the date on which the Commission announces that it has made the comparability determinations contemplated in paragraph (b)(4)(i). In addition, the relief provided under CFTC Letter No. 15-63 should be extended by further no-action relief in order to allow time for Commission action and to forestall market uncertainty as the letter's currently scheduled expiration date nears.

⁶ See, e.g., *id.* at 54 (proposed three-year phase-in period for certain non-financial counterparties).

Thank you for your consideration of these concerns. Please do not hesitate to contact me or ISDA staff if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Bella Rozenberg". The signature is written in a cursive style with a large, prominent initial "B".

Bella Rozenberg

Senior Counsel/Head of Regulatory and Legal Practice Group

Certification Pursuant to Commission Regulation 140.99(c)(3)

As required by Commission Regulation 140.99(c)(3), I hereby (i) certify that the material facts set forth in the attached letter dated October 11, 2016 are true and complete to the best of my knowledge; and (ii) undertake to advise the Commission, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,

A handwritten signature in cursive script that reads "Bella Rozenberg".

Bella Rozenberg

Senior Counsel/Head of Regulatory and Legal Practice Group