

September 9, 2015

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 to Division of Market Oversight Staff for Interpretive Guidance or Extension of No-Action Relief re: CDS Clearing-Related Swaps

Dear Mr. McGonagle:

The International Swaps and Derivatives Association, Inc.¹ (“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 43² and “reporting counterparties” under Part 45³ (collectively, “Reporting Parties”), is writing to request an extension and expansion of certain no-action relief issued pursuant to CFTC Letter No. 14-119 (“NAL 14-119”) with regards to the reporting of “CDS Clearing-Related Swaps” or interpretive guidance that would negate the need for such relief, as discussed below.

I. Background

On December 13, 2012, ISDA submitted a request⁴ 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

¹ 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 68 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, 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.

² 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].”

³ 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.”

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http://www2.isda.org/attachment/NjkyOA==/2012%20Dec%2013%20NAL_Clearing_created%20Swaps_FINAL.pdf

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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 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. Under CFTC Letter No. 13-86, DMO further extended such relief until September 30, 2014 and, in consideration of a related request from the Chicago Mercantile Exchange, Inc. , 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") and exempted DCOs from the SEF registration requirement, both pursuant to its Part 37 regulations. NAL 14-119 extended such relief until the earlier of (i) September 30, 2015 or (ii) the effective date of any DMO or Commission action to facilitate a longer term approach to establishing settlement prices for CDSs.

On August 31, 2015, the Commission's proposed *Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps*⁵ (the "Proposed Amendments") were published in the Federal Register in response to the its *Review of Swap Data Recordkeeping and Reporting Requirements*⁶. In a clarification to the view previously indicated by DMO staff, the Proposed Amendments acknowledge that certain "clearing swaps", including those executed anonymously, are not preceded by an uncleared bilateral swap (a/k/a an "alpha"), defined therein as an "original swap". However, the Proposed Amendments do not explicitly advise whether CDS Clearing-Related Swaps are recognized by the Commission as clearing swaps which do not have original swaps; nor does it refer to a permanent resolution of the NAL 14-119 relief pertaining to Part 45.

II. Request for Interpretive Guidance

ISDA contends that there is no original swap associated with CDS Clearing-Related Swaps, but rather the relevant parties enter directly into clearing swaps with the DCO. Therefore, as inferred from the Proposed Amendments, neither Reporting Parties nor DCOs should have any obligations under the Commissions Reporting Rules and the Proposed Amendments with respect to original swaps in relation to their CDS Clearing-Related Swaps. ISDA intends to comment separately on the Proposed Amendments, but in the meantime would appreciate verification by DMO of this interpretation, which would negate the need for an extension or expansion of the relief under NAL 14-119 provided to Reporting Parties pursuant to Parts 37, 43 and 45, as further discussed below.

⁵ 80 Fed. Reg. 52544

⁶ 79 Fed. Reg. 16689

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III. Relief Expansion

In our letter to DMO submitted on September 25, 2014⁷ requesting an extension of CFTC Letter No. 13-86, ISDA asked that DMO expand the scope of its letter to provide relief for Reporting Parties from the requirement to report CDS Clearing-Created Swaps under Part 43. 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 alphas and as a matter of practice the DCOs have been fulfilling this obligation pursuant to the conditions in NAL 14-119. 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 complete information on the swaps in order to report in the event of a gap or error.

DMO staff has acknowledged that ISDA requested an expansion of the relief for CDS Clearing-Related Swaps to Part 43, but has not yet taken action to allow for a Reporting Party's obligation to be met by the DCO or otherwise shift the reporting obligation to the DCO. If DMO provides the interpretive guidance requested in II above, then a staff letter would not be necessary to ensure the compliance of Reporting Parties with respect to their obligations for CDS Clearing-Related Swaps under either Part 43 or Part 45. However, if DMO chooses not to issue such interpretive guidance, then ISDA respectfully requests that DMO provide additional relief that accepts that a DCO may also fulfill the Part 43 reporting obligation for CDS Clearing-Related Swaps until such time as the Commission affects a permanent resolution in conjunction with the Proposed Amendments or via separate Commission action.

IV. Relief Extension

ISDA respectfully requests that DMO issue the interpretive guidance requested above in order to eliminate the reporting and trade execution obligations for original swaps perceived to be related to CDS Clearing-Related Swaps. In absence of such action, ISDA requests that DMO further extend and expand the relief granted pursuant to NAL 14-119 and thereby recommend that enforcement action not be taken against a Reporting Party for (i) failure to report swap data pursuant to 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 September 30, 2016, or until such time as the requirements pertaining to CDS Clearing-Related Swaps are effectively clarified or amended in a manner that eliminates the necessity for such relief.

⁷ http://www2.isda.org/attachment/Njk5Mg==/Request%20to%20DMO%20for%20Extension%20of%20No-Action%20Relief%20for%20CDS%20Clearing-Related%20Swaps_25Sep14_FINAL.pdf

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tara Kruse". The signature is fluid and cursive, with the first name "Tara" written in a larger, more prominent script than the last name "Kruse".

Tara Kruse
Director; Co-Head of Data, Reporting & FpML
International Swaps and Derivatives Association, Inc.

cc: Dan Bucsa, Deputy Director, Division of Market Oversight

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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 9, 2015 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 black ink, appearing to read "Tara Kruse". The signature is fluid and cursive, with the first name "Tara" written in a larger, more prominent script than the last name "Kruse".

Tara Kruse
Director; Co-Head of Data, Reporting & FpML
International Swaps and Derivatives Association, Inc.