IV. Multibank Settlement in CDS Manipulation Suit

A. Introduction

On October 29, 2015, Judge Denise Cote of the Southern District of New York granted preliminary approval to a settlement award of $1.86 billion, making it one of the largest private antitrust class action settlements of all time.[1] The suit named almost all of the major investment banks as defendants, including Goldman Sachs, JPMorgan, Bank of America Corp., Barclays Bank PLC, BNP Paribas, Credit Suisse AG, Deutsche Bank AG, HSBC Bank PLC, Morgan Stanley & Co. LLC, Royal Bank of Scotland PLC, and UBS AG, as well as industry group International Swaps and Derivatives Association (ISDA) and market data provider Markit Group Holdings Ltd.[2] The plaintiff class in *In re Credit Default Swaps Antitrust Litigation*[3] represents persons who had purchased or sold a credit-default swap (CDS) through one of the defendant banks.[4] The antitrust action alleged that the named banks illegally conspired to restrict potential competitors from entering the CDS market for the purpose of artificially fixing and inflating the profit spreads for CDSs traded on the over-the-counter (OTC) market.[5] "A Credit Default Swap . . . is an agreement by one party to make a series of payments to a counter party, in exchange for a payoff, if a specified credit instrument goes into default."[6] On a basic level, a CDS is similar to purchasing insurance on a credit instrument or security.[7] For example, a bank lending capital to a public company might purchase a CDS to protect

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[1] John Kennedy, *Citi, Others Get Nod for $1.86B Deal in Market-Rigging Suit*, LAW 360 (Oct. 29, 2015), http://www.law360.com.ezproxy.bu.edu /articles/720800/citi-others-get-nod-for-1-86b-deal-in-market-rigging-suit [https://perma.cc/DN4G-AFL3].
[2] *Id.*
[3] 978 F. Supp. 2d 1374 (S.D.N.Y. 2013).
[4] *See* Complaint at 1, In re Credit Default Swaps Antitrust Litig., 978 F. Supp. 2d 1374 (S.D.N.Y. 2013).
[5] *See id.*, at 17 ("Defendants and their co-conspirators engaged in a continuing agreement, contract, combination or conspiracy in restraint of trade for the purpose of artificially increasing and maintaining the spreads for CDS traded on the OTC market within the United States.").
[6] Jerry W. Markham, *Regulating Credit Default Swaps in the Wake of the Subprime Crisis*, in 6 CURRENT DEVELOPMENTS IN MONETARY AND FINANCIAL LAW 281, 290 (Int'l Monetary Fund ed., 2012).
[7] *Id.*

the loan's principal and future interest payment receivables against the risk that the company defaults on repayment.[8] In return for this protection, a CDS buyer contracts to pay an annual premium based on the loan's credit risk to the CDS seller.[9]

CDS contracts are not listed on exchanges, but are traded in an OTC market relying on the activities of dealers.[10] The CDS market flows almost entirely through a group of these dealers, comprised primarily of the banks named as defendants in the antitrust lawsuit.[11] Customers can only trade through dealers because the OTC market requires intermediaries to match buyers of CDS contracts with sellers.[12] Critically, trades are not reported in real time in the OTC market, so customers cannot obtain accurate information about the current market prices unless they ask a dealer.[13] This lack of market

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[8] *See id.* ("Although CDS were widely used as a form of insurance against a default from [a] credit instrument, they were also used for speculation on whether a default will occur.") (footnote omitted).

[9] *Id.* ("[T]he protection buyer makes a fixed payment to the protection seller in return for a payment that is contingent upon a 'credit event'—such as a bankruptcy—occurring to the company that issued the security . . . or the security itself (the 'reference obligation'). The contingent payment is often made against delivery of a 'deliverable obligation'—usually the reference obligation or other security issued by the reference entity—by the protection buyer to the protection seller.") (quoting Deutsche Bank AG v. Ambac Credit Products, LLC, No. 04 CIV. 5594 (DLC), 2006 WL 1867497, at *2 (S.D.N.Y. July 6, 2006)).

