
MEMORANDUM

To: File

From: CFTC Office of the Chief Economist

Re: Information regarding activities and positions of participants in the index credit default swap market

Date: March 16, 2012

Introduction

The staff of the SEC's Division of Risk, Strategy and Financial Innovation has completed an analysis of index credit default swap (CDS) transaction and position activity, and shared that analysis with the CFTC's Office of Chief Economist (OCE). The first analysis is based on a sample of all new, risk transfer, dollar-adjusted, gold record transactions in index CDS submitted to the Depository Trust and Clearing Corporation's Trade Information Warehouse (DTCC-TIW) between January 1, 2011 and December 31, 2011 (the sample period).¹ The second analysis is based on monthly position data in index CDS over the same sample period and provided by DTCC-TIW.

Scope and Limitations of this Analysis

This analysis provides information that characterizes the level of activity and positions in the index CDS market. The information provided here reflects all activity in index CDS submitted to DTCC-TIW in 2011; the information is not filtered to reflect activity that would constitute swap dealing under the Dodd-Frank Act.² Because of the nature of the data that is available, it is not possible to determine the extent to which the index CDS activity reported here is reflective of swap dealing. However, since the data cannot be directly connected to the swap dealing determination under the Dodd-Frank Act, this analysis reflects consideration of certain factors that are available in the data (such as the

¹ Non-dollar denominated transactions are adjusted to U.S. dollars at prevailing exchanges rates.

² See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," 75 FR 80174 (Dec. 21, 2010).

number of counterparties a person has, whether a person maintains a “flat book,” or whether a person provides initial margin) to approximate which market participants may be engaged in activities that could be expected to be associated with swap dealing activity. These factors are described in Section I below. However, it is important to note that these factors are not necessarily the criteria that would be relevant to determining whether a person is a swap dealer. Those criteria will be set out in the final rules and interpretive guidance further defining the term “swap dealer.” Therefore, these factors and the data provided here cannot be used to draw conclusions regarding any specific entity’s status as a swap dealer.

There are several additional considerations in reviewing this data. First, index CDS can be swaps or security-based swaps depending on the nature of the index. Information about the nature of the indices underlying the index CDS covered by this data is not available, so it is unknown whether the index CDS are swaps or security-based swaps. Second, although we believe that a large part of index CDS entered into in the U.S. are reported to DTCC, it is not possible to verify this precisely because, for example, some transactions that would qualify as index CDS may not be properly categorized as such or some index CDS may be entered into by parties that do not report to DTCC.³ Third, this data is limited to a one-year period. Last, although we believe that the data itself is reliable, the process of its collection has not been independently validated.

Finally, we note that similar data is not available for types of swaps other than index CDS, because currently parties enter into swaps through a variety of means and it is uncertain whether the available data for other categories of swaps is comprehensive. For example, although some entities have begun to collect significant amounts of data on certain types of swaps, such as interest rate swaps, there is no means of determining what

³ Although rules requiring counterparties to report swaps to a Swap Data Repository in accordance with the Dodd Frank Act have been adopted, they have not yet become effective. As a result, the Commission does not yet have ready access to data regarding all swaps. Nevertheless, because financial institutions through DTCC began to provide infrastructure to the CDS market (the component of the swap market where reporting is most developed) several years ago, we have access to, and are able to analyze, data on a large fraction of the index CDS market.

level of activity in such types of swaps is not reported to those entities and therefore no way to confirm the completeness of those datasets.

Bearing these limitations in mind, this analysis of activity in index CDS data is intended to assist the Commission in the development of final rules that further define the terms “swap dealer” and “major swap participant” in connection with the implementation of the Dodd-Frank Act. In part, this information may help evaluate the impact of alternative approaches to implementing the de minimis exception to the “swap dealer” definition by quantifying, under certain assumptions, the number of persons who may be required to register as “swap dealers.” This information may also help evaluate the impact of alternative approaches to implementing the “major swap participant” definition.

The memorandum is organized as follows. Section I first discusses the factors noted above which, when analyzed in combination with the index CDS dataset available from DTCC-TIW, may be used to approximate which market participants are engaged in dealer activity. Next, the section outlines the methodological approach. An analysis of each criterion based on 12-month aggregate gross notional dollar value of index CDS transactions and illustrated by charts and tables follows, as well as an analysis of the effect of combining multiple criteria. Section I concludes with an analysis of transaction activity between counterparties and special entities. Section II provides an analysis of aggregate gross notional positions that may be relevant to predicting the number of entities that need to determine whether they qualify as major swap participants.

Section I – Information about possible dealing activity in the index CDS market

The first analysis in this section characterizes the number of entities whose aggregate gross notional transaction amounts in index CDS calculated over the sample period fall within certain ranges.

Higher levels of activity and exposure are likely to be highly correlated with dealing activity. However, high levels of market activity do not necessarily reflect dealer

activity. For this reason, a number of alternative analyses are included in this section that consider other factors which may be indicative of dealer activity. These factors were developed given the limited data available. As a result, the factors used may not reflect all criteria that could be indicative of dealer activity, or the criteria that may be used to identify dealer activity in the final rules. The factors used in this analysis include the following:

1. *Whether an entity transacts with multiple counterparties.* As a general matter, having more counterparties may be commensurate with dealer status. Nevertheless, to the extent that a market participant limits its activity to the inter-dealer market, it is possible to transact with relatively few counterparties despite engaging in dealing activity. Also, some non-dealers may maintain trading relationships with numerous dealers.
2. *Whether an entity transacts with multiple counterparties, excepting those entities recognized by ISDA as dealers.*⁴ Having more non-dealer counterparties may be commensurate with dealer status. That is, dealers are more likely to interact with non-dealers than would other non-dealers. Nevertheless, this analysis has an analogous limitation to that described in the first criterion.
3. *Whether an entity's aggregate buy notional amount is within 45-55% of its aggregate gross notional transactions.* To the extent that dealing is associated with zero net exposure, a dealer's buying and selling activity should be largely offsetting. Hence, total notional buying exposure should comprise roughly half of the gross notional transaction activity. However, because an entity may buy and sell credit protection for the same notional amount, but on different reference entities or indexes, or with different maturity dates on the same reference entity, a flat order book could nevertheless reflect directional, speculative trades, uncharacteristic of a dealer.
4. *Whether an entity's aggregate number of buy orders are within 45-55% of its aggregate number of transactions.* Using the same rationale as for criterion 3,

⁴ See http://www.isda.org/researchnotes/pdf/ConcentrationRN_4-10.pdf, http://www.isda.org/c_and_a/pdf/ISDA-Operations-Survey-2010.pdf, and <http://www.risk.net/risk-magazine/news/2127940/g14-dealer-adds> (discussing CDS market and participants in CDS market).

dealing activity commensurate with dealer status should, in general, reflect an offsetting number of buy and sell transactions. However, a possible limitation of this criterion is that a dealer may offset large swaps with a large number of smaller swaps. If a dealer offsets large protection selling swaps with many smaller protection buying swaps, a flat order book may not be characterized by an equal number of buy and sell transactions. In addition, a dealer may offset index CDS with a number of single-name CDS, which could also result in an unequal number of buy and sell transactions.

