



February 18, 2011

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

**Re: Swap Data Repositories; Proposed Rule
17 CFR Part 49 RIN 3038-AD20**

Dear Mr. Stawick:

Reval.com, Inc. ("Reval") appreciates the opportunity to submit its comments in response to the Commodity Futures Trading Commission's ("Commission" or "CFTC") December 23, 2010, 17 CFR Part 49 RIN 3038-AD20 Swap Data Repositories; Proposed Rule ("Rule"), for a Swap Data Repository ("SDR").

Reval would like to commend the CFTC and its staff for putting together a comprehensive Rule addressing the structure, responsibilities and registration requirements of SDRs.

Executive Summary

Reval[®] provides financial and accounting professionals with an award-winning Web-based platform that supports derivative risk management and hedge accounting. This Software-as-a-Service addresses the need for derivatives to comply with international regulations, such as FAS 133, FAS 157, Sarbanes-Oxley, IAS 39 and IFRS 7. Over 500 of the world's leading corporations, financial institutions, and accounting and advisory firms rely on Reval to provide independent valuations of derivative transactions and to assist with the hedge accounting of foreign exchange, interest rates, energy, credit, commodities, and other asset classes. Reval uses its expert teams comprising financial engineers, accounting professionals, and technologists to deliver its critically acclaimed services and products. Founded in 1999, Reval has headquarters in New York and regional centers based in Bala Cynwyd, Chicago, San Francisco, Toronto, London, Frankfurt, Graz (Austria) Sydney, Hong Kong, and Gurgaon (India).

Reval is uniquely positioned to be an SDR as it currently acts as a data warehouse across asset classes defined as Swaps under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act", "Dodd-Frank") and can provide valuation, risk and necessary reporting, conveniently over the Internet. As such, Reval fully intends to register to become an SDR.

On January 24, 2011, Reval submitted its comment on Swap Data Recordkeeping and Reporting Requirements; Proposed Rule 17 CFR Part 45 RIN 3038-AD19. In that letter, Reval commented that not having enough data requirements to be able to accurately calculate valuations on positions and not having the capabilities for stress testing reporting would impede the intent of Dodd-Frank to properly address the reduction of financial systemic risk through the SDR. These issues are also addressed in this comment letter as the Rule goes beyond data requirements.

Regardless of what the final rules for the SDR will be, the registration, approval, set-up and implementation of the SDRs will be a monumental task, taking a minimum of 12 months after an SDR is approved. Realistically, it would probably take two years before all 180+ Swap Dealers, DCOs, MSPs and other Reporting Entities are fully implemented with smoothly operating interfaces. Whether the process will be phased in or not, the right amount of time needs to be allowed if the job is to be done right.

Overall, the approach to avoid conflict of interest, fair competition and separation of duties is fairly well laid out in the Rule, but it will fail to open up the market to SDRs that are not backed by a bank consortium. Ownership of an SDR by a Reporting Entity and a board seat held by a Reporting Entity would have to be strictly limited, especially if the Reporting Entity is a major participant in the Swap markets. Without such limitations, it is likely that many independent SDRs would not see an opportunity in registering or would not be able to fairly compete and would withdraw registration, thus creating the potential for a monopoly.

As U.S. regulations continue to lead the way for G-20 nations following suit with similar financial reform, the question of how to treat non-U.S. based SDRs within the U.S. will be an important one. For Dodd-Frank to be successful, all countries have to work together and have to have similar regulations and requirements. Countries that do not allow a registered U.S.-based SDR from operating in their jurisdiction should not be allowed to operate within the U.S.

Reval’s views are represented with specific comments to the following areas of the proposed rules for SDRs:

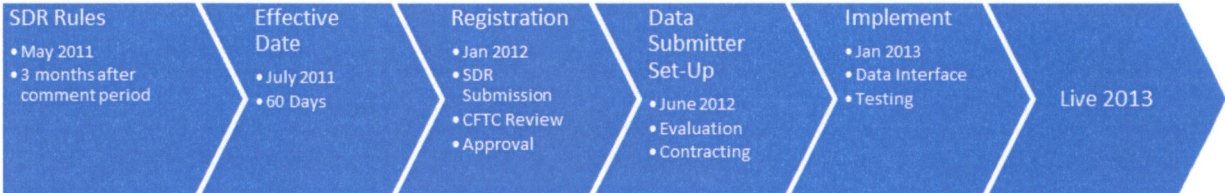
III. Effectiveness and Transition Period

Request for Comment: Questions 1 and 2:

1) Is a phase-in period appropriate (especially for existing trade repositories that may seek SDR registration)? If so how long should the phase-in period be?

