



| asset management group

CEA § 2(h)
CFTC Regulations Part 50

February 25, 2013

Mr. Ananda Radhakrishnan
Director
Division of Clearing and Risk
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: Request for No-Action Relief

Dear Mr. Radhakrishnan:

The Asset Management Group (the “**AMG**”)¹ of the Securities Industry and Financial Markets Association (“**SIFMA**”) requests that the Commodity Futures Trading Commission (the “**Commission**”) grant the relief requested herein with respect to the clearing requirement for the iTraxx Europe, iTraxx Crossover and iTraxx HiVol credit default swap indices (collectively, “**iTraxx indices**”).

Unlike the other classes of swaps that the Commission has designated for mandatory clearing starting March 11, 2013,² no registered derivatives clearing organization (“**DCO**”) offered customer clearing for iTraxx at the time of the clearing determination. The Clearing Determination provides that if no DCO had begun offering client clearing for iTraxx by February 11, 2013, the required compliance date for clearing will be 60 days after the date on which iTraxx is first offered for client clearing.³ Many of AMG’s member firms have primary clearing relationships with the Chicago Mercantile Exchange (“**CME**”), and had expected that either CME would be able to clear iTraxx indices by February 11, 2013 or clearing of iTraxx indices would not be required on March 11, 2013.

¹ The AMG’s members represent U.S. asset management firms whose combined assets under management exceed \$20 trillion. The clients of AMG member firms include, among others, registered investment companies, ERISA plans and state and local government pension funds, many of whom invest in commodity futures, options, and swaps as part of their respective investment strategies.

² Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74285 (December 13, 2012) (the “**Clearing Determination**”).

³ *Id.* at 74297.

Recently, however, CME indicated to many AMG members that it would not be able to clear iTraxx indices by February 11, 2013 (or even later this year). Around the same time, a DCO affiliate of IntercontinentalExchange (“ICE”) informed AMG members that it anticipated being able to clear iTraxx indices in February 2013. ICE has subsequently communicated to our members that it is launching the clearing of iTraxx indices on February 25, 2013; accordingly, we understand that, under the Clearing Determination, mandatory clearing of swaps referencing these indices will begin on or around April 26, 2013. As CME’s position on clearing iTraxx indices came as a surprise to many and as many AMG members were not otherwise prepared to clear swaps through ICE, establishing the necessary infrastructure and satisfying the necessary documentation requirements to clear iTraxx indices through ICE by April 26, 2013 or the later date that they are required to clear, if applicable, will prove extremely onerous for many of our members and may not be possible for others. Therefore, we are requesting time-limited no-action relief from the Staff in order to allow sufficient time to implement the clearing of iTraxx indices. Specifically, we are requesting no-action relief from the requirement to clear iTraxx indices until at least 90 days after CME is able to provide customer clearing of iTraxx indices. If, however, the Commission is not willing to extend the requested relief indefinitely, we request that the Commission extend the compliance date for clearing iTraxx indices for all market participants until no earlier than September 11, 2013.

Market participants have understood since the enactment of the Dodd-Frank Act that they would need to make significant changes to the manner in which they do business in order to bring themselves into compliance with the new regulatory framework. In recognition of this fact, AMG members have taken substantial steps to achieve compliance, in some cases even prior to the promulgation of proposed or final rules by the Commissions. As the Staff is aware from the number of requests for no-action or interpretive relief they have received in relation to impending compliance deadlines, meeting the requirements of the new regulatory framework by the applicable deadlines has been difficult even in cases where swap market participants had significant advance notice of their compliance obligations.

In the case of iTraxx indices, AMG members expected that clearing these instruments would be available through CME in early 2013. CME’s inability to clear iTraxx indices on this anticipated time frame, combined with ICE clearing iTraxx indices in a more compressed timeframe, will result in very significant obligations and compliance efforts for market participants. First, from an operational standpoint, firms would need to establish connectivity with ICE’s clearing systems. Some of AMG’s members were not expecting to rely on ICE to clear any of their transactions for various reasons, including clearing workflow for block trades.⁴ Many of these members were not planning on devoting the resources to build infrastructure to connect to more than one DCO, and therefore, do not have the infrastructure to connect with ICE in time to begin clearing through them prior to the date on which they will be required to clear

⁴ Other DCOs permit partial clearing of trades in a block if less than all of the trades in the block are rejected by a futures clearing merchant (“FCM”). For example, if an asset manager is looking to clear a block trade for ten funds that it manages and the FCM rejects the trade for one of the funds, the asset manager may still be able to clear the rest of the trade for the other nine funds. It is our understanding that ICE does not support this functionality, so ICE may reject this entire block trade for all ten funds.

iTraxx indices under the Clearing Determination. Further, building these systems will require time and human capital—two resources that are in very short supply as firms continue to construct and implement the range of systems required to comply with the Commission’s other swaps regulations, and efforts for many of these requirements have been in progress for months or even years. Second, the manner in which the clearing determination was made for iTraxx indices will require firms that have no relationship with ICE to negotiate and sign documentation in a very abbreviated time frame, likely to the detriment of those firms who will suffer from a substantially weakened negotiating position.