[10] In Re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2014 U.S. Dist. LEXIS 123784, at *6 (S.D.N.Y. Sept. 4, 2014) ("Due to low trading volume and unstandardized products, dealers faced the possibility of holding undesirable CDS exposure, a risk that only large financial institutions, like Dealer-Defendants, could manage.").

[11] *Id.* at *10 ("In short, by the beginning of 2008 Dealer-Defendants had total command of CDS trading. By controlling real-time pricing data, Dealer-Defendants were able to maintain supracompetitive bid/ask spreads, even as increased liquidity and standardization should have driven those spreads down.").

[12] Matt Levine, *Banks Wanted to Keep the CDS Market to Themselves*, BLOOMBERG VIEW (Sept. 11, 2015), http://www.bloombergview.com /articles/2015-09-11/banks-wanted-to-keep-the-cds-market-to-themselves [https://perma.cc/YUN5-9Y35] ("Sellers come to dealers to find buyers, and buyers come to find sellers . . . . Customers could only trade with dealers, and trades were not reported publicly in real time . . . .").

[13] *See In re Credit Default Swaps Antitrust Litig.*, 2014 U.S. Dist. LEXIS 123784, at *8-9 ("[A]fter a transaction, virtually no CDS data could be shared

price transparency gives the dealers a significant informational advantage that allows them to make a profit off of the spread.[14] In 2013, trading in CDSs was estimated to constitute approximately $13.5 trillion in total purchases and sales, more than 99% of which was arranged by the banks named as defendants in the suit.[15] The CDS market, and its largely-unregulated speculative potential for hedging risk, has been criticized for its role in facilitating the deceptive credit ratings that factored into the financial crisis of 2008.[16]

B. Recent Attempts to Expand the CDS Market—A Brief History

When a market is illiquid, dealers serve a valuable purpose in creating liquidity by connecting buyers and sellers.[17] As markets expand and liquidity increases, however, more frequent trading allows for an actual "market price" to emerge.[18] If, hypothetically, transactions were publicly reported in real time, customers could efficiently determine the "market price" without asking a dealer.[19] The huge volume of CDS trading made market conditions "ripe" for a more transparent system like an electronic exchange, which "would have diminished the buy-side's dependence on the over-the-counter trading services offered by [the banks]."[20] Acting on this potential, Citadel Group attempted to enter into a joint venture with Chicago Mercantile Exchange (CME) in 2008 to develop a clearinghouse and electronic

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without Dealer-Defendants' consent . . . . Markit would delay before circulating information, allowing Dealer-Defendants to quote different prices in the interim and to disavow as stale the information that Markit eventually released.").

[14] *See* Levine, *supra* note 12.

[15] *See* Complaint, *supra* note 4, at 15.

[16] *See* Markham, *supra* note 6; *see also* Nathaniel Popper, *Banks to Settle With Investors in Suit Over Financial Crisis*, N.Y. TIMES (Sept. 11, 2015), http://www.nytimes.com/2015/09/12/business/dealbook/banks-to-settle-with-investors-in-suit-over-financial-crisis.html [https://perma.cc/N7JZ-YBLH].

[17] *See In re Credit Default Swaps Antitrust Litig.*, 2014 U.S. Dist. LEXIS 123784, at *6-7.

[18] *See* Levine, *supra* note 12.

