

September 25, 2014

Mr. Vincent McGonagle  
Director, Division of Market Oversight  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

**Re: Request for Division of Market Oversight Staff No-Action Letter Pursuant to CFTC Regulation 140.99: re: CDS Clearing-Related Swaps**

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc.<sup>1</sup> (“ISDA”) and its members recognize the importance of the Part 43 and Part 45 regulations (the “Reporting Rules”) and the Part 37 regulations of the Commodity Futures Trading Commission (the “Commission” or “CFTC”) and strongly support initiatives to increase regulatory transparency. ISDA, on behalf of its members that are “reporting parties” under Part 43<sup>2</sup> and “reporting counterparties” under Part 45<sup>3</sup> (collectively, “Reporting Parties”), is writing to request an extension and expansion of certain no-action relief issued pursuant to CFTC Letter No. 13-86<sup>4</sup> (“NAL 13-86”) with regards to the reporting of “CDS Clearing-Related Swaps”, as described below.

I. Background

On December 13, 2012, ISDA submitted a request<sup>5</sup> to staff of the CFTC’s Division of Market Oversight (“DMO”) requesting no-action relief on behalf of its members, and other similarly situated market participants, to request that the Commission provide relief under Part 45 pertaining to certain off-facility, cleared credit default swaps (“CDS”) that are entered into pursuant

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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 800 member institutions from 64 countries. These members include a broad range of OTC 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 including exchanges, 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> 17 CFR Part 43 Real-Time Public Reporting of Swap Transaction Data, 77 Fed. Reg. 1182 (Jan. 9, 2012). CFTC regulation 43.2 defines the term “reporting party” to mean “the party to a swap with the duty to report a publicly reportable swap transaction in accordance with this [Part 43] and section 2(a)(13)(F) of the [CEA].”

<sup>3</sup> 17 CFR Part 45 Swap Data Recordkeeping and Reporting Requirements, 77 Fed. Reg. 2136 (Jan 13, 2012). CFTC regulation 45.1 defines the term “reporting counterparty” to mean “the counterparty required to report swap data pursuant to this [Part 45], selected as provided in §45.8.”

<sup>4</sup> <http://www.cftc.gov/ucm/groups/public/@lrllettergeneral/documents/letter/13-86.pdf>

<sup>5</sup> [http://www2.isda.org/attachment/NjkyOA==/2012%20Dec%2013%20NAL\\_Clearing\\_created%20Swaps\\_FINAL.pdf](http://www2.isda.org/attachment/NjkyOA==/2012%20Dec%2013%20NAL_Clearing_created%20Swaps_FINAL.pdf)

## Request for Extension of No-Action Relief for CDS Clearing-Related Swaps

to a derivatives clearing organization's ("DCO") rules related to its price submission process ("CDS Settlement Price Process") for determining end-of-day settlement prices for cleared CDS ("CDS Clearing-Related Swaps").

In response to ISDA's request, DMO issued CFTC Letter No. 12-59<sup>6</sup> which granted conditional relief to Reporting Parties that are DCO clearing members from their obligations under Part 45 with respect to CDS Clearing-Related Swaps until June 30, 2013, allowing their obligations to be fulfilled by the DCO instead. Subsequently, DMO extended such relief until December 31, 2013 under CFTC Letter No. 13-36<sup>7</sup>. Under NAL 13-86, DMO further extended such relief and, in consideration of a related request from the Chicago Mercantile Exchange, Inc. ("CME"), expanded such relief to exempt Reporting Parties from the requirement to execute CDS Clearing-Related Swaps on a Swap Execution Facility ("SEF") or Designated Contract Market ("DCM") pursuant to its Part 37 regulations.

ISDA and its members are grateful for the relief granted by DMO with respect to CDS Clearing-created swaps. The conditions that prompted ISDA's original request for relief, and the subsequent extensions, remain and will persist, since they are innate to the origins of these swaps. DCOs are still uniquely positioned to report these swaps, the swaps are not conducive to execution on a SEF or DCM, and the conditions specified in section III of NAL 13-86 continue to be met by Reporting Parties and DCOs.