There are two aspects to this question: The general need for a phase-in period to allow for a successful implementation of the SDR requirement of Dodd-Frank, and the need for a phase-in period to promote competitiveness within the SDR marketplace.

Without a phase-in period, it is unlikely that all Swaps could be reported on time to either a new SDR or to the existing trade repositories¹. The process chart below shows that, in all likelihood, SDRs will not even be approved much before July 2011. Parallel processes will probably not take place as most SDRs would not invest resources until the rules are final, and then, most would not begin making capital expenditures until approved. The Commission should not underestimate the time needed for its own approval process and the process that most Reporting Entities will need to select and negotiate service level agreements with one or more SDRs.



Once the process for contracting with the Data Submitter is complete, the real technical work begins as implementing a near real-time snapshot approach will not be simple and will have to be done in parallel with all of the Reporting Entities. The above timeline assumes that there are enough SDRs to handle the simultaneous requests from many Swap Dealers and other Reporting Entities. The implementation process would be similar to that of a Swap Dealer, for which the selection and implementation of a new trading system can easily take two years from start to finish.

¹ See Existing Trade Repositories, 17 CFR Part 45 RIN 3038–AD19 Swap Data Recordkeeping and Reporting Requirements, p. 76577.

In practical terms, an SDR would need at least one year to be able to negotiate agreements with Reporting Entities, build and test interfaces, make any enhancements to book all Swaps in an asset class and to go live. Depending on how many SDRs are approved per asset class, even more time may be needed just to handle the volumes of Reporting Entities. Therefore, it is difficult to envision how *all* Swaps would be reported to SDRs much before 2013.

Although the statutory deadline for final rules is July 15, 2011², the Dodd-Frank bill goes on further to say:

“Each Swap entered into before the date of enactment of the Wall Street Transparency and Accountability Act of 2010, the terms of which have not expired as of the date of enactment of that Act, shall be reported to a registered Swap data repository or the Commission by a date that is not later than—

“(i) 30 days after issuance of the interim final

rule; or

“(ii) such other period as the Commission determines to be appropriate.”³

Therefore, a phase-in period of up to 540 days for pre-enactment Swaps would allow both Reporting Entities and SDRs to first phase-in their respective processes to manage Swaps enacted after Dodd-Frank which would allow all participants to fine tune any technical requirements and better prepare for the large volumes of pre-enactment Swaps. In terms of creating a phase-in period to promote competition, certainly existing bank-related trade repositories⁴ have a competitive advantage as they have existing contractual arrangements with the major Swap Dealers, many of whom are also equity owners or have other invested interests in these trade repositories, and connectivity may already be in place. Even if pricing from a new SDR were dramatically different, it is unlikely that any of the major Swap Dealers already connected to an existing trade repository would consider implementing a new SDR as they have enough changes to implement in order to comply with Dodd-Frank. This would place any other new SDR at a serious competitive disadvantage, enough so that most would likely not register to become an SDR.

A phase-in period of 360 days where newly formed SDRs could be given time ahead of existing bank-related trade repositories would make the playing field more even and attract more potential registrants to become SDRs. The dilemma of encouraging free market competition in an established regime of big players while trying to regulate these very same players, and doing so on aggressive an timeline, is indeed a challenge

Alternatively, the Commission could require a break-up of those Swap Dealers connected to existing trade repositories where there is a potential conflict or not allow any additional Swap Dealers to connect to the existing trade repositories, thus leaving some market opportunity for other prospective SDRs to go after the smaller Swap Dealers and Major Swap Participants.

2) Conversely, should all applicants for SDR registration have to demonstrate compliance with the final rules to receive registration? Why or why not?