[19] *Id.*

[20] *In re Credit Default Swaps Antitrust Litig.*, 2014 U.S. Dist. LEXIS 123784, at *8.

trading system (called the Credit Market Derivatives Exchange) that would quote prices for CDSs electronically.[21] If successful, this effort would have effectively excluded the dealer banks as intermediaries in most CDS transactions—essentially attempting to "license their documents and use their trade data to build a product to replace them."[22]

However, the banks had already protected their position with respect to new CDS market entrants by restricting price data, so that it was impossible for investors to determine the supply of and demand for CDS contracts.[23] The banks shared market data with one another via the Depository Trust & Clearing Corporation (DTCC), which processed CDS trades and provided accurate market price data only to its bank members and Markit.[24] These restrictions on market information were enacted by the DTCC board of directors, where the dealer-banks "used their positions as board members to promulgate rules" preventing data publication.[25] The dealer-banks allowed Markit access to the market data on the condition that it not post real-time information, so as to preserve the dealers' informational advantage.[26] The banks also directly moved to counter the Citadel-CME proposal by partnering with Intercontinental Exchange (ICE), a CME rival, to set up a different clearinghouse.[27] However, the banks attached a number of conditions to their partnership with ICE, which gave them significant power over the organization.[28] Clearinghouse rules "required members to hold large amounts of capital in derivatives units, a condition that was prohibitive even for some large banks," and

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[21] Louise Story, *A Secretive Banking Elite Rules Trading in Derivatives*, N.Y. TIMES, Dec. 11, 2010, at A1.

[22] Levine, *supra* note 12 (speculating that CMDX's effect of eliminating dealers completely from the CDS market was likely the catalyst for the alleged anticompetitive behavior).

[23] *In re Credit Default Swaps Antitrust Litig.*, 2014 U.S. Dist. LEXIS 123784, at *9-11.

[24] *Id.* at *9 ("Formal processing of Dealer-Defendants' CDS trades was handled by subsidiaries of the Depository Trust & Clearing Corporation . . . whose board of directors included representatives of Dealer-Defendants.").

[25] *Id.*

[26] *Id.*

[27] Story, *supra* note 21.

[28] *See id.* ("The banks also refused to allow the deal with ICE to close until the clearinghouse's rulebook was established, with provisions in the bank's favor.").

mandated that market data be provided only to Markit.[29] Similar to the DTCC, bank representatives had a majority of the seats on the clearinghouse's risk committee.[30] This provided the banks significant influence with respect to setting prices for clearing trades and the amount of collateral required of customers, as well as deciding "which derivatives should be handled through clearinghouses, and which should be exempt."[31] Moreover, the dealer-banks coordinated their efforts to hamstring the CMDX by refusing to participate in the exchange and by using Markit and the ISDA to prohibit CMDX from licensing price data on CDS agreements.[32] Markit used its intellectual property rights to critical indexes and market data to exercise significant bargaining leverage over CME and Citadel, insisting that each trade on CMDX involve at least one dealer bank.[33] These demands culminated in CME abandoning its exchange venture with Citadel and establishing a clearinghouse with the dealer-banks on advantageous terms, similar to ICE.[34] Thus, on the eve of the plaintiffs' lawsuit, the market for CDS contracts was restricted to these two bank-dominated exchanges.[35]

C. The Lawsuit Settlement: Concerns over CDS Market Manipulation

The antitrust class action was not the only investigation into the CDS market. Both the U.S. Department of Justice (DOJ) and the European Commission (EC) had been investigating allegations of anti-

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[29] *Id.*
[30] *Id.* (The banks' positions on clearinghouse risk committees "puts them in a pivotal position to determine how derivatives are traded" due to the "broad authority" and self-regulatory autonomy granted to them by Dodd-Frank).
[31] *Id.*
[32] *See* Levine, *supra* note 12 ("But, according to the plaintiffs, the dealers got together to shut this down. They refused to invest in CMDX when asked, refused to participate in the exchange, cleared transactions through a different clearinghouse from CMDX, and convinced Markit and ISDA not to license price data or CDS agreements to CMDX, making it impossible for CMDX to actually trade CDS. And they did this all in classically conspiratorial fashion . . . .").
[33] *See* Story, *supra* note 21.
[34] *Id.* ("With Citadel out of the picture, the banks agreed to join the Chicago Mercantile Exchange's clearinghouse effort. The exchange set up a risk committee that, like ICE's committee, was mainly populated by bankers.").
[35] *Id.*

