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**Comments of SunGard Energy & Commodities re:  
Swap Data Recordkeeping and Reporting Requirements  
17 CFR Part 45; RIN 3038-AD19**

February 7, 2011

**By Electronic Submission**

David Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Center  
1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20518

Dear Mr. Stawick:

SunGard Energy & Commodities appreciates the opportunity to comment on this proposed rulemaking, and commends the CFTC staff for holding the Roundtable to Discuss Swap Data Recordkeeping and Reporting issues on January 28, 2011. Our solutions help energy companies, corporate hedgers, hedge funds and financial services firms to compete efficiently in global energy and commodities markets by streamlining and integrating the trading, risk management and operations of physical commodities and their associated financial instruments. Through real-time data, connectivity and analysis, we help customers achieve transparency and regulatory compliance, address end-to-end transaction and operational lifecycles, and meet time-to-market needs with flexible deployment options. Our comments on the proposed rule are as follows:

**Reporting for standardized swaps:**

In 17 CFR Part 45, CFTC proposes rules to implement Dodd Frank Act (DFA) requirements for recordkeeping and reporting of swaps. Section I. B. of the Supplementary Information provided with the rules cites the requirement in Section 728 of DFA that “The Commission shall provide standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository”, and further that “in carrying out [the duty to prescribe data element standards] the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.”

In appendix 1 to Part 45 of the rules, CFTC provides “Tables of the Minimum Primary Economic Terms Data and Minimum Valuation Data.” The proposed rule makes no distinction in these tables between data required for two distinct types of swaps:

1. Highly standardized swaps, which are traded on a Swap Execution Facility (SEF) or Designated Contract Market (DCM) and cleared by a Derivatives Clearing Organization (DCO); and
2. More customized swaps, which are either executed off-facility or uncleared or both.

In both cases, the prescribed data is to be captured for each swap transaction under the current rule.

While this approach appears to be in keeping with the mandate to “prescribe consistent data element standards applicable to registered entities and reporting counterparties”, it fails to recognize the characteristics of highly standardized swaps, which may be managed much like futures contracts, as a net open position for each swap contract and brokerage account, rather than treating each “fill” as an individual transaction. Other than for price transparency in real-time public reporting, which is the subject of a separate rulemaking (17 CFR Part 43), we do not see the regulatory purpose for the requirement to report such highly standardized swaps individually, in the manner described in the proposed rule.

- The contractual terms of such swaps are pre-determined, both before and after clearing.
- When an order to buy and an offer to sell such swaps are matched as a trade on an execution facility, the trade may or may not constitute a legal Transaction between that buyer and that seller.
- Trades in such swaps are replaced in the clearing process by two or more legal swap Transactions, each with the DCO as a central counterparty.

Therefore, we propose that reporting of trading in highly standardized swap contracts that are executed on a SEF or DCM and cleared by a DCO be handled in the following manner:

- **Creation Data: Primary Economic Terms:** A SEF or DCM which executes highly standardized swap contracts should report all purchases and sales in a particular swap contract for a particular account to the same SDR, to be selected at the time of the first such trade. This is analogous to the proposed rule’s requirement that all data for a particular swap be reported to the same SDR.
- Upon execution of a trade in such swap contract, the SEF or DCM should report the increase in net uncleared position to the SDR selected for the buyer and the decrease in net uncleared position for the seller, together with a reference to the primary economic terms of the highly standardized swap contract.
- **Continuation Data:** On a daily basis, the SEF or DCM should report to the same SDR the net uncleared position (if any) of each contract participant in each swap contract that was available for trading since the previous daily report. This responsibility could be delegated to FCMs representing the contract participants.
- **Creation Data: Confirmation Data:** Upon clearing of a trade in a swap contract, the DCO should report to the SDR the confirmed Transaction between each participant in the swap and the DCO as a central counterparty.

The primary benefit of this proposal to regulators and participants is that net open positions in highly standardized swap contracts will be readily available to the CFTC and other regulators for monitoring, screening and analysis, including verification of Position Reports for Physical Commodity Swaps, should that separate proposed rule become final. Also, the SDR would be able to serve as an independent source for reconciliation of disputed positions. Finally, the regulatory cost of storing and analyzing primary economic terms data and confirmation data for each standardized swap would be reduced by capturing the information once for each standardized contract.