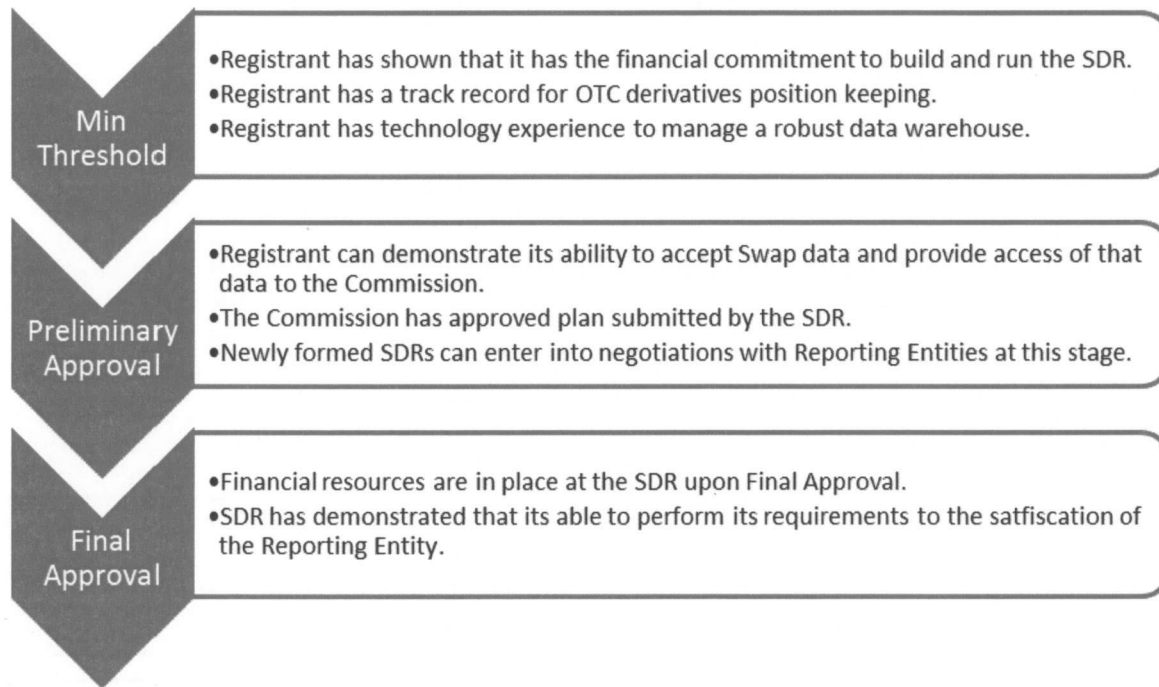
The process the Commission will take to review and approve all registrations will impact the timeline presented in the process chart example. Realistically, every applicant will have to make some additional investment in order to fully comply with the rules, so the extent to which an SDR registrant has to demonstrate compliance as an initial requirement may limit the number of SDRs that would be willing to register. An unintended consequence will in fact be that some of the existing trade repositories servicing the Swap Dealer community today would have an immediate advantage that would create potential anti-trust situations and limit competition as many have ownership held by potential Reporting Entities.

² 17 CFR Part 49 RIN 3038–AD20 Swap Data Repositories, p. 80922.

³ See Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 Sec 729, REPORTING AND RECORDKEEPING, p 326.

⁴ See Existing Trade Repositories, 17 CFR Part 45 RIN 3038–AD19 Swap Data Recordkeeping and Reporting Requirements, p. 76577.

Instead, the Commission should consider stages during the registration process that would allow fair competition for a prospective SDR, while also ensuring that the registrant is committed to meeting the investments required to be compliant with the rules as quickly as possible. The Commission could set minimum threshold requirements for registration that would efficiently eliminate those registrants that are clearly not in a position to meet the timelines and then set criteria that the registrant will have to meet to receive final approval. The following chart shows an example of a staged approval process:



Perhaps newly formed SDRs could be given preliminary approval on an expedited basis which would allow them to pursue discussions with Reporting Entities not already connected to existing bank-related trade repositories. SDRs with conflicts of interest should not be allowed to market their services to Reporting Entities until they have received Final Approval.

II. The Proposed Regulations: Part 49

D. Core Principles Applicable to SDRs: Limitations on Ownership of Voting Equity

In principle, it would be hard to imagine tax payers showing any understanding or patience of another instance of the proverbial “fox guarding the hen house” scenario. Therefore, it does not seem prudent to allow a situation, however small in probability, in which an SDR with ownership or business interest by a Swap Dealer, MSP or DCO could not meet its statutory requirements and, as a result, be unable to perform its role in helping the Commission fulfill its obligations for enforcement, market surveillance and systemic risk monitoring. To this point, a Financial Entity, Swap Dealer or Major Swap Participant or its affiliate should not be allowed to become an SDR.