competitive practices related to the credit derivatives market.[36] Notably, the EC had even identified specific entities implicated by the investigation and went so far as to charge thirteen investment banks, ISDA, and Markit with engaging in anticompetitive behavior.[37] Specifically, the EC accused the dealer-banks of blocking the establishment of CDS exchanges by refusing to license market data necessary to run an exchange.[38] Though the DOJ is still evaluating the banks' activities, "investigators believe the alleged anti-competitive conduct has since been remedied and there is no need to seek penalties."[39]

Despite both investigative bodies failing to successfully prosecute any of the entities allegedly involved, the principal attorney for the plaintiff class felt that they had built a solid case from the results of the discovery process.[40] The crux of the plaintiffs' lawsuit in *In Re Credit Default Swaps Antitrust Litigation* is that "Defendants and their co-conspirators engaged in a continuing agreement, contract, combination or conspiracy in restraint of trade for the purpose of artificially increasing and maintaining the spreads for CDS[s] traded on the OTC market within the United States."[41] Though nine representatives from the defendant banks met once per month in the ICE Trust offices,[42] purportedly for coordinating efforts to make sure the derivatives market functioned effectively, the case essentially alleges that "they spent some of their time at those meetings plotting to keep the market from functioning better."[43] The original complaint alleged that the defendants

> '(a) communicated among themselves' about transaction costs and bid-ask spreads on CDS contracts, (b) agreed collectively to 'fix, raise, [and]

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[36] *See* Complaint, *supra* note 4, at 28-29.
[37] *Id.* at 30-31.
[38] *Id.* at 30.
[39] *DOJ Won't Penalize Banks in Swaps Investigation: WSJ*, HUFFPOST BUS. (Dec. 1, 2013), http://www.huffingtonpost.com/2013/12/02/doj-not-planning-to-penal_n_4370011.html [https://perma.cc/KBF2-HPZ9].
[40] Jesse Drucker & Bob Van Voris, *Wall Street Banks to Settle CDS Lawsuit for $1.87 Billion*, BLOOMBERG (Sept. 11, 2015), http://www.bloomberg.com/news/articles/2015-09-11/wall-street-banks-reach-settlement-on-cds-lawsuit-lawyer-says [https://perma.cc/L87Y-29WQ].
[41] Complaint, *supra* note 4, at 17.
[42] *See* Story, *supra* note 21.
[43] Levine, *supra* note 12.

> maintain . . . prices' and CDS spreads, (c) used their ownership of Markit to lock out other potential information providers from accessing CDSs data so as to reduce market transparency, and (d) collectively utilized their control of the ICE clearinghouse to 'create membership rules and other practices that prevented other CDS dealers from transacting business on the largest CDS clearinghouse, thereby reducing competition' . . . .[44]

Moreover, the suit maintains that the dealer banks' lucrative and inflated buy-sell spreads—the source of the class action's common injury—would not have existed in a more competitive, transparent market.[45]

Judge Cote found that these claims largely succeeded in stating a plausible claim for relief, and only partially granted the defendants' motion to dismiss.[46] Most significantly, the opinion held that the Complaint "plausibly alleges an antitrust conspiracy in violation of Section 1 of the Sherman Act."[47] The implications of surviving the defendants' motion to dismiss may have seriously increased plaintiffs' leverage at the bargaining table, because their attorney filed a motion for approval of settlement a year later.[48] The

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[44] *See* Complaint, *supra* note 4, at 17-18.

[45] *See id.* at 27-28 ("Numerous recent studies found that transaction costs in a financial trading market are dependent on that market's transparency . . . . Thus, an opaque market dominated by a small number of liquidity suppliers behaving strategically to exploit market conditions and controlling trade information among themselves . . . results in anti-competitive and artificially inflated spreads paid by . . . the buyers and sellers of CDS.").