Separate and apart from the timing of DCOs’ readiness to clear iTraxx indices, the September 6, 2012 comment letter submitted by the International Swaps and Derivatives Association (“**ISDA**”) in response to the Commission’s proposed clearing determination⁵ similarly called attention to the significant infrastructural demands that clearing iTraxx on the proposed schedule would create. In that letter, ISDA stated:

We understand that not only are no buy-side clients clearing iTraxx® currently, but that none of the submitting DCOs have an approved buy-side clearing platform for iTraxx®. Even if regulatory approval were to be granted between the finalization of this clearing requirement proposal and the first anticipated compliance date, there would be insufficient time to test the requisite systems and procedures to ensure safe and sound clearing of client trades. . . . [For these reasons] ISDA believes that mandatory clearing of iTraxx® indices should not take effect until the Commission makes a formal determination that . . . voluntary client clearing has been operational for a period of at least 90 days and the relevant DCOs, FCMs, executing brokers and buy-side counterparties have completed all requisite testing and instituted all appropriate processes for clearing both the iTraxx® index and its constituents.⁶

We fully agree with ISDA that there is not sufficient time to test the requisite clearing systems and procedures by the date on which our member firms are required to clear iTraxx indices under the Clearing Determination. The mismatch in the anticipated and actual dates for mandated clearing of iTraxx indices resulted in insufficient time to prepare for iTraxx clearing; this timing concern is now exacerbated for market participants without existing clearing relationships with ICE.

In addition to these timing concerns, we have recently become aware of other sound reasons to defer mandatory clearing of iTraxx index swaps. For example, there are potential complications that are created in the event that a restructuring credit event occurs under an iTraxx index swap that are unique to these instruments. It is possible that the holder of the swap

⁵ ISDA Letter to the Commodity Futures Trading Commission on the Proposed Clearing Requirement Determination Under Section 2(h) of the CEA (September 6, 2012), *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58749&SearchText=>.

⁶ *Id.* 6–7.

could receive a single-name credit default swap referencing the underlying security in the index that experienced the event, in lieu of a payment. In that case, the holder may end up with a security-based swap that may not be cleared and that has different margin requirements and other characteristics in addition to the iTraxx index swap.

Without additional time to prepare for clearing iTraxx indices through ICE and to address the intricacies of clearing iTraxx indices, entities that need to transact in iTraxx indices may be precluded from conducting their businesses as planned on the date they are required to clear under the Clearing Determination, resulting in a significant disruption of the market for these instruments. Accordingly, we strongly urge the Staff of the CFTC to adopt the relief described below.

Relief Request: We request that the Division of Market Oversight of the Commission confirm that they will not recommend that the Commission commence enforcement action against any person in connection with any failure of such person to comply with any provision of the Dodd-Frank Act or the rules promulgated thereunder to the extent such failure arises solely because such person fails to clear swaps on iTraxx indices entered into by such person prior to 90 days after CME makes swaps on iTraxx indices available for client clearing (or alternatively, no earlier than September 11, 2013).

* * *

Based on the foregoing, we respectfully request that the Staff of the CFTC grant the relief described in this letter. We appreciate the Commission's consideration of this request, and stand ready to provide any additional information or assistance that the Commission might find useful. Should you have any questions, please do not hesitate to contact Tim Cameron at 212-313-1389 or Matt Nevins at 212-313-1176.

Sincerely,



Timothy W. Cameron, Esq.
Managing Director, Asset Management Group
Securities Industry and Financial Markets Association



Matthew J. Nevins, Esq.
Managing Director and Associate General Counsel, Asset Management Group
Securities Industry and Financial Markets Association

Commodity Futures Trading Commission

February 25, 2013

Page 5

cc: Hon. Gary Gensler, Chairman, Commodity Futures Trading Commission
Hon. Jill E. Sommers, Commissioner, Commodity Futures Trading Commission
Hon. Bart Chilton, Commissioner, Commodity Futures Trading Commission
Hon. Scott O'Malia, Commissioner, Commodity Futures Trading Commission
Hon. Mark Wetjen, Commissioner, Commodity Futures Trading Commission

Sarah E. Josephson, Deputy Director, Product Review, Division of Clearing and Risk,
Commodity Futures Trading Commission

*

*

*

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

As required by CFTC Regulation 140.99(c)(3), we hereby (i) certify that the material facts set forth in the attached letter dated February 25, 2013 are true and complete to the best of our knowledge; and (ii) undertake to advise the CFTC, prior to the issuance of a response thereto, if any material representation contained therein ceases to be true and complete.

Sincerely,



Timothy W. Cameron, Esq.
Managing Director, Asset Management Group
Securities Industry and Financial Markets Association



Matthew J. Nevins, Esq.
Managing Director and Associate General Counsel, Asset Management Group
Securities Industry and Financial Markets Association