5. *Whether an entity's frequency of posting initial margin on orders occurs in less than 10% of their aggregate transactions.* This criterion reflects the expectation that, in general, dealers are less likely to post initial margin when entering into CDS, particularly in dealer-to-dealer transactions. A limitation of this analysis is that reporting initial margin to DTCC-TIW is voluntary. Therefore, since this filter may capture entities that in fact post margin, but choose not to report, the criterion may be over-indicative of dealing activity.

Methodology

To illustrate the number of persons who may be engaged in dealing activity involving index CDS, the analyses that follow include both histograms and tables for each criterion. Histograms are a heuristic method of representing the underlying data. In this analysis, they are constructed to show the frequency (i.e., number) of potential dealers who satisfy a particular criterion as measured at discrete intervals based on their aggregate gross notional transaction amounts⁵ over the 12-month period ending on December 31, 2011. The discrete intervals (“bins”) are chosen so that the distribution is sufficiently granular to permit inferences about possible de minimis threshold levels, yet wide enough to allow the shape of the distribution to emerge.

⁵ The analysis in this memo aggregates account-level data to the corporate parent or transacting agent. For example, a corporate parent can transact through multiple accounts; similarly, an investment adviser can act as the transacting agent for multiple client accounts. However, for the purposes of the special entity analysis, we have calculated 12-month notional at the account level to avoid pooling special entity transactions with non-special entity transactions.

Each histogram depicts the percentage of total entities accounted for by each notional bin in graphical and tabular form. The tables also report the percentage of notional as an additional element. This allows for inference as to the effect on the percentage of total entities or total notional resulting from different choices for the value of the de minimis exception.

Finally, this analysis reflects the state of the index CDS market in 2011, prior to the implementation of most of the provisions of Title VII of the Dodd-Frank Act. The full implementation of Title VII – including the implementation of registration requirements for swap dealers, and an exception that would permit some market participants to engage in unregulated dealing activity up to a de minimis amount – may be expected to change the market. This analysis does not seek to predict those changes.

1. Distribution of index CDS activity for all entities

For each entity, we calculate aggregate gross notional dollar value of CDS index transactions over the 12-month period ending December 31, 2011. Figure 1 illustrates the number of entities at different levels of trading activity as measured by aggregate gross notional amounts. Table 1 also provides the percentage of total entities and the percentage of total notional accounted for by each notional bin.

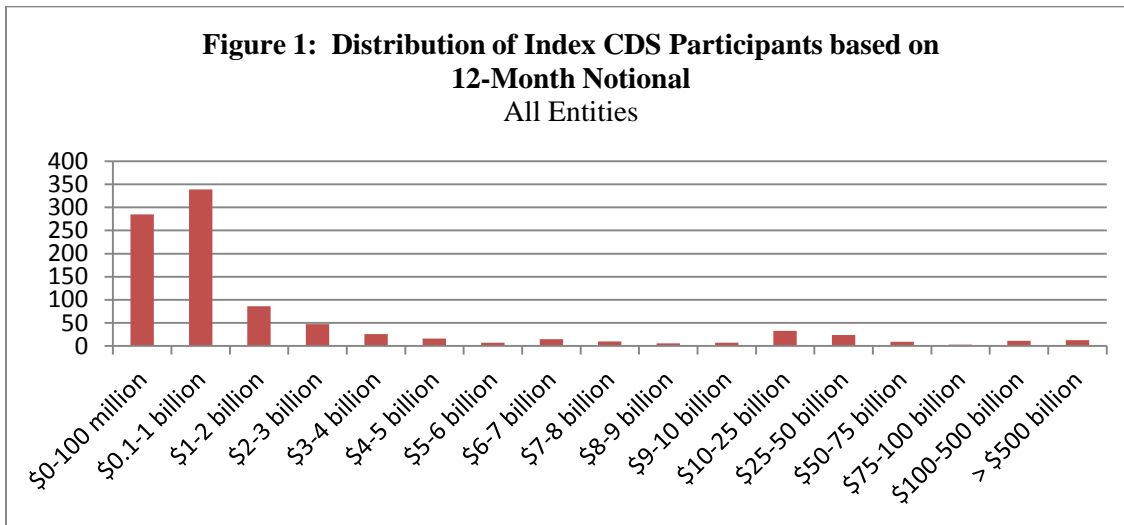


Table 1. Trailing 12-Month Index CDS Activity - All Entities

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	285	30.42%	\$ 12.56	0.04%
\$0.1-1 billion	339	36.18%	\$ 124.90	0.37%
\$1-2 billion	86	9.18%	\$ 123.33	0.36%
\$2-3 billion	47	5.02%	\$ 118.00	0.35%
\$3-4 billion	26	2.77%	\$ 89.13	0.26%
\$4-5 billion	16	1.71%	\$ 74.38	0.22%
\$5-6 billion	7	0.75%	\$ 38.72	0.11%
\$6-7 billion	15	1.60%	\$ 98.96	0.29%
\$7-8 billion	10	1.07%	\$ 76.57	0.22%
\$8-9 billion	6	0.64%	\$ 52.12	0.15%
\$9-10 billion	7	0.75%	\$ 68.02	0.20%
\$10-25 billion	33	3.52%	\$ 489.57	1.43%
\$25-50 billion	24	2.56%	\$ 822.33	2.40%
\$50-75 billion	9	0.96%	\$ 548.27	1.60%
\$75-100 billion	3	0.32%	\$ 259.24	0.76%
\$100-500 billion	11	1.17%	\$ 1,955.93	5.72%
> \$500 billion	13	1.39%	\$ 29,246.57	85.52%
Total	937		\$ 34,198.60	

2. Criterion: Index CDS transactions with multiple counterparties

For each entity, we identify the number of unique counterparties across all transactions over the 12-month period. Figures 2a, 2b, and 2c illustrate the number of entities captured by different levels of trading activity when there are at least 20, 15, and 10 unique counterparties, respectively. Each associated table provides the percentage of total entities and the percentage of total notional accounted for by each notional bin.

a. Index CDS transactions with 20 or more unique counterparties

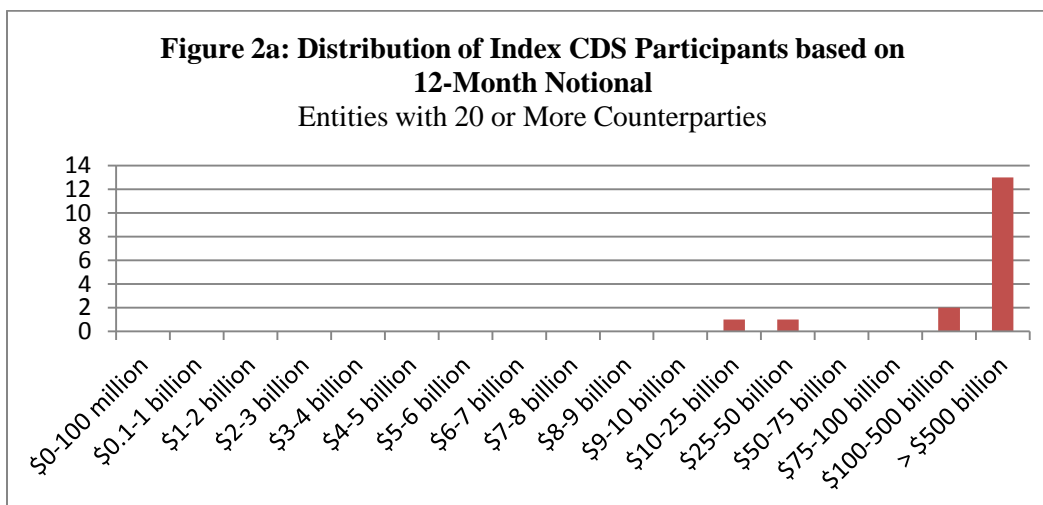


Table 2a. Trailing 12-Month Index CDS Activity - Entities with 20+ Counterparties