[46] *See* In Re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2014 U.S. Dist. LEXIS 123784, at *50 (S.D.N.Y. Sept. 4, 2014) (dismissing only the "claims brought under Section 2 of the Sherman Act and claims for damages based on investments entered prior to the Fall of 2008," while finding the remainder sufficiently stated a claim for relief).

[47] *Id.* at *30 ("The financial crisis hardly explains the alleged secret meetings and coordinated actions. Nor does it explain why ISDA and Markit simultaneously reversed course.").

[48] *Banks, ISDA and Markit Settle CDS Market Manipulation Claims*, PRACTICAL LAW (Oct. 21, 2015), http://us.practicallaw.com/w-000-6810?q=&qp=&qo=&qe [https://perma.cc/4CR2-65BH] ("On October 16, 2015, Quinn Emanuel Urquhart & Sullivan, LLP filed a motion for approval of settlement on behalf of [the named plaintiff] . . . indicating that 12 of that

agreed-upon settlement has the defendants collectively agreeing to pay $1.86 billion distributed pro rata according to the plaintiffs' measure of CDS market share, with JP Morgan Chase paying the largest amount at $595 million.[49] Though none of the defendants admitted fault under the agreement,[50] the "Behavioral Remedies" that the ISDA agreed to undertake may be more significant for the CDS market than the monetary payout.[51]

D. ISDA Behavioral Remedies and Implications for the CDS Market

There are two very significant actions that the ISDA has agreed to undertake as part of the settlement agreement: 1) adopting a new, more transparent licensing framework for its intellectual property and 2) agreeing to vote on a proposal to discourage the post-trade disclosure of buyers and sellers of CDS contracts (Name Give-up).[52] Much of the speculation about the failure of the Citadel and CME joint exchange venture focused on the difficulty of obtaining a license for market data related to the pricing of CDS settlements administered by ISDA.[53] The settlement attempts to remedy these concerns by creating

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largest banks, the [ISDA,] and Markit . . . have settled allegations that they violated antitrust laws . . . .").

[49] Matthew Heller, *3 Banks to Pay 54% of $1.8B CDS Suit Settlement*, CFO (Oct. 19, 2015), http://ww2.cfo.com/legal/2015/10/3-banks-pay-54-1-8b-cds-suit-settlement/ [https://perma.cc/2PT6-28K4] ("JPMorgan will pay $595 million of the settlement, while Morgan Stanley and Barclays will pay $230 million and $178 million, respectively . . . . Other banks that settled include Goldman Sachs ($164 million), Bank of America ($90 million), Credit Suisse ($159 million), Deutsche Bank ($120 million), Citigroup ($60 million), and BNP Paribas ($89 million).").

[50] *See Banks, ISDA and Markit Settle CDS Market Manipulation Claims*, *supra* note 48.

[51] *See* Stipulation and Agreement of Settlement with International Swaps and Derivatives Association, Exhibit 9, App. A at 41, In Re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2014 U.S. Dist. LEXIS 123784 (S.D.N.Y. Sept. 4, 2014) [hereinafter IDS Settlement Agreement].

[52] *See id.* at 41-43.

[53] *See* Story, *supra* note 21 (contending that, because Markit "own[ed] the rights to certain derivatives indexes[,]" it was able to use its superior bargaining position to demand serious concessions in exchange for a license); Levine, *supra* note 12 (discussing the plaintiffs' allegations that the dealer bank defendants "convinced Markit and ISDA not to license price data or CDS agreements to CMDX").