In its response<sup>8</sup> to the Commission's Review of Swap Data Recordkeeping and Reporting Requirements<sup>9</sup>, ISDA recommends that the Part 45 reporting requirements with respect to alpha swaps, which would include CDS Clearing-Created Swaps, be eliminated. Such result would permanently address the issue pertaining to a Reporting Party's inability to report such swaps under Part 45 and negate the need for further relief related to this rule. We also request that the Commission permanently address the trade execution mandate under Part 37, by eliminating such obligation with respect to CDS Clearing-Related Swaps. As any relevant amendments to the Reporting Rules and Part 37 could not be made effective prior to the expiration of the relief under NAL 13-86 on September 30, 2014, ISDA requests that DMO staff extend and expand the relief, as described below.

NAL 13-86, and the relevant preceding staff letters, do not provide relief for Reporting Parties from the requirement to report CDS Clearing-Created Swaps under Part 43. We acknowledge that ISDA's prior request on this matter asked to reserve the right for our members to provide Part 43 reporting on these swaps. However, due to the anonymized nature of the CDS Settlement Price Process that results in CDS Clearing-Created Swaps, Reporting Parties do not have the relevant swap data to enable them to report these swaps and as a matter of practice the DCOs have been fulfilling this obligation pursuant to the conditions in NAL 13-86. Reporting Parties cannot consider the DCO as a third-party service provider in this scenario as they do not have the visibility to monitor whether the DCO has reported these swaps timely and accurately or the

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<sup>6</sup> <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-59.pdf>

<sup>7</sup> <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-36.pdf>

<sup>8</sup> [http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response\\_FINAL.pdf](http://www2.isda.org/attachment/NjY1NQ==/2014%20May%2023%20CFTC%20RFC-%20ISDA%20Response_FINAL.pdf)

<sup>9</sup> 79 Fed. Reg. 16689

## Request for Extension of No-Action Relief for CDS Clearing-Related Swaps

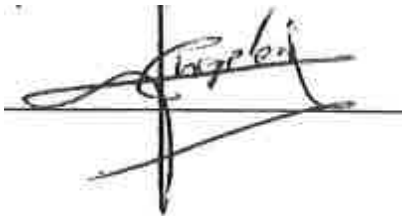
complete information on the swaps in order to report in the event of a gap or error. Therefore, ISDA respectfully requests that DMO provide additional relief that accepts that a DCO may also fulfill the Part 43 reporting obligation.

### II. Relief request

In consideration of the conditions described above, ISDA respectfully requests that DMO further extend and expand the relief granted pursuant to NAL 13-86 and thereby recommend that enforcement action not be taken against a Reporting Party for (i) failure to comply with its obligations to report swap data as required by either Part 43 or Part 45 for CDS Clearing-Related Swaps or (ii) entering into a CDS Clearing-Related Swap through the CDS Settlement Price Process rather than on a SEF or DCM as may be required by Part 37. We request such relief until December 31, 2016, or until such time as the requirements pertaining to CDS Clearing-Related Swaps are effectively amended in a manner that eliminates the necessity for such relief.

Thank you for your consideration of these concerns. Please contact me or my staff if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Engelen", is written over a horizontal line. The signature is stylized and somewhat cursive.

Karel Engelen  
Senior Director; Head, Data, Reporting & FpML  
International Swaps and Derivatives Association, Inc.

cc: Ananda Radhakrishnan, Director, Division of Clearing and Risk  
David Van Wagner, Chief Counsel, Division of Market Oversight, CFTC  
Nancy Markowitz, Deputy Director, Division of Market Oversight, CFTC  
Laurie Gussow, Special Counsel, Division of Market Oversight, CFTC

**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 September 23, 2014 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,

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Karel Engelen  
Senior Director; Head, Data, Reporting & FpML  
International Swaps and Derivatives Association, Inc.