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	0	0.00%	\$ -	0.00%
\$0.1-1 billion	0	0.00%	\$ -	0.00%
\$1-2 billion	0	0.00%	\$ -	0.00%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	0	0.00%	\$ -	0.00%
\$4-5 billion	0	0.00%	\$ -	0.00%
\$5-6 billion	0	0.00%	\$ -	0.00%
\$6-7 billion	0	0.00%	\$ -	0.00%
\$7-8 billion	0	0.00%	\$ -	0.00%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	0	0.00%	\$ -	0.00%
\$10-25 billion	1	5.88%	\$ 20.77	0.07%
\$25-50 billion	1	5.88%	\$ 49.20	0.17%
\$50-75 billion	0	0.00%	\$ -	0.00%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	2	11.76%	\$ 425.67	1.43%
> \$500 billion	13	76.47%	\$ 29,246.57	98.33%
Total	17		\$ 29,742.21	

b. Index CDS transactions with 15 or more unique counterparties

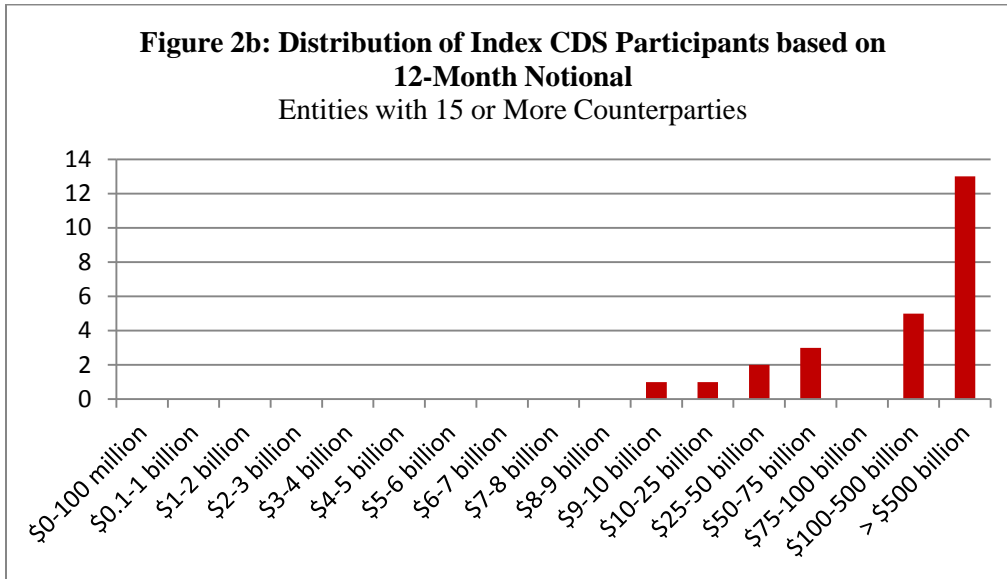


Table 2b. Trailing 12-Month Index CDS Activity - Entities with 15+ Counterparties

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	0	0.00%	\$ -	0.00%
\$0.1-1 billion	0	0.00%	\$ -	0.00%
\$1-2 billion	0	0.00%	\$ -	0.00%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	0	0.00%	\$ -	0.00%
\$4-5 billion	0	0.00%	\$ -	0.00%
\$5-6 billion	0	0.00%	\$ -	0.00%
\$6-7 billion	0	0.00%	\$ -	0.00%
\$7-8 billion	0	0.00%	\$ -	0.00%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	1	4.00%	\$ 10.00	0.03%
\$10-25 billion	1	4.00%	\$ 20.77	0.07%
\$25-50 billion	2	8.00%	\$ 74.93	0.25%
\$50-75 billion	3	12.00%	\$ 196.41	0.64%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	5	20.00%	\$ 940.58	3.08%
> \$500 billion	13	52.00%	\$ 29,246.57	95.92%
Total	25		\$ 30,489.26	

c. Index CDS transactions with 10 or more unique counterparties

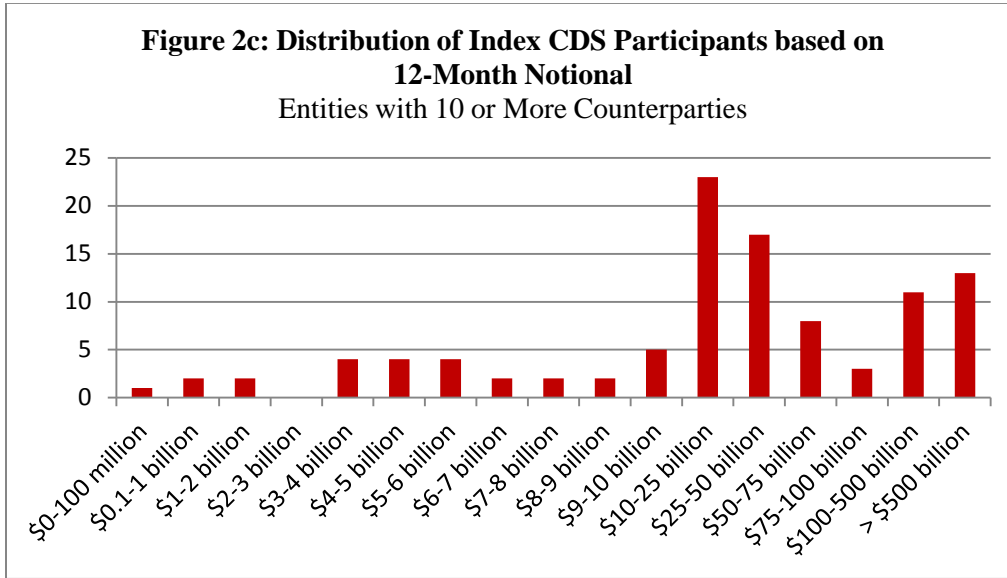


Table 2c. Trailing 12-Month Index CDS Activity - Entities with 10+ Counterparties

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	1	0.97%	\$ 0.08	0.00%
\$0.1-1 billion	2	1.94%	\$ 1.70	0.01%
\$1-2 billion	2	1.94%	\$ 2.38	0.01%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	4	3.88%	\$ 13.74	0.04%
\$4-5 billion	4	3.88%	\$ 18.44	0.06%
\$5-6 billion	4	3.88%	\$ 22.15	0.07%
\$6-7 billion	2	1.94%	\$ 12.81	0.04%
\$7-8 billion	2	1.94%	\$ 14.91	0.05%
\$8-9 billion	2	1.94%	\$ 17.46	0.05%
\$9-10 billion	5	4.85%	\$ 48.87	0.15%
\$10-25 billion	23	22.33%	\$ 351.10	1.06%
\$25-50 billion	17	16.50%	\$ 585.75	1.77%
\$50-75 billion	8	7.77%	\$ 485.34	1.47%
\$75-100 billion	3	2.91%	\$ 259.24	0.78%
\$100-500 billion	11	10.68%	\$ 1,955.93	5.92%
> \$500 billion	13	12.62%	\$ 29,246.57	88.53%
Total	103		\$ 33,036.47	