## **Valuations, margin, collateral**

We agree that it is necessary to collect primary economic terms data and valuation data at the transaction level for the more customized swaps which are either executed off-facility or uncleared or both. However, the minimum valuation data to be reported at the transaction level for such swaps should be limited to the mark-to-market. It is inappropriate to also require reporting of margin and collateral as transaction level valuation data, as shown in the proposed rule. Instead, we support the idea of a separate central repository across asset classes which would hold credit support agreements and related net margin and collateral positions between two counterparties. The benefit of this proposal would be the elimination of unnecessary costs.

## **Position aggregation and valuation**

We note further that aggregation and valuation of positions in non-linear swap instruments require analytical models which differ widely and in many cases are proprietary. Some guidance on acceptable methods of valuation for uncleared swaps is needed, either in the final rule or by consensus among industry participants in a self-regulatory organization or standards board for each asset class or sub asset class in order to benefit from industry knowledge and expertise.

## **Reporting of settlements data**

“Settlement” is the process of calculating a required payment under a swap transaction, which should be reflected either as a life cycle event or as a snapshot final valuation of the settled portion of a swap transaction. Typically, settlement requires reference to the value of one or more published prices (“settlement prices”).

Settlement prices are proprietary to their publisher. Publishers typically charge a fee for access to settlement prices, in print or electronic form, and often place contractual restrictions on how the data may be used or redistributed. The final rule should address the following issues:

- All registered SDRs will need to have access to all published settlement prices referenced by swaps in the asset class or sub-asset classes for which they accept swaps, including unrestricted use of such settlement prices by the SDR and regulators in performing their required duties under the DFA.
- Should the CFTC regulate whether publishers may charge a one-time fee or per-use fee for this access?
- Who will bear the burden for paying these fees?

## **Method for Reporting of Swap Continuation Data**

The proposed rule prescribes that the life cycle event approach to continuation data be used for credit and equity asset classes and that the snapshot approach to continuation data be used for interest rate, currency and other commodity asset classes. In response to the commissions request for comments on this approach, we do not see sufficient evidence to justify prescribing the snapshot approach for commodity sub-classes such as energy, agriculture and metals. The final rule should set the regulatory goal and delegate the decision to a self-regulatory organization or standards board made up of representatives of all stakeholders for each commodity sub-asset class, in order to benefit from industry knowledge and expertise.

## Universal Identifiers:

While the Dodd Frank Act does not require adoption of unique identifiers, section II. C. of the Supplementary Information provided with proposed rule 17 CFR Part 45 states that “Over the course of the last decade, virtually all stakeholders in the financial sector have come to recognize the need for universal, accurate and trusted methods of identifying particular financial transactions, the legal entities that are parties to financial transactions, and the product type involved in particular financial transactions. Such identifiers will be crucial tools for financial regulators ... [and] would also have great benefits for ... financial entities.”

We commend the CFTC for lending the weight of regulatory enforcement as a further incentive for the financial industry to accomplish these goals.

- We agree with the regulatory approach that encourages adoption of an international standard for a Universal Counterparty Identifier (UCI).
- We agree in principal with the need for a Universal Swap Identifier (USI).
- We have concerns about the specific proposal for a Universal Product Identifier (UPI).

## Universal Product Identifier (UPI)

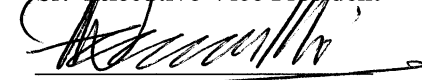
In the rule as proposed, it is not clear whether the product type to be referenced for a UPI is an underlying asset (e.g. Nymex WTI), a trade type (e.g. swaption) or some combination of both. We do see the benefit in identifying taxonomy of products for each asset class and support the idea of a final rule which clearly identifies the regulatory goals for use of this taxonomy (e.g. aggregation of positions for position limit monitoring). However, we believe the final rule should delegate specification of the product taxonomy and related data fields for an asset class or sub-asset class to a self-regulatory organization or standards board made up of representatives of all stakeholders for that asset class or sub-asset class, in order to benefit from industry knowledge and expertise.

This concludes our comments on the proposed rule 17 CFR Part 45. We appreciate the opportunity for public comment on these important issues before the CFTC.

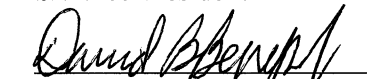
Respectfully yours,



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