a strict framework by which ISDA would negotiate a licensing agreement for any of its intellectual property within 15 days of receiving such a request, and on "fair, reasonable and nondiscriminatory" terms.[54] The provisions also contain a framework for entirely new licensing procedures, including a dispute resolution mechanism.[55] Most significantly, ISDA commits to delegate licensing decisions to an independent sub-committee "consisting of an equal number of buy- and sell-side members," broadcast the licensing meetings over the internet, and publish the committee's written decisions on the ISDA website in an effort to ensure a more transparent, fair process.[56] One of plaintiff's expert witnesses—Stanford Professor of Finance Darrell Duffie—submitted a declaration to the court supporting the settlement, writing that the licensure changes would "make it much easier for parties to license ISDA's intellectual property for the exchange trading of CDS."[57]

The ISDA also agreed to have its board vote on whether to make a statement in favor of abolishing Name Give-up in the CDS market.[58] It additionally agreed to utilize any guidance the Commodity Futures Trading Commission (CFTC) offered to help eliminate this practice.[59] Duffie views this as a critical step towards the establishment of electronic exchanges because market entities typically prefer this anonymity so as not to disclose their trading strategies to other analysts.[60] Having the ISDA endorse the end of Name Give-up might incentivize participation on a new CDS trading platform or exchange,

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[54] *See* IDS Settlement Agreement, *supra* note 51.
[55] *See id.* at 43 ("In the event that ISDA and the party requesting a license do not reach an agreement . . . within six months of the request, ISDA and the party requesting a license shall agree to a third-party determination . . . .").
[56] *See id.* at 42-43.
[57] Declaration of Darrell Duffie in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with all Defendants and Preliminary Certification of a Settlement Class at 4, In Re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2014 U.S. Dist. LEXIS 123784 (S.D.N.Y. Sept. 4, 2014) [hereinafter Declaration of Darrell Duffie].
[58] Exhibit 9, *supra* note 51, at 43.
[59] *See id.*
[60] Declaration of Darrell Duffie, *supra* note 57, at 4, n.3 ("Anonymity is a critical component of exchange trading platforms because it allows entities to transact without disclosing their trading strategies to the wider market. The practice of Name Give-up, accordingly, deters buy-side firms from trading on platforms with exchange-like features.").

making the establishment of such a platform more competitively viable.[61]

Although not a condition of the settlement agreement, ICE has recently announced that it plans to develop an "anonymous, all-to-all trading platform for single-name CDS."[62] As putting the contracts on an exchange could reduce information costs for buyers and sellers, it is believed that such a platform could incentivize greater market activity in a currently "flagging market."[63] Since the 2008 financial crisis, single-name CDS volume has steadily declined as market participants have been exiting the business.[64] However, ICE has been steadily signing up new buy-side firms and single-name CDS trading actually increased from 2014 to 2015.[65] Duffie takes the view that moving to an anonymous exchange would result in "increased price transparency, more efficient pricing, and enhanced competition among dealers, and would thereby improve the efficiency of the CDS market."[66] He attributes this dramatic shift in ISDA policy, at least in part, to the success of the lawsuit discussed herein.[67] Although such an exchange may reduce the informational advantages that dealers enjoy, it is still unclear whether the expenses associated with centralized exchanges would be offset by a corresponding increase in liquidity and activity in the market.[68]

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[61] *Id.* ("The elimination of the practice of Name Give-up would thus, in my view, significantly increase incentives for participation on new or existing CDS trading platforms with exchange-like features.").

[62] *Id.* at 3 ("[ICE] announced that it plans to begin offering an anonymous . . . trading platform . . . . This platform was described as 'exchange-like' and will feature many of the beneficial aspects of exchange trading . . . .") (footnote omitted).

[63] Mike Kentz, *ICE Plans Single-Name CDS Platform*, REUTERS (Aug. 31, 2015), http://www.reuters.com/article/markets-derivatives-cds-idUSL1N1161A520150831 [https://perma.cc/RX2X-4Q5V] ("The exchange and traders believe that an open access, exchange-like platform for trading the currently bilaterally negotiated contracts would open the doors to a multitude of new participants and boost liquidity in the flagging market.").

[64] *See* Levine, *supra* note 12.