3. Criterion: Index CDS transactions with multiple counterparties, excepting ISDA-recognized dealer counterparties

For each entity, we identify the number of unique non-ISDA-recognized dealer counterparties across all transactions over the 12-month period. Figures 3a, 3b, and 3c illustrate the number of entities captured by different levels of trading activity when there respectively are at least 7, 5, and 3 unique non-ISDA-recognized dealer counterparties. Each associated table provides the percentage of total entities and the percentage of total notional accounted for by each notional bin.

a. Index CDS transactions with 7 or more counterparties, excepting ISDA-recognized dealer counterparties

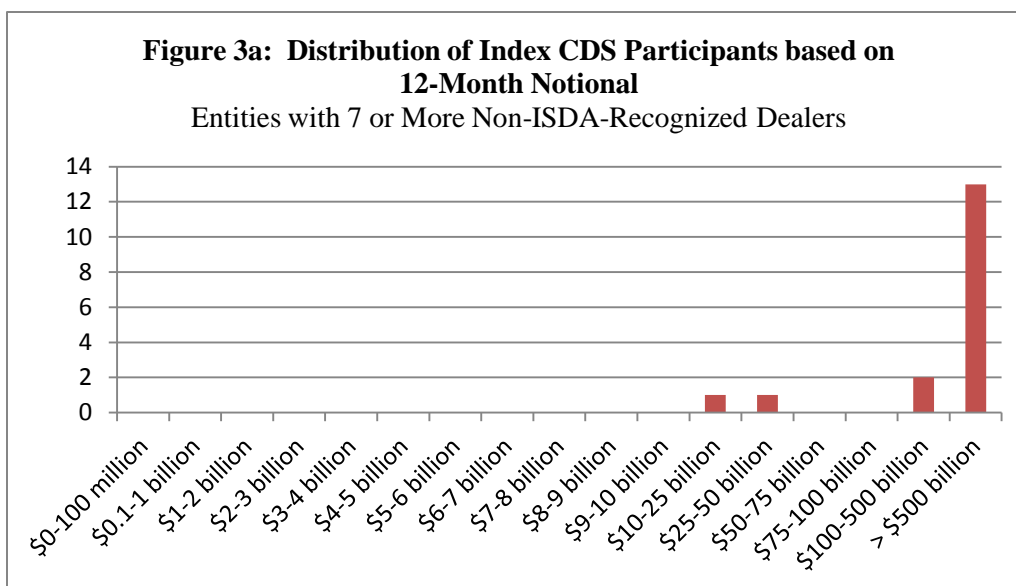


Table 3a. Trailing 12-Month Index CDS Activity - Entities with 7+ Non-ISDA Dealer Counterparties

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	0	0.00%	\$ -	0.00%
\$0.1-1 billion	0	0.00%	\$ -	0.00%
\$1-2 billion	0	0.00%	\$ -	0.00%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	0	0.00%	\$ -	0.00%
\$4-5 billion	0	0.00%	\$ -	0.00%
\$5-6 billion	0	0.00%	\$ -	0.00%
\$6-7 billion	0	0.00%	\$ -	0.00%
\$7-8 billion	0	0.00%	\$ -	0.00%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	0	0.00%	\$ -	0.00%
\$10-25 billion	1	5.88%	\$ 20.77	0.07%
\$25-50 billion	1	5.88%	\$ 49.20	0.17%
\$50-75 billion	0	0.00%	\$ -	0.00%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	2	11.76%	\$ 425.67	1.43%
> \$500 billion	13	76.47%	\$ 29,246.57	98.33%
Total	17		\$ 29,742.21	

b. Index CDS transactions with 5 or more counterparties, excepting ISDA-recognized dealer counterparties

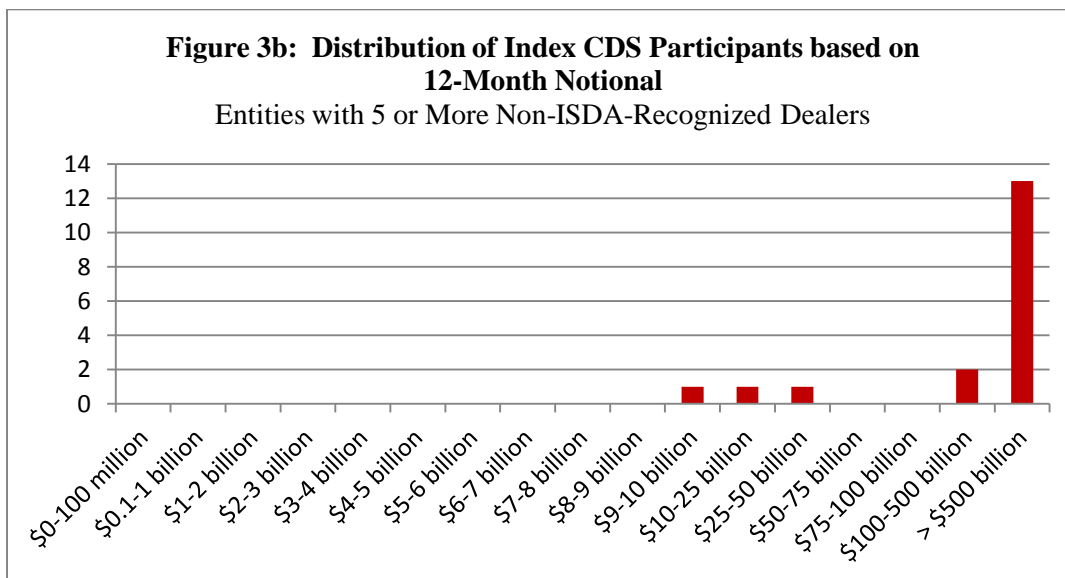


Table 3b. Trailing 12-Month Index CDS Activity - Entities with 5+ Non-ISDA Dealer Counterparties

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	0	0.00%	\$ -	0.00%
\$0.1-1 billion	0	0.00%	\$ -	0.00%
\$1-2 billion	0	0.00%	\$ -	0.00%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	0	0.00%	\$ -	0.00%
\$4-5 billion	0	0.00%	\$ -	0.00%
\$5-6 billion	0	0.00%	\$ -	0.00%
\$6-7 billion	0	0.00%	\$ -	0.00%
\$7-8 billion	0	0.00%	\$ -	0.00%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	1	5.56%	\$ 10.00	0.03%
\$10-25 billion	1	5.56%	\$ 20.77	0.07%
\$25-50 billion	1	5.56%	\$ 49.20	0.17%
\$50-75 billion	0	0.00%	\$ -	0.00%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	2	11.11%	\$ 425.67	1.43%
> \$500 billion	13	72.22%	\$ 29,246.57	98.30%
Total	18		\$ 29,752.21	

c. Index CDS transactions with 3 or more counterparties, excepting ISDA-recognized dealer counterparties

