



February 7, 2011

VIA ELECTRONIC SUBMISSION

Mr. David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

**Re: Real-Time Public Reporting of Swap Transaction Data
RIN Number 3038-AD08**

Dear Mr. Stawick:

On December 7, 2010, the U.S. Commodity Futures Trading Commission (the "Commission" or "CFTC") issued a Notice of Proposed Rulemaking regarding the Real-Time Public Reporting of Swap Transaction Data ("Real-Time Reporting Rulemaking") in the Federal Register,¹ as required by Section 727 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").² The Commission invited interested persons to comment on all aspects of the proposed rules by February 7, 2011. Argus Media Inc. ("Argus") hereby submits comments on the proposed rule.

Argus supports the important goal of enhancing price discovery through the real-time reporting of swap transaction data. However, Argus remains concerned that real-time dissemination of information of this kind will result in disclosure of the identity of the counterparties to the underlying transaction, particularly in less liquid markets and markets characterized by less standardized swap transactions. Any action that undermines the confidentiality of counterparty identities will inevitably reduce participation and, therefore, market liquidity. In this comment, Argus proposes a number of alternatives that may help protect counterparty confidentiality, particularly in more illiquid markets.

Argus is a leading independent provider of price information, market data and business intelligence for the global, physical petroleum, natural gas, electricity, emissions, biofuels and coal industries. Argus is incorporated in the United States as Argus Media Inc., a Delaware corporation, which is a wholly owned subsidiary of Argus Media Ltd., established in 1970.

Headquartered in London, Argus has offices in Washington, D.C., Houston, New Jersey, Moscow, Singapore, Tokyo and Beijing. Argus is owned by its employees and by the family of

¹ *Real-Time Public Reporting of Swap Transaction Data*, 75 Fed. Reg. 76,140 (Dec. 7, 2010) (to be codified at 17 C.F.R. Part 43).

² Pub. L. No. 111-203 (2010) (to be codified as an amendment to the Commodity Exchange Act ("CEA") in 7 U.S.C. ch. 1).

its founder. Argus staff adhere to a strict ethics policy that forbids them from dealing in energy and commodities or in the stock of energy or commodities companies.

I. Real-Time Reporting Rulemaking

Section 727 of the Dodd-Frank Act created Section 2(a)(13) of the CEA to provide for the public availability of swap transaction and pricing data in real-time.³ This provision requires public reporting of swap transaction data, including price and volume information, “as soon as technologically practicable” after the execution of the swap.⁴ The data is to be provided “in such form and at such times as the Commission determines appropriate to enhance price discovery.”⁵ This mandate, however, is counterbalanced by the recognition that real-time reporting of such information should not come at the expense of protecting the confidentiality of the identity of the counterparties to the underlying transaction. In particular, the Dodd-Frank Act requires the Commission to prescribe rules that: (i) ensure such information does not identify the participants; (ii) specify the criteria for determining what constitutes a large notional swap transaction (“block trade”) for particular markets and contracts; (iii) specify the appropriate time delay for reporting block trades to the public; and (iv) take into account whether public disclosure will materially reduce market liquidity.⁶

The Real-Time Reporting Rulemaking proposes rules for the real-time reporting of all swaps.⁷ Consistent with Congress’ directive, the proposed rules prohibit the real-time dissemination of swap transaction and pricing data that identifies or facilitates the identification of a party to a swap.⁸ Reporting parties and swap markets must provide a registered swap data repository that accepts and publicly disseminates real-time swap data with a description of the underlying assets and tenor of the swap in a form that is general enough to provide anonymity, but specific enough to provide a meaningful understanding of the swap’s economic characteristics.⁹ The Commission does not propose specific guidelines regarding how an underlying asset must be described; rather, the proposed rules provide reporting parties with discretion on how to report swap transaction and pricing data.¹⁰ If a reporting party does not report a specific description of the underlying asset and/or tenor of a swap because it would facilitate the identification of a party to the swap, then the party must meet certain documentation and recordkeeping requirements.¹¹

³ Dodd-Frank Act, Section 727 (CEA Section 2(a)(13)).

⁴ *Id.* (CEA Section 2(a)(13)(A)).

⁵ *Id.* (CEA Section 2(a)(13)(B)).

⁶ *Id.* (CEA Section 2(a)(13)(E)).

⁷ 75 Fed. Reg. at 76,141.

⁸ *Id.* at 76,174 (Proposed Rule § 43.4(e)(1)).

⁹ *Id.* (Proposed Rule § 43.4(e)(2)).

¹⁰ *Id.* at 76,151.

¹¹ *Id.* at 76,174 (Proposed Rule § 43.4(e)(2)).