The Commission should not allow any SDR equity ownership or SDR debt held by any market participant (together with any related persons) that would have more than five percent of the notional principal Swap volume in the asset class where the SDR is registering.

Equity ownership should also be limited to five percent of the SDR. As we see it, the top swap dealers effectively dominate the OTC derivatives market; therefore, leaving the ownership level higher than five percent, could easily allow a group of these Swap Dealers to come together to have undue control over the SDR. If five percent is considered too low, certainly a cap of lower than 20 percent would be required as it would only take three entities, each owning the maximum allotment of 20 percent, to vote in a majority capacity, affecting the outcome of any board decision.

In principle, it also seems unfair that there should be any economic gain to SDRs backed by financial entities that were at the epicenter of the recent financial crisis. Furthermore, allowing these Swap Dealer consortium-backed entities to become SDRs will dissuade most from even considering registration as it would be assumed they would monopolize the Swap Dealer business. If the Commission does not want to create an “uncompetitive environment” and wants to promote an environment in which independent firms can become SDRs, then it needs to consider the fact that once an SDR contracts a client for a given asset class, that client will effectively be “off the market” for a long period of time. If the big SDRs are allowed to “start their engines” and contract clients before the independent SDRs are ready to do the same, this may create an unintended consequence of crowding out the independent SDRs. It would be difficult to protect against this advantage without eliminating all conflict related to equity ownership by Swap Dealers and other Reporting Entities.

Understanding that the conflict may exist but recognizing that a lot of work has been done by existing bank-owned entities, perhaps bank-related trade repositories should be permitted to be a third-party Reporting Entity that can, on behalf of its owners, report to a registered SDR.

Regardless of the percentage of ownership in an SDR, a Reporting Entity should not be allowed to sit on a board committee that nominates public directors, governs compliance, or other committees where a potential conflict of interest could arise.

VI. List of Subjects

§ 49.3 Procedures for registration.

While the 180 day maximum timeframe for approval may be realistic to allow time for the Commission to complete its due diligence on the registrant, the window of time for the SDR to then actually prepare to meet the SDR requirements by the end of 2011 will most likely be unachievable, given the final rules to register may not even be published until May or June of 2011 and given the time it will take for the SDR to prepare to register.

§ 49.7 Swap data repositories located in foreign jurisdictions.

All SDRs registering in the U.S., regardless of their location, should be required to comply with the same U.S. regulations and process. Hopefully, the G-20 countries will coordinate their respective registration requirements to be similar enough to make the burden of registration in multiple locations less onerous, but there are sure to be differences as not all countries, for example, will require English language registrations. Certainly any U.S. domiciled SDRs should not be put at any disadvantage over foreign SDRs during the registration process.

The greatest risk would be if the foreign-based SDR decided not to allow access to the data and the Commission had no legal jurisdiction to access the information. To safeguard against this, the foreign SDR should be required to physically host the data in the U.S. or create a daily back-up of the data with an entity in the U.S., where the Commission would have legal jurisdiction to access the data.

The U.S. should not accept the registration of any foreign-based SDR from a country that also does not allow registration of any U.S.-based SDR or that puts unequal or unfair requirements on U.S. SDRs registering in that foreign country.

§ 49.10 Acceptance of Data.

The focus of our comments in this section is on trade type coverage requirements by asset class. One of the key selection criteria for the Commission to approve an SDR registration should be the ability of the SDR to handle as many types of Swaps as possible in as many asset classes as possible. This criterion will not only benefit the Commission by minimizing the number of SDRs it needs to manage, but also minimize costs to market participants who would otherwise have to manage multiple SDR interfaces and processes.

However, it may be unrealistic to expect that the SDR accept “all” Swaps at any time. There will be new instrument types or one-off customizations that would require systems and database enhancements by the SDR that could not be done properly in real time. The SDR should be given a period of at least 270 days to accept new Swaps (180 days may be acceptable time, but many technology firms have set development release cycles that may not line up with a new Swap request).