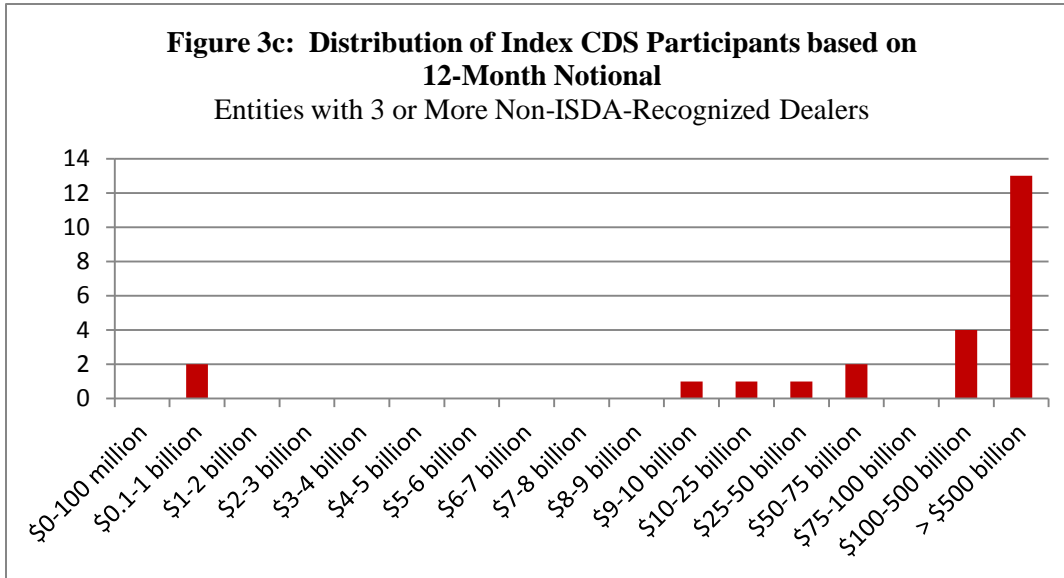


Table 3c. Trailing 12-Month Index CDS Activity - Entities with 3+ Non-ISDA Dealer Counterparties

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	0	0.00%	\$ -	0.00%
\$0.1-1 billion	2	8.33%	\$ 0.62	0.00%
\$1-2 billion	0	0.00%	\$ -	0.00%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	0	0.00%	\$ -	0.00%
\$4-5 billion	0	0.00%	\$ -	0.00%
\$5-6 billion	0	0.00%	\$ -	0.00%
\$6-7 billion	0	0.00%	\$ -	0.00%
\$7-8 billion	0	0.00%	\$ -	0.00%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	1	4.17%	\$ 10.00	0.03%
\$10-25 billion	1	4.17%	\$ 20.77	0.07%
\$25-50 billion	1	4.17%	\$ 49.20	0.16%
\$50-75 billion	2	8.33%	\$ 127.78	0.42%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	4	16.67%	\$ 725.91	2.41%
> \$500 billion	13	54.17%	\$ 29,246.57	96.90%
Total	24		\$ 30,180.85	

4. Criterion: Buy notional amounts within 45-55% of aggregate gross notional amount for index CDS

For each entity, total buy notional amounts are calculated as a percentage of their gross notional over the 12-month period ending December 31, 2011. Figure 4 illustrates the number of entities at different levels of trading activity when their total buy notional is within 45-55% of their gross notional. Table 4 also provides the percentage of total entities and the percentage of total notional accounted for by each notional bin.

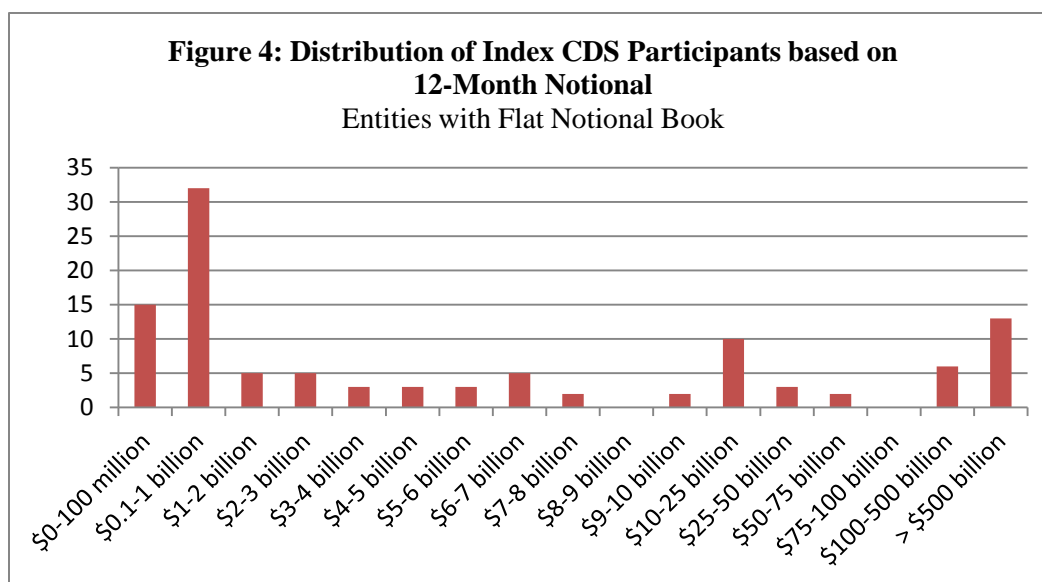


Table 4. Trailing 12-Month Index CDS Activity - Entities with Flat Notional Book

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	15	13.76%	\$ 0.54	0.00%
\$0.1-1 billion	32	29.36%	\$ 13.37	0.04%
\$1-2 billion	5	4.59%	\$ 7.83	0.03%
\$2-3 billion	5	4.59%	\$ 11.88	0.04%
\$3-4 billion	3	2.75%	\$ 10.08	0.03%
\$4-5 billion	3	2.75%	\$ 13.53	0.04%
\$5-6 billion	3	2.75%	\$ 16.19	0.05%
\$6-7 billion	5	4.59%	\$ 33.16	0.11%
\$7-8 billion	2	1.83%	\$ 15.53	0.05%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	2	1.83%	\$ 19.56	0.06%
\$10-25 billion	10	9.17%	\$ 153.84	0.50%
\$25-50 billion	3	2.75%	\$ 98.11	0.32%
\$50-75 billion	2	1.83%	\$ 119.91	0.39%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	6	5.50%	\$ 1,176.79	3.80%
> \$500 billion	13	11.93%	\$ 29,246.57	94.54%
Total	109		\$ 30,936.89	

5. Criterion: Buy transactions within 45-55% of aggregate transactions for index CDS

For each entity, buy transactions are calculated as a percentage of all transactions over the sample period. Figure 5 illustrates the distribution of aggregate gross notional amounts for entities whose buy transactions are within 45-55% of their aggregate transactions. Table 5 also provides the percentage of total entities and the percentage of total notional accounted for by each notional bin.

