



February 7, 2011

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: The Commodities Futures Trading Commission Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AD19).

Dear Mr. Stawick:

The Financial Services Roundtable¹ (Roundtable) submits this letter in response to the Commodity Futures Trading Commission's (the Commission) notice of proposed rulemaking (the Proposal) on Swap Data Recordkeeping and Reporting Requirements. The proposal seeks to implement provisions in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, 124 Stat. 1376 (2010). Title VII establishes swap data repositories (SDR) and authorizes the Commission to prescribe recordkeeping and reporting standards for swap data. The proposal also includes new swap data reporting and record-retention requirements for swap dealers ("SDs"), major swap participants (MSP), and non-SD/MSP counterparties.

The Roundtable supports the CFTC's intent to enhance transparency, promote standardization and reduce systemic risk. We understand that the Commission modeled the proposed swap data recordkeeping requirements after the Commission's Core Principles 17 and 18, which require certain market participants to keep "full and complete records, together with all pertinent data and memoranda, of all activities relating to the business entity or person that is subject to the Commission's authority." See Part IIA of the Proposal. However, the Roundtable is concerned with the data retrieval requirements and we request additional clarification regarding the term "systematic records."

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

Proposed § 45.2. General Swap Recordkeeping

The proposal would require non-SD/MSP counterparties to “keep full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty[.]” *See* 75 Fed. Reg. 76599, proposed § 45.2(b). The swap data must be retained by non-SD/MSP counterparties during the life of the swap and for at least five years following the termination of the swap. *See* § 45.2(c). During the retention period, swap data must be retrievable by a non-SD/MSP counterparty within three business days. *See* § 45.2(d)(3).

Proposed § 45.2(b). The Commission should define what constitutes “systematic records”.

Proposed Section 45.2(b) augments the Commission’s general recordkeeping principles with the addition of the phrase “systematic records.” Non-SD/MSP counterparties must retain “full, complete, and **systematic** records.” (emphasis added). However, the Proposal is not clear about what comprises “systematic records.” We encourage the Commission to limit the definition for systematic records, to have requirements that clearly define pertinent data fields, and to limit those requirements to no more data than is available in existing systems.

The lack of clarity regarding whether a data-retention program is “systematic” creates concern about the potential impact of the new recordkeeping and retrieval requirements. For example, institutions periodically archive records and remove the archived data from servers. Additionally, archived records may be difficult to restore to a particular system. We encourage the Commission to clearly define systematic records and provide examples of what constitutes “systematic records” as well as providing an extended retrieval time, beyond three business days, to allow for the retrieval of archived records.

Proposed § 45.2(c). The retention period following final termination of a swap by a non-SD/MSP should be less than five years.

Proposed section 45.2(c) would require non-SD/MSPs to retain swap data for a period of five years following the final termination of the swap. This is the same retention period required of designated clearing organizations, designated contract markets, swap execution facilities, SD, and MSP. We are concerned that five years is an unduly burdensome period of time for a non-SD/MSP to retain this data. Some institutions may have constraints with respect to keeping data beyond the termination date of

trades. The cost of compliance for non-SD/MSPs would be significant because of issues regarding data storage. In light of the Commission's recognition that Congress intended to place a lesser burden on non-SD/MSP counterparties to swaps, we believe it would be appropriate to implement an incremental approach for recordkeeping requirements. We also ask the Commission to consider adopting a two year retention period for non-SD/MSPs to minimize compliance costs on end-users.

Proposed § 45.2(d)(3). Non-SD/MSPs should have at least seven business days to retrieve swap data.

The data retrieval requirement outlined in § 45.2 (d)(3) requiring the swap data of non-SD/MSPs to be retrievable within three business days will cause complications for many non-SD/MSP entities. In situations where institutions file physical records off-site, the compliance cost would be problematic, as a three day time period would require an expedited return. Beyond general geographic distance of the records, there are additional constraints due to the speed of transfer, indexing, and service levels. Institutions may have records relating to hedging transactions in different offices, so if all records need to be in one location for production, the three-day retrieval period would be difficult, if not impossible. As well, indexing methodologies and service levels from off-site companies can vary by office within one institution. Therefore, the requirement to create and keep a detailed index for all records would be time consuming and costly, especially if not needed for any other purpose.

We believe that the Commission should take into consideration the many variables and subsequent cost surrounding the storage of records and their retrieval. We support the Commission's desire to establish a reasonable time-frame for retrieval, but we ask the Commission to balance the retrieval burden on end-users, and allow non-SD/MSPs seven business days to retrieve records. We also encourage the Commission to provide a safe harbor for the retrieval of records by non-SD/MSPs to cover good faith and best effort situations when an absolute deadline to retrieve the data cannot be met.

Proposed § 45.2(d)(3). Determination of which counterparty must report.

Proposed section 45.5(d) contemplates that, where only one party to a swap is a U.S. person, the U.S. person would be designated the reporting party, regardless of the status of its counterparty. This requirement does not seem to take into account a scenario where the non-U.S. person is more adequately suited to fulfill the reporting requirement. For example, consider the scenario where a buy-side company, designated as an MSP, is entering into swap transactions with offshore dealer counterparties

that are not designated as SDs. It would be impractical to require such an MSP to implement a costly reporting infrastructure to report only this portion of its trades. Accordingly, we encourage the Commission to consider allowing the parties to such a swap to independently determine which party will be designated as the reporting party.

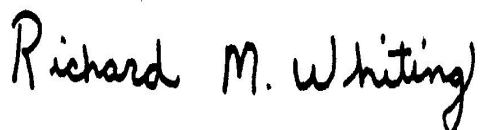
Inter-affiliate transactions

We believe that there are special considerations with respect to inter-affiliate swaps in the context of the reporting requirements that should be considered. Corporate groups often use one or more designated entities to enter into third-party swaps to hedge their risks. These designated entities often then enter into back-to-back swaps with the affiliate that has the risk being hedged. In the case of swaps between affiliates, reporting does not appear to add any value in terms of increasing transparency and would have the effect of increasing costs and administrative burdens on corporate groups. Additionally, the reporting of these swaps could be distortive to the data in the SDRs that would be used to calculate block trade sizes and for other purposes. Companies would generally be willing to provide information about these swaps to the Commission and maintain records for inspection.

Conclusion

In closing, the Roundtable supports the Commission's intent to enhance transparency and reduce systemic risk. However, the Roundtable seeks clarity regarding the term "systematic records" and asks that the Commission reconsider whether the proposed data retrieval requirements may be unduly burdensome. Thank you again for the opportunity to share our views with you on this subject. If you have any questions, please contact the Senior Vice President of Regulation at BITS², William Henley at William@fsround.org or me at Rich@fsround.org.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive, slightly slanted style.

Richard Whiting
Executive Director and General Counsel

² BITS is the technology division of the Roundtable. BITS fosters the growth and development of electronic financial services and e-commerce for the benefit of financial institutions and their customers.