[65] *See* Kentz, *supra* note 63 ("The exchange has signed up 21 new buyside[sic] firms . . . . As a result, ICE has already cleared more in 2015 (US$10.2bn) than it did in all of 2014 (US$10.01bn).").

[66] Declaration of Darrell Duffie, *supra* note 57, at 2.

[67] *Id.* at 3.

[68] *See* Kentz, *supra* note 63 ("Such voluntary movement . . . on to open anonymous trading platforms would have been unheard of only a few years

E. Conclusion

According to Duffie's declaration, the significant ISDA concessions over licensing market information and increased transparency seem to be the real windfall of this settlement.[69] However, the impact of these remedies on the CDS market remains unclear, as the inherent illiquidity of CDS contracts has been likened to corporate bonds in that having dealer intermediaries may actually increase efficiency.[70] Even if a functioning exchange were to develop as a result of these changes, it is difficult to discern whether this would result in a more competitively-priced CDS market.[71] Despite these concerns about viability, the behavioral remedies adopted by ISDA as part of the settlement seem to alleviate many of the conspiratorial

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ago . . . . But now, it seems, increasing concerns around liquidity in cash bonds and derivatives have all but necessitated the modernization of credit derivatives market structure. 'Clearing is much more expensive than bilateral trading on an absolute basis, but if it brings back liquidity I'm all for it,' said one dealer-trader.").

[69] *See* Declaration of Darrell Duffie, *supra* note 57, at 4 ("I consider these and other terms of the proposed settlement agreement to be important changes that should make the CDS market more transparent, efficient, and competitive, and thereby benefit class members.").

[70] *See* Levine, *supra* note 12 ("[M]aybe CMDX would have led to cheap electronic trading of CDS where dealers couldn't overcharge clients. But there are reasons to doubt that. People keep trying to launch cheap electronic trading of corporate bonds, but the corporate bonds keep stubbornly resisting . . . . [T]he corporate bond market is still pretty illiquid . . . . CDS has [sic] similar problems.") (footnotes omitted); Levine, *Nobody Knows How Much Bonds Cost*, BLOOMBERG (July 8, 2015), http://www.bloombergview.com/articles/2015-07-28/nobody-knows-how-much-bonds-cost [https://perma.cc/V2P9-VBYF] ("The [dealers] aren't *adding* information to markets, but they're allowing the information that's already there to flow freely.") (emphasis in original).

[71] Dealer-Defendants' Memorandum in Support of their Joint Motion to Dismiss the Consolidated Amended Complaint at 4, In Re Credit Default Swaps Antitrust Litig., No. 1:13-md-02476, 2014 U.S. Dist. LEXIS 123784 (S.D.N.Y. Sept. 4, 2014) ("[P]laintiffs speculate that if . . . CMDX would have become a full-blown clearinghouse and exchange . . . resulting in a cascading series of market developments that would have enabled plaintiffs to receive better net prices on their CDS trades than they actually negotiated with the dealer defendants over a more than six-year period.").

concerns that prompted the antitrust suit in the first place.[72] It may also allow for other qualified entities—like BNY Mellon, who was previously denied an ISDA license—to enter the business and provide more liquidity to the market.[73] However, it remains an open question whether the new licensing procedures will have the effect of increasing transparency, and the ISDA's non-committal obligation to "vote on a proposal for ISDA to make an official statement"[74] may give rise to skepticism about the impact of the settlement. However, cautious optimism may be warranted, as any increase in transparency will better enable market forces to decide whether anonymous, exchange-traded CDS are commercially viable—as opposed to an alleged cabal of major investment banks and industry groups.

Patrick T. Gilmartin[75]

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[72] *See* Complaint, *supra* note 4, at 18.
[73] *See* Story, *supra* note 21.
[74] *See* IDS Settlement Agreement, *supra* note 51, at 43.
[75] Student, Boston University School of Law (J.D. 2017).