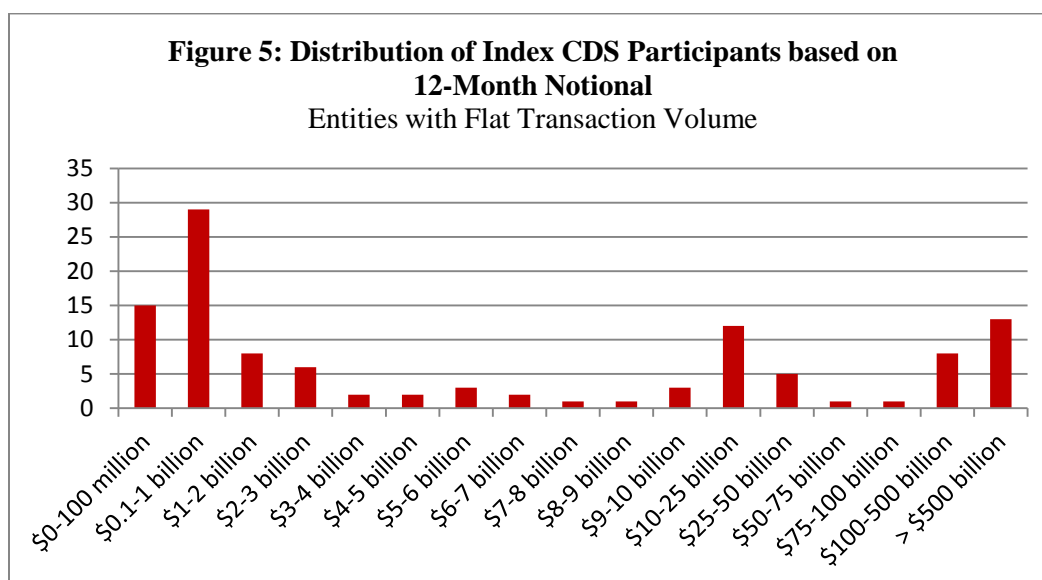


Table 5. Trailing 12-Month Index CDS Activity - Entities with Flat Transaction Volume

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	15	13.39%	\$ 0.66	0.00%
\$0.1-1 billion	29	25.89%	\$ 11.65	0.04%
\$1-2 billion	8	7.14%	\$ 11.94	0.04%
\$2-3 billion	6	5.36%	\$ 14.02	0.04%
\$3-4 billion	2	1.79%	\$ 6.93	0.02%
\$4-5 billion	2	1.79%	\$ 8.31	0.03%
\$5-6 billion	3	2.68%	\$ 16.19	0.05%
\$6-7 billion	2	1.79%	\$ 13.20	0.04%
\$7-8 billion	1	0.89%	\$ 7.56	0.02%
\$8-9 billion	1	0.89%	\$ 8.73	0.03%
\$9-10 billion	3	2.68%	\$ 29.21	0.09%
\$10-25 billion	12	10.71%	\$ 186.89	0.60%
\$25-50 billion	5	4.46%	\$ 153.70	0.49%
\$50-75 billion	1	0.89%	\$ 66.75	0.21%
\$75-100 billion	1	0.89%	\$ 99.70	0.32%
\$100-500 billion	8	7.14%	\$ 1,405.17	4.49%
> \$500 billion	13	11.61%	\$ 29,246.57	93.48%
Total	112		\$ 31,287.18	

6. Criterion: Initial margin posted with less than 10% frequency for index CDS

For each entity, the number of transactions in which they post initial margin is calculated as a percentage of all transactions over the sample period. Figure 6 illustrates the distribution of aggregate gross notional amounts for entities who post initial margin with less than 10% frequency. Table 6 also provides the percentage of total entities and the percentage of total notional accounted for by each notional bin.

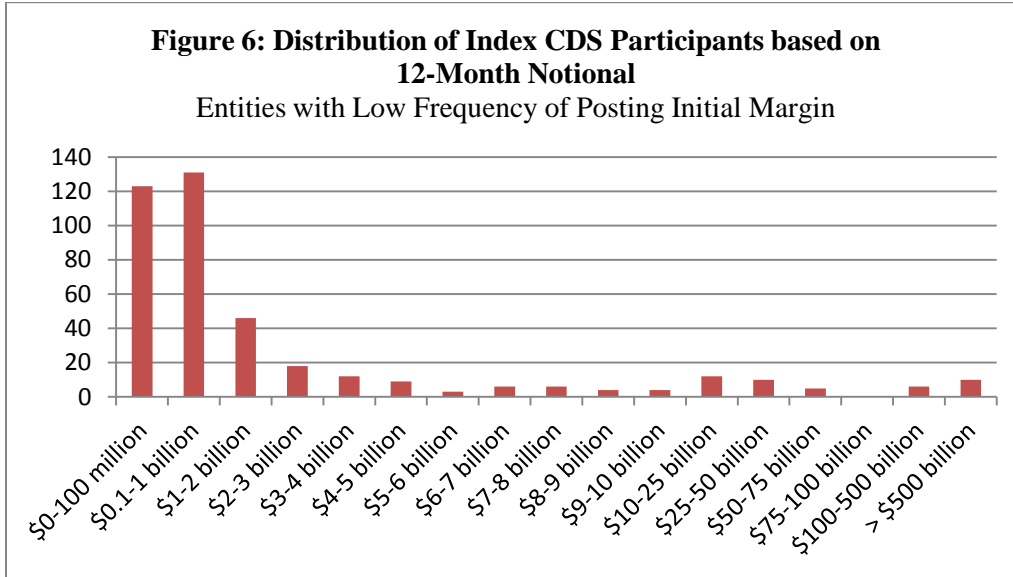


Table 6. Trailing 12-Month Index CDS Activity - Entities with Low Percentage of Transactions with Initial Margin

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	123	30.37%	\$ 5.14	0.02%
\$0.1-1 billion	131	32.35%	\$ 49.28	0.20%
\$1-2 billion	46	11.36%	\$ 66.92	0.27%
\$2-3 billion	18	4.44%	\$ 46.27	0.18%
\$3-4 billion	12	2.96%	\$ 40.63	0.16%
\$4-5 billion	9	2.22%	\$ 42.05	0.17%
\$5-6 billion	3	0.74%	\$ 17.07	0.07%
\$6-7 billion	6	1.48%	\$ 39.47	0.16%
\$7-8 billion	6	1.48%	\$ 46.06	0.18%
\$8-9 billion	4	0.99%	\$ 34.77	0.14%
\$9-10 billion	4	0.99%	\$ 38.85	0.15%
\$10-25 billion	12	2.96%	\$ 193.33	0.77%
\$25-50 billion	10	2.47%	\$ 345.16	1.38%
\$50-75 billion	5	1.23%	\$ 306.40	1.22%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	6	1.48%	\$ 1,008.06	4.02%
> \$500 billion	10	2.47%	\$ 22,798.54	90.91%
Total	405		\$ 25,078.00	

Analysis of Combined Criteria for Index CDS

Each of the above analyses is designed to inform on the number of entities that would be captured by alternative criteria and definitions of swap activity. While each of the alternative analyses may indicate dealing activity, there may be limitations that could lead any single factor to incorrectly specify dealing activity. The analysis below provides the number of entities that meet various combinations of the factors. Figure 7 identifies participants having *any* two of the factors, and Figure 8 identifies participants having *any* three of the factors. For purposes of this analysis, we increase the ‘multiple counterparty’ criteria to 15 and the ‘multiple non-ISDA-recognized dealer counterparties’ criteria to 5. Tables 7 and 8 provide the associated percentages of total entities and the percentage of total notional accounted for by each notional bin.

