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Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street N.W.
Washington, DC 20581

Re: Proposed Rulemaking 23.603 - Regulations to Establish and Govern the Duties of Swap Dealers and Major Swap Participants

Dear Mr. Stawick:

We are pleased to provide you with our comments and perspectives about the CFTC's pending rulemaking relative to business continuity and disaster recovery ("BC/DR") preparedness for swap dealers and major swap participants .

The enclosed comments and perspectives are our own and do not necessarily reflect the views of swap dealers, major swap participants or industry organizations.

Background:

Tellefsen and Company, L.L.C. ("TCL") is a boutique management consulting firm founded by Jerry Tellefsen. Since 1984, the firm has been exclusively focused in the global capital markets, derivatives and financial services industries.

Over the years, our firm has worked for all major U.S. equity, options and futures exchanges, futures commission merchants, inter-dealer brokers, securities broker-dealers, investment banks, proprietary trading and asset management firms.

Two of our major, relevant practice areas include market structure consulting and business continuity management ("BCM").

In the business continuity management practice area, we have performed specific client assignments for numerous futures commission merchants, global clearing firms, intra-dealer brokers, securities broker dealers, asset management firms, DCMs and DCOs.

Our project work with these market participants has been in developing and assessing their business continuity strategies and plans, assessing their technology and network architectures and set ups for key, mission critical systems (i.e., electronic trading, order management, market data dissemination, price reporting, clearance and settlement, risk management).

Additionally, we have been actively involved with the Futures Industry Association ("FIA") over the last 15+ years and have been members of the FIA Information Technology Division. In this capacity, John Rapa has chaired the FIA's Business Continuity Committee and coordinated the annual industry DR testing since 2003.

Business continuity management is analogous to operational risk management - a business continuity plan (BCP) is a valuable risk management tool for responding to significant business disruptions (SBD), mitigating risk and threats and, as such, is an insurance policy.

Having a well-constructed and well-tested plan helps instill confidence with the staff, clients and regulators. It illustrates management's ability to be in control during a significant business disruption and shows a commitment to mitigating risks and to the protection of the firm's assets.

As part of a comprehensive risk management overhaul in the swaps arena, the Commission is seeking comments about the viability for swap dealers and major swap participants to implement BCM for their operations and information systems. This would include, but not be limited to:

- Implementing a business continuity plan that outlines the process and procedures to be followed in the event of a significant business disruption
- Back up and recovery of mission-critical data and information
- The ability to recover critical systems and business operations by the next business day with minimal disturbance to counterparties and the market
- Distribution of the BCP to all relevant employees
- Notification of any SBD to the Commission
- Identification of emergency contacts at the firm
- Annual review and update of the BCP by a senior manager of the firm
- Annual BC/DR testing and independent test oversight

We are pleased to provide you with our perspectives on several aspects of the proposed regulations, and our estimations of time and costs to develop, implement, maintain and test BC/DR plans.

Swap Dealers – BCM Capabilities:

The Commission has outlined the thresholds for - and definitions of - swap dealers. As a result, it is anticipated that swap dealers will be larger, well-capitalized banks, broker dealers and financial services firms.

It is likely that the majority of these firms are already required by their regulatory oversight to have BC/DR resiliencies and BCM programs in place (e.g., CFTC, Federal Reserve, MFA, SEC, SIFMA).

From our perspectives, most of these organizations do an excellent job in this area and have been diligent in their BC/DR planning and implementations for many years. To wit:

- As these firms have introduced new systems, applications, products and system functions, their internal IT staffs have conducted regular system testing, regression testing, stress testing, failover testing etc., to ensure their availability, capacity, resilience and readiness
- These organizations regularly augment IT testing with other BCM exercises (e.g., they conduct annual BC/DR plan updates, building evacuation drills, business disruption scenario planning workshops, etc.)
- In addition, all the U.S. FCMs, securities broker-dealers and banks have participated in the planning and execution of the annual DR test initiative conducted and coordinated by the FIA's IT Division and/or the Securities and Financial Markets Association (SIFMA).

We have a direct, working knowledge of major banks, FCMs, DCMs and DCOs that have built out and evolved their technology infrastructures and networks in the last 3-5 years and have designed resiliency, redundancy and fail over capabilities into their mission-critical system architectures.

These firms have learned valuable lessons from the September 11, 2001 disasters, the Northeast blackout of 2003, Hurricanes Rita and Katrina and become sensitive to the potentials for physical threats, terrorist attacks, acts of God/nature, cyber terrorism, software worms, spoofing, pandemics etc.

They have refined their strategies, plans and tactics accordingly via regular testing and enhancements to processes and procedures, and regularly assess their readiness and maturity levels versus key BCM sound practice metrics, such as those listed below.

