

December 6, 2016

ISDA Responses to CFTC Questions on Inter-Affiliate Clearing Exemption

1. Do ISDA members currently relying on the alternative compliance framework of regulation 50.52(b)(4)(ii) typically comply with subparagraph (1) (pay and collect variation margin on swaps with unaffiliated counterparties), or do they typically comply with subparagraph (2) (pay and collect variation margin on all swaps with other eligible affiliate counterparties)? We note that the no-action letter issued yesterday (CFTC Letter 16-81), consistent with the prior no-action letters, requires eligible affiliate counterparties to maintain documentation regarding compliance with the conditions of the no-action letter. Referring to such documentation may be useful in better understanding how market participants have relied on the alternative compliance framework and plan to rely on the existing no-action letter relief.

Generally, variation margin is exchanged on swaps between eligible affiliate counterparties. This is also the case due to both the CFTC and Prudential Regulators' margin rules requiring swap dealers to exchange variation margin with their swap entity and financial end user affiliates. The compliance dates for variation margin was September 1, 2016 for some large swap dealers and is March 1, 2017, for all other swap dealers. Additionally certain transactions between swap dealers that are banks and their affiliates are subject to the Federal Reserve's Regulation W, which has collateralization requirements. .

2. Have eligible affiliate counterparties located in the five new clearing law jurisdictions (Australia, Canada, Hong Kong, Mexico, and Switzerland) previously relied on regulation 50.52 in connection with swaps that were covered by the CFTC's first clearing requirement issued in 2012? Please provide any relevant explanatory information regarding the use of the inter-affiliate exemption by eligible affiliate counterparties.

Yes. Eligible affiliate counterparties located in these jurisdictions previously relied on CFTC Rule 50.52 in connection with swaps covered by the first clearing requirement determination. However, given that the second clearing requirement determination applies to currency used in the jurisdictions listed above, a higher proportion of swaps transactions with the underlying currency of eligible affiliate counterparties located in these new clearing law jurisdictions will be subject to the clearing requirement. Eligible affiliate counterparties should be able rely on the s first alternative compliance framework.

3. To what extent have eligible affiliate counterparties relied upon the second alternative compliance framework of (i.e., the five percent test) under regulation 50.52(b)(4)(iii)? Please provide any relevant explanatory information regarding the use of this alternative compliance framework by eligible affiliate counterparties.

Eligible affiliate counterparties not located in the United States, the European Union, Japan, or Singapore have relied on the second alternative compliance framework for swaps subject to the first clearing requirement determination. As noted in our response to Question 2 above, the number of eligible affiliate counterparties not located in the United States, the European Union, Japan, or Singapore, as well as the number of swaps

transactions, that will need to rely on the second alternative compliance framework will increase under the second clearing requirement determination.

4. What is the scope of the swaps covered by ISDA's supplemental request? Would the swaps covered by possible supplemental staff-level action be limited to the interest rate swaps included in the CFTC's expanded clearing requirement issued in September 2016? Would the swaps covered by supplemental staff-level action include swaps that were covered by the CFTC's first clearing requirement issued in 2012?

The purpose of ISDA's supplemental request is to expand the scope of jurisdictions that would not count toward the 5% test calculation under regulation 50.52(b)(4)(iii). The choice of alternative compliance framework is dependent on the location of the eligible affiliate counterparty and not the product type, and thus we believe that providing relief based on counterparty location is generally consistent with the current regulatory framework and achieves a more practical result.

5. Would the swaps covered by ISDA's supplemental request be eligible for any exemption to an applicable non-U.S. clearing requirement for intragroup swaps? Please provide CFTC staff with any useful information about analogous non-U.S. intragroup exemptions from mandatory clearing.

The response to this question requires extensive analysis of the clearing requirements in different foreign jurisdictions. Given the forthcoming December 13, 2016 deadline for the first compliance date under the second clearing requirement determination, we ask that Commission staff issue no-action relief based on the information provided in this response. If necessary, we will submit additional information at a later time.

6. Would the swaps covered by ISDA's supplemental request be subject to the CFTC's uncleared margin requirement or to the uncleared margin requirements issued by one or more non-U.S. jurisdictions? Please provide any useful information regarding the interplay between the global implementation of margin for uncleared swaps and intragroup exemptions from mandatory clearing around the globe.

As discussed in our response to Question 4, the availability of the alternative compliance frameworks is dependent on the location of the eligible affiliate counterparty and not product type.

The specific requirements with respect to initial and variation margin for uncleared swaps will depend on whether the relevant U.S. eligible affiliate counterparty is subject to the CFTC or Prudential Regulators' margin rules. As noted in our response to Question 1 above, both rules require counterparties to exchange variation margin on uncleared swaps. In addition to being subject to U.S. margin rules, these swaps would likely also be subject to the margin rules of the jurisdiction in which the non-U.S. eligible affiliate counterparty is located.

7. How many ISDA members and how many members' affiliates are seeking to use the regulation 50.52(b)(4)(ii)'s alternative compliance framework for an eligible affiliate counterparty located in each of the five new clearing law jurisdictions? How many in each of the European Union, Japan, and Singapore? If possible, please identify the firms by legal entity identifier.

The response to this question requires extensive data research and analysis. Given the forthcoming December 13, 2016 deadline for the first compliance date under the second clearing requirement determination, we ask that Commission staff issue no-action relief based on the information provided in this response. If necessary, we will submit additional information at a later time.

8. Are there any eligible affiliate counterparties located in each of these eight jurisdictions that would be interested in staff-level no-action relief?

Yes. Eligible affiliate counterparties that transact in any swaps required to be cleared under either the first or second clearing requirement determination are interested in staff-level no-action relief. Some of these eligible affiliate counterparties transact in swaps covered by both the first and second clearing requirement determinations, and some only transact in swaps covered by the second clearing requirement determination.

9. By what date or dates would staff-level no-action relief need to be issued for the benefit of specified firms with regard to specific swaps?

The relief is necessary in light of the forthcoming December 13, 2016 deadline.