Again, the CFTC staff reiterates that the factors used here are not necessarily the criteria that would be relevant to determining whether a person is a swap dealer under the final rules and interpretive guidance further defining the term “swap dealer” that the CFTC and SEC will be issuing. Therefore, conclusions should not be drawn from the data provided here regarding any specific entity’s status as a swap dealer.

Figure 7: Distribution of Index CDS Participants based on 12-Month Notional
Entities Passing At Least Two Criteria

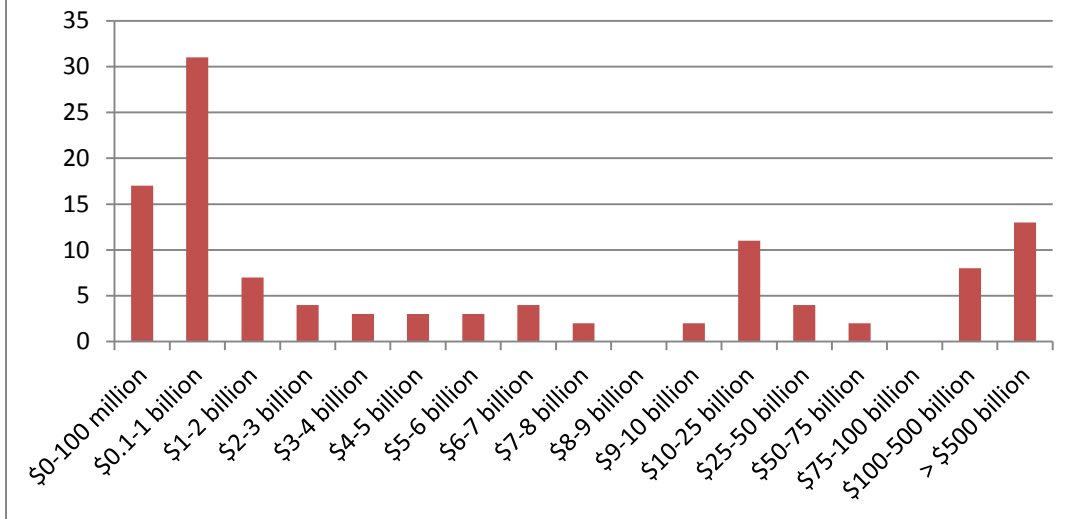


Table 7. Trailing 12-Month Index CDS Activity - Entities Passing At Least Two Data Filters

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	17	14.91%	\$ 0.73	0.00%
\$0.1-1 billion	31	27.19%	\$ 12.89	0.04%
\$1-2 billion	7	6.14%	\$ 10.54	0.03%
\$2-3 billion	4	3.51%	\$ 9.74	0.03%
\$3-4 billion	3	2.63%	\$ 10.25	0.03%
\$4-5 billion	3	2.63%	\$ 13.53	0.04%
\$5-6 billion	3	2.63%	\$ 16.19	0.05%
\$6-7 billion	4	3.51%	\$ 26.27	0.08%
\$7-8 billion	2	1.75%	\$ 15.53	0.05%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	2	1.75%	\$ 19.56	0.06%
\$10-25 billion	11	9.65%	\$ 165.84	0.53%
\$25-50 billion	4	3.51%	\$ 144.39	0.46%
\$50-75 billion	2	1.75%	\$ 127.78	0.41%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	8	7.02%	\$ 1,405.17	4.50%
> \$500 billion	13	11.40%	\$ 29,246.57	93.66%
Total	114		\$ 31,224.98	

Figure 8: Distribution of Index CDS Participants based on 12-Month Notional Entities Passing At Least Three Criteria

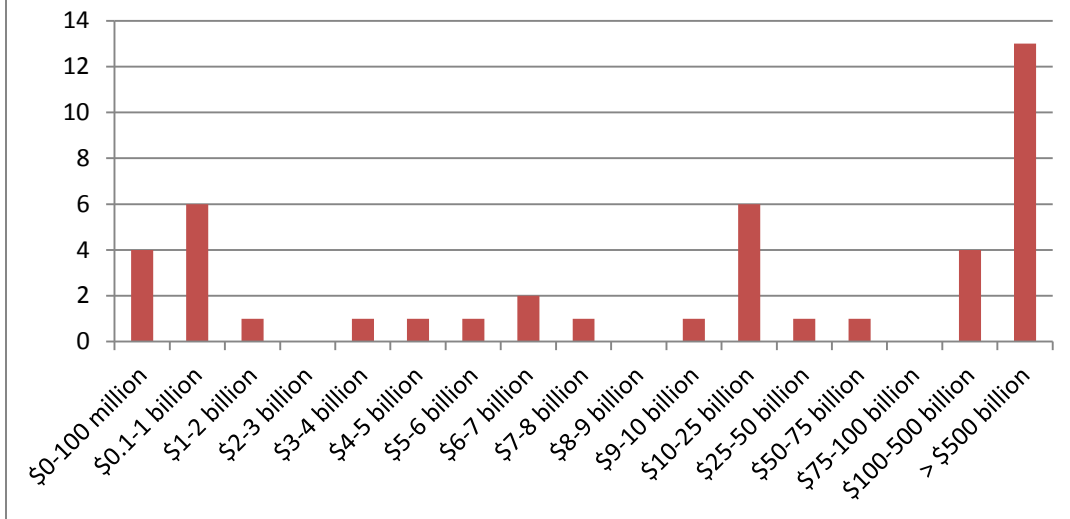


Table 8. Trailing 12-Month Index CDS Activity - Entities Passing At Least Three Data Filters

Notional Bucket	Entities	% of Entities	Notional	% of Notional
\$0-100 million	4	9.30%	\$ 0.10	0.00%
\$0.1-1 billion	6	13.95%	\$ 2.81	0.01%
\$1-2 billion	1	2.33%	\$ 1.90	0.01%
\$2-3 billion	0	0.00%	\$ -	0.00%
\$3-4 billion	1	2.33%	\$ 3.48	0.01%
\$4-5 billion	1	2.33%	\$ 4.08	0.01%
\$5-6 billion	1	2.33%	\$ 5.56	0.02%
\$6-7 billion	2	4.65%	\$ 13.20	0.04%
\$7-8 billion	1	2.33%	\$ 7.56	0.03%
\$8-9 billion	0	0.00%	\$ -	0.00%
\$9-10 billion	1	2.33%	\$ 10.00	0.03%
\$10-25 billion	6	13.95%	\$ 102.12	0.34%
\$25-50 billion	1	2.33%	\$ 30.89	0.10%
\$50-75 billion	1	2.33%	\$ 66.75	0.22%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	4	9.30%	\$ 725.91	2.40%
> \$500 billion	13	30.23%	\$ 29,246.57	96.78%
Total	43		\$ 30,220.93	

Special Entity Analysis for Index CDS

Finally, while the information in the above analyses may be relevant to evaluating possible approaches for implementing the *de minimis* exception to the “swap dealer” definition, the proposed rule also considers treating Dodd-Frank Act special entities⁶ differently from other end users for the purposes of this exception. For this reason, Table 9 illustrates the distribution of aggregate gross notional amounts for counterparties to special entity transactions.