II. Comments to Real-Time Reporting Rulemaking

Argus shares Congress' and the Commission's concern that real-time public disclosure of swap transaction data should not reveal the identity of the participants, an outcome that likely would materially reduce market liquidity. In situations where only a few entities trade a certain type of underlying asset, real-time reporting may inadvertently reveal the identity of the swap participants, particularly where the underlying asset is a commodity.¹² A similar concern arises in markets characterized by less standardized swap transactions. Argus stresses the importance of maintaining the anonymity of the parties to a swap. Protecting the confidentiality of participants' business transactions and market positions is essential to market participation and, in turn, market liquidity. If market participants are able to infer the identity of a party or parties to a swap based on the underlying information provided through real-time public reporting, then entities will be less inclined to engage in these types of swaps. This consequence harms the ability of market participants to create new swaps products – vital as hedging instruments for producers and consumers of the underlying physical commodity – resulting in increased risk and higher costs for US producers and consumers.

Based on its own experience in the physical commodities markets, Argus proposes a number of alternatives that may help protect counterparty confidentiality, particularly in illiquid markets in a way that Argus believes will not undermine price discovery:

First, in commodity swaps with very specific underlying assets, *e.g.* natural gas at Transco Z-4, the reporting parties could utilize a broader geographic region, as opposed to a specific delivery point. Indeed, the Commission expressly permits this approach in the Real-Time Reporting Rulemaking.¹³ For example, only two companies may trade an off-facility swap with an underlying energy commodity contract having a specific delivery location at Lake Charles, Louisiana. Thus, disclosure of the underlying asset would effectively reveal that one of those two companies was entering into the transaction. In this instance, instead of specifying the Lake Charles delivery point, the reporting party could use a broader geographic region like Louisiana or the Gulf Coast.

Second, the real-time disseminator could delay reporting of real-time data in instances where real-time reporting may jeopardize the anonymity of the parties to a swap. Under this

¹² See, *e.g.*, Public Roundtable to Discuss Swap Data, Swap Data Repositories and Real-Time Reporting, Comments of Peter Axilrod, Managing Director, New Business Development, The Depository Trust & Clearing Corporation, at 252-53 available at <http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/derivative18sub091410.pdf> (“I guess I’d like to make a plea for people to be careful with commodities. It’s a little bit of a different market than what most people have been talking about. There are delivery points all over the country, there are load-serving entities, many of them all over the country, there are producers all over the country, and if you force people to specify a particular delivery point all the time, people are pretty much going to know who’s making those trades. So, whatever you do in terms of what commodities data is reported publicly, you have to leave room for some flexibility in terms of anonymization [sic].”)

¹³ See 75 Fed. Reg. at 76,150-51.

alternative, transactions in less liquid markets would be reported every day, but on a lagged basis. For example, on any given day, the real-time reporting would disclose information for transactions, but for transactions that occurred some number of days' prior. Alternatively, general transaction and pricing data could be reported on a real-time basis, with a time lag for reporting more detailed information. This time lag would help protect the compulsory counterparty confidentiality while still providing the transparency required by the Dodd-Frank Act. And, depending on the particular market, the delay in real-time reporting might be of no consequence to the public, including other participants in that market. Congress expressly recognized that using a time delay to report certain types of trades to the public is appropriate.¹⁴ The Commission should be prepared to apply this time delay concept to real-time reporting for commodity swaps, for example, in markets it determines to be thinly traded. While Congress required real-time public reporting of swap transaction data, the Dodd-Frank Act also gives the Commission discretion to make this data available "at such times as the Commission determines appropriate to enhance price discovery."¹⁵

Third, the real-time disseminator could report real-time data for swaps involving illiquid asset classes on a less frequent basis. For example, real-time reports could be aggregated and disseminated every other day, every third day or once per week. As noted, the Commission has discretion to make swap transaction and pricing data available "in such form and at such times as the Commission determines appropriate to enhance price discovery."¹⁶ Indeed, the public—the beneficiaries of this information—may receive increased value from the provision of more fulsome information at a later time. This approach is also consistent with Congress' directives to protect the identity of the participants to a swap transaction and prevent material reductions in market liquidity.

¹⁴ Dodd-Frank Act, Section 727 (CEA Section 2(a)(13)(E)(iii)). Although Congress identified only block trades in this regard, it did not expressly limit the use of a time delay only to this type of trade.

¹⁵ *Id.* (CEA Section 2(a)(13)(B)).

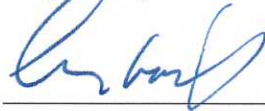
¹⁶ *Id.* (CEA Section 2(a)(13)(B)).

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III. Conclusion

Argus appreciates the opportunity to provide the Commission with its perspective on the Real-Time Swap Reporting Rulemaking. Argus welcomes the opportunity to discuss these issues further with the Commission and its Staff.

Respectfully submitted,



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