<i>Business Continuity Metrics – Sound Practice Areas</i>	
Business continuity capabilities (redundancy of systems, data, staff, evacuation and accounting for/relocating staff, etc.)	Material changes to the business since the last plan update that may impact BC/DR
Disaster recovery capabilities (disaster tolerance, infrastructure support capabilities, data replication/backup)	Business constituent, prime broker, bank and counter-party impact
Processes/procedures to deal with potentially significant disruptions to the business	Regulatory reporting requirements
Business impact analysis of functional business units or departments	Operational capabilities (staff levels, skills, process and procedures, backup and recovery capabilities)
Back-up and recovery of books and records	Training / staff BC/DR awareness
Identification and back-up of all mission-critical systems	Testing and readiness relative to RTOs
Assessment of financial and operational risks	Staffing levels (IT, Operations, skill sets)
Alternate communications between the firm and its employees, banks, fund administrators, brokers, counter parties, investors, regulators, etc.	Strategic BC/DR planning, maintenance and updating of the BCP.
Procedures for evacuating, accounting for and relocating employees	Risk controls (security, catastrophic risk insurance coverage)
Alternate physical location of employees	Changes in key service providers
Pandemic planning, staff training and preparedness	Information and physical security capabilities

As a result, firms that address the major sound practice metrics for BCM should be well along the way to being able to comply with the proposed regulation.

Major Swap Participants – BCM Capabilities:

The Commission anticipates that major swap participant firms are likely to be commercial end-user organizations, including companies such as, but not limited to:

- Airlines
- Energy exploration and trading
- FX trading
- Grain producers
- Import/export
- Metals trading
- Mining
- Public utilities
- Smelters and refineries

Given the diversity of the businesses and industries of these market participants, it is unclear how well-prepared they are to comply with the proposed regulations (i.e. what level of BCM preparedness exist today for the finance or trading operation of an airline, mining company or refiner that would engage in swaps trading).

Estimation of Time and Costs to Develop, Implement, Maintain and Test BC/DR Plans:

The analysis and development of a comprehensive BC/DR plan typically involves several steps. These include:

- Analyzing the firm’s business, infrastructure and facilities to gather data about the firm’s BC and DR requirements (business impact analysis)
- Identifying mission-critical applications, systems and information that are required to run the business on a daily basis
- Customizing the BC/DR plan and components to the firm’s unique business operations and infrastructure
- Developing multiple structures to facilitate communications with staff and business constituents in cases of significant business disruption
- Identifying any areas of risk, shortcomings or potential exposure that could impact BC or DR capabilities
- Providing the flexibility to easily and flexibly modify and update the BC/DR plan document and test the viability of the plan going forward.

From our extensive experience, the amount of time that would be expended to create, implement, test and regularly update a BC/DR plan varies by the size of a firm and the scope of their business lines:

BCM Activity	# Man-Days Effort for Medium-Sized Firms	# Man-Days Effort for Large-Sized Firms
Conduct Business Impact Analyses- Functional Teams/Departments	4-6	10-20
Develop Business Continuity Plan	40	60-120
Staff BC Training / BCP Rollout	2-4	8-10
Test BC/DR Capabilities, BCP Scenarios	12-15	20-30
Annual BCP Review and Update	10	15-20
Totals:	68-75	113-200

Conclusions / Going Forward:

In our professional opinion, most/all of the swap dealing firms have the technology and network infrastructure in place to evolve to achieve a next day RTO.

However, the Commission should carefully evaluate the BCM capabilities of major swap participants before establishing a hard date by which these metrics must be in place. Based on the above table, the Commission may have greatly underestimated the time and scope of work for firms to develop, implement and test their BCM capabilities.

We urge you to reach out to major swap participant firms to better assess and ascertain the state of their BCM and BC/DR capabilities to address the proposed regulation.

Given that these firms are not as closely regulated as major financial services firms are, it cannot be assumed they have the same levels or capabilities of BC/DR preparedness as larger swap dealers or futures commission merchants.

The general rule of thumb in BCM is that one size does not fit all. The Commission should implement a workable approach and consider how each respective swap dealer or major swap participant is set up and organized to achieve them.

We suggest you look to these firms for their feedback about the quantity and quality of their labor pool and how they are staffed and organized with the capacity to develop and implement a BCP and potentially recover from a SBD.

If rushed to implement, a broad based approach to these new standards may only be as good as the weakest link that exists – the slowest, least capitalized organization that is the last one to have this capability in place.

Regular and varied testing will be key to corroborating industry readiness going forward.

Our best counsel to the Commission is to analyze the feedback from the comment period, and assess the time frames that swaps dealing firms and major swap participants indicate that they can adopt the new standards within.

We would be pleased to be available for any follow up questions or to discuss the state of industry sound practices in this area.

Very truly yours,

John J. Rapa

John J. Rapa, CBCP
President/Chief Executive Officer

TELLEFSEN AND COMPANY, L.L.C.