Table 9. Trailing 12-Month Index CDS Activity - Counterparties (CPs) to Special Entities

Notional Bin	% of CPs		Notional	% of Notional
	CPs			
\$0-25 million	0	0.00%	\$ -	0.00%
\$25-50 million	0	0.00%	\$ -	0.00%
\$50-75 million	1	6.67%	\$ 0.07	0.03%
\$75-100 million	0	0.00%	\$ -	0.00%
\$100 million - 1 billion	0	0.00%	\$ -	0.00%
\$ 1-2 billion	3	20.00%	\$ 3.67	1.78%
\$ 2-3 billion	1	6.67%	\$ 2.38	1.15%
\$ 3-4 billion	0	0.00%	\$ -	0.00%
\$ 4-5 billion	0	0.00%	\$ -	0.00%
\$ 5-6 billion	1	6.67%	\$ 5.63	2.73%
\$ 6-7 billion	0	0.00%	\$ -	0.00%
\$ 7-8 billion	1	6.67%	\$ 7.75	3.76%
\$ 8-9 billion	0	0.00%	\$ -	0.00%
\$ 9-10 billion	0	0.00%	\$ -	0.00%
> \$10 billion	8	53.33%	\$ 186.61	90.54%
Total	15		\$ 206.10	

⁶ Classification is determined by whether the market participant appears to be a special entity based on its name.

Section II – Information about index CDS positions of non-ISDA-recognized dealer market participants

This section provides tables of aggregate gross notional positions for all entities except for ISDA-recognized dealers and the Intercontinental Exchange Clear Credit LLC (ICE Clear Credit) . Aggregate gross notional positions are calculated on a monthly basis by summing gross notional buy and sell positions, and then averaging over the entire 12-month period ending December 31, 2011. The analysis excludes ISDA-recognized dealers because registered dealers are not a part of major participant regulation. The analysis also excludes ICE Clear Credit. In addition to providing information about aggregate gross notional positions, we separately report gross notional buy and sell positions for those entities that have bought and sold credit protection over the same period.

Collectively, this information may reasonably be expected to predict the number of entities that need to determine whether they qualify as major swap participants by virtue of having a “potential future exposure” sufficient to approach the thresholds set forth by the rule defining “substantial position” for purposes of the analysis.

1. Aggregate gross notional positions for index CDS

For each entity, month-end buy and sell positions are aggregated and averaged over the sample period. Table 10 illustrates the distribution of average aggregate gross notional amounts for all entities except ISDA-recognized dealers and ICE Clear Credit.

Table 10. Avg. Aggregate Gross Notional Positions for index CDS - Ex. ISDA/ICE

Notional Bin	Entities	% of Entities	Notional	% of Notional
\$0-100 million	563	56.53%	\$ 17.35	1.39%
\$0.1-1 billion	299	30.02%	\$ 102.73	8.22%
\$1-2 billion	46	4.62%	\$ 65.46	5.24%
\$2-3 billion	14	1.41%	\$ 34.78	2.78%
\$3-4 billion	19	1.91%	\$ 66.34	5.31%
\$4-5 billion	9	0.90%	\$ 40.18	3.21%
\$5-6 billion	5	0.50%	\$ 28.37	2.27%
\$6-7 billion	2	0.20%	\$ 13.72	1.10%
\$7-8 billion	4	0.40%	\$ 29.63	2.37%
\$8-9 billion	6	0.60%	\$ 50.69	4.05%
\$9-10 billion	3	0.30%	\$ 29.21	2.34%
\$10-25 billion	16	1.61%	\$ 282.55	22.60%
\$25-50 billion	8	0.80%	\$ 321.69	25.73%
\$50-75 billion	1	0.10%	\$ 70.52	5.64%
\$75-100 billion	1	0.10%	\$ 97.09	7.77%
\$100-500 billion	0	0.00%	\$ -	0.00%
> \$500 billion	0	0.00%	\$ -	0.00%
Total	996		\$ 1,250.31	

2. Aggregate gross notional positions for entities buying credit protection for index CDS

For each entity buying credit protection, month-end buy positions are aggregated and averaged over the sample period. Table 11 illustrates the distribution of average aggregate notional amounts for all entities except ISDA-recognized dealers and ICE Clear Credit.

Table 11. Avg. Aggregate Buy Notional Positions for Index CDS - Ex. ISDA/ICE

Notional Bin	Entities	% of Entities	Notional	% of Notional
\$0-100 million	555	61.39%	\$ 15.86	2.50%
\$0.1-1 billion	257	28.43%	\$ 87.95	13.84%
\$1-2 billion	35	3.87%	\$ 50.08	7.88%
\$2-3 billion	11	1.22%	\$ 27.47	4.32%
\$3-4 billion	7	0.77%	\$ 24.61	3.87%
\$4-5 billion	12	1.33%	\$ 53.75	8.46%
\$5-6 billion	3	0.33%	\$ 16.94	2.67%
\$6-7 billion	1	0.11%	\$ 6.83	1.08%
\$7-8 billion	4	0.44%	\$ 29.76	4.68%
\$8-9 billion	1	0.11%	\$ 8.54	1.34%
\$9-10 billion	1	0.11%	\$ 9.23	1.45%
\$10-25 billion	16	1.77%	\$ 253.70	39.94%
\$25-50 billion	0	0.00%	\$ -	0.00%
\$50-75 billion	1	0.11%	\$ 50.58	7.96%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	0	0.00%	\$ -	0.00%
> \$500 billion	0	0.00%	\$ -	0.00%
Total	904		\$ 635.29	

3. Aggregate gross notional positions for entities selling credit protection for index CDS

For each entity who sells credit protection, month-end sell positions are aggregated and averaged over the sample period. Table 12 illustrates the distribution of average aggregate notional amounts for all entities except ISDA-recognized dealers and ICE Clear Credit.

Table 12. Avg. Aggregate Sell Notional Positions for Index CDS - Ex. ISDA/ICE

Notional Bin	Entities	% of Entities	Notional	% of Notional
\$0-100 million	411	61.90%	\$ 9.70	1.58%
\$0.1-1 billion	170	25.60%	\$ 55.91	9.09%
\$1-2 billion	25	3.77%	\$ 37.07	6.03%
\$2-3 billion	16	2.41%	\$ 38.30	6.23%
\$3-4 billion	10	1.51%	\$ 35.30	5.74%
\$4-5 billion	6	0.90%	\$ 27.79	4.52%
\$5-6 billion	3	0.45%	\$ 16.58	2.70%
\$6-7 billion	2	0.30%	\$ 13.35	2.17%
\$7-8 billion	1	0.15%	\$ 7.64	1.24%
\$8-9 billion	2	0.30%	\$ 17.47	2.84%
\$9-10 billion	2	0.30%	\$ 18.92	3.08%
\$10-25 billion	14	2.11%	\$ 228.50	37.15%
\$25-50 billion	1	0.15%	\$ 46.51	7.56%
\$50-75 billion	1	0.15%	\$ 61.99	10.08%
\$75-100 billion	0	0.00%	\$ -	0.00%
\$100-500 billion	0	0.00%	\$ -	0.00%
> \$500 billion	0	0.00%	\$ -	0.00%
Total	664		\$ 615.02	