

December 13, 2012

Mr. Ananda Radhakrishnan
Director
Division of Clearing and Risk

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

Re: Clearing-created Swaps

Dear Mr. Shilts:

The International Swaps and Derivatives Association, Inc. (“ISDA”), on behalf of its members that intend to register as swaps dealers (“SDs”) or major swap participants (“MSPs”) and other similarly situated persons, is writing to request no-action relief pursuant to Rule 140.99 with regard to the reporting of “Clearing-created Swaps”, as described below, under the Regulations of the Commodity Futures Trading Commission (the “Commission”) contained in Parts 43 and 45.

ISDA’s mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 58 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

I. Relief Requested

Rule 45 allocates responsibility for reporting data with respect to cleared swaps to various parties according to the circumstances of execution of the cleared swap. Rule 45 does not treat as a discrete category of swaps those swaps that are “off-facility swaps”, but that do not exist prior to the time they are accepted for clearing (“Clearing-created Swaps”). Rule 43 follows a similar allocation. ISDA requests confirmation that the staff of the Divisions of Clearing and Risk and Market Oversight (the “Divisions”) will not recommend enforcement action against SDs or MSPs who do not undertake reporting responsibilities with respect to Clearing-created Swaps under Rule 45 until such time as the Commission promulgates a rule specifically treating reporting responsibility with respect to Clearing-Created Swaps.

International Swaps and Derivatives Association, Inc.
1101 Pennsylvania Avenue, NW, Suite 600
Washington, DC 20004
P 202 756 4500 F 202 756 7323
www.isda.org

NEW YORK	WASHINGTON
LONDON	BRUSSELS
HONG KONG	SINGAPORE
TOKYO	

II. Discussion

Rule 45.3 requires the reporting of swap creation data by different entities according to the circumstances of the swap's execution. Rule 45.3, however, does not provide for the execution of a cleared swap on (or by) a derivatives clearing organization ("DCO"). Rule 45.3 contemplates that swaps executed elsewhere (e.g., on a swap execution facility or off-facility) will subsequently be accepted for clearing. In the case of off-facility swaps that are subsequently cleared, Rule 45.3(b) and (c) allocate, subject to certain contingencies, the reporting of primary economic terms data by the "reporting counterparty," as defined, with the DCO then having responsibility for the reporting of confirmation data. SDs and MSPs are in many cases designated as reporting counterparties under Rule 45.8.

Despite the lack of attention to it in Rule 45, there exists a class of cleared swaps that have no prior existence separable from their cleared being. An example of this in the credit default swap market is what is called a "firm" or "forced" trade – a cleared trade entered into between a DCO and a clearing member pursuant to the testing that a DCO is required to do of the actionable prices clearing members must provide to the DCO as the basis for the DCO's daily market pricing.

ISDA has approached two DCOs active in the derivatives market. Both have indicated that they are likely to accept responsibility for Part 45 reporting with respect to forced trades.

Given that Rule 45* does not take account of this class of swaps, ISDA members that are SDs or MSPs are concerned to not be viewed by default as the relevant Rule 45 reporting counterparties. When the Commission has the opportunity to promulgate a rule with respect to Clearing-created Swaps, such default responsibility will no longer be an issue.

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

Sincerely,



* Rule 43 also does not specifically recognize this class of swaps. Given, however, the more limited nature of Rule 43 reporting, ISDA members feel able, and wish to reserve the right, to provide Part 43 reporting on forced trades.

**Request for No-Action
Relief and Interpretive Guidance -
Parts 43 and 45**

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 December 13, 2012 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 "Robert C. Schul". The signature is written in a cursive, flowing style.