Mechanisms can be put in place to handle exceptions, and reports can be created to advise the Commission on the exposure the SDR has to not having all of the data recorded. For example, the Rule could define a template for sending some minimum data fields for Swaps that do not meet the current definitions, so at least the SDR can record the counterparty information, maturity, base currency, a flag denoting that it is not yet fully accepted into the SDR, and the position valuation provide by the Reporting Entity.

Another alternative would be to have the Commission select an SDR that can be the “clean-up” SDR that would aggregate the Swaps that all of the other SDRs are not able to capture.

§ 49.11 Confirmation of Data Accuracy.

Clearly without accurate data being submitted, the SDR’s function would be limited. While any exchange-traded or cleared trade would be confirmed through the action of trading or clearing between counterparties, uncleared trades would not have this mechanism. Currently the Rule does not require both counterparties to an uncleared trade to simultaneously submit their transaction details; therefore, it will be very difficult, if not impossible, for the SDR to confirm a trade without contacting both counterparties or relying on the Reporting Entity to provide affirmation that the submitted trade has been confirmed.

The cost for the SDR to confirm a trade with a counterparty that has not submitted its trade to the SDR would be significant as there could be thousands of counterparties that are not required to submit their trades to the SDR and would not have an electronic interface to the SDR. Therefore, to confirm these trades, the SDR would have to invest in the cost to implement an interface to the counterparty or manually confirm the trade details, both of which would require significant resources. The SDR would have to charge the non-reporting counterparty for this service, and most likely at a higher per trade cost than that charged to the reporting counterparty.

The Commission should therefore consider the intent of the Dodd-Frank bill on the issue of trade confirmation, which is that the SDR is only required to confirm with the Reporting Entity that the data submitted is correct, not that the trade details between the two counterparties are correct and agreed upon. Otherwise, either the Rule should require the Reporting Entity to confirm the trade prior to submission or it should be dramatically amended to require both counterparties to an uncleared trade to submit data to the SDR.

§ 49.12 Swap data repository recordkeeping requirements.

The proposal to keep the data for a swap at maturity plus five years should be more than sufficient. The burdens associated with the time period requirement would be data storage costs and CPU run time costs to analyze the data. Outside of doing market research or requiring historic data for an investigation, there should not be a frequent need for the Commission to review data after the trade has matured, let alone going back an additional five years. The data storage costs are fairly low today, so the bigger impact would be the hardware costs to be able to analyze the current and historic trade data and the time and cost to unarchive trades back into the system.

§ 49.13 Monitoring, screening and analyzing Swap data.

The SDR needs to be more than just a trade data warehouse; it needs to be a provider of data analysis and reporting. This is especially true if the Commission is to monitor systemic risk in the OTC derivatives market stemming from *uncleared trades*. For monitoring systemic risk from uncleared trades, the Commission would need to be able to:

- consolidate net counterparty exposure positions across all SRDs for all asset classes;
- ensure exposures are obtained through proper valuation including CVAs;
- apply the corresponding posted collateral to the net counterparty exposure; and
- have all the aforementioned correspond with the requisite Master Agreement, if applicable.

Any implementation of Dodd-Frank with respect to OTC derivatives that falls short of instituting these points will materially inhibit the Commission, and thereby the US Government, from preventing another financial crisis due to systemic risk from OTC derivatives.

As the Commission knows, the market mechanisms already are in place to minimize systemic risk in the exchange-traded futures market. Similarly, the proposed rules for cleared OTC derivative trades would put in place the market mechanism to reduce or eliminate systemic risk from this sector of the OTC derivatives market. The sector of the market that poses the more daunting task for minimizing systemic risk is the uncleared OTC derivatives trades. The chart below illustrates the gaps that currently exist in making the market mechanisms comparable among these markets/sectors.

Market Mechanism Required to Minimize or Eliminate Systemic Risk				
Market Sectors	Standardized Contracts and Traded Instruments	Standardized Margining Process	Consistent Daily Margining Process	Clearing House: Multilateral Member Capital Supporting Trades/Positions
Exchanged Traded Futures Market	Yes	Yes	Yes	Yes
Proposed (DF) OTC Derivatives Cleared Trades Market	Yes	Yes	Yes	Yes
Proposed (DF) OTC Derivatives Uncleared Trades Market	No	No. General guidelines and ISDA CSA structure	No. Some daily asymmetrical bi-lateral margining agreements	No. Bi-lateral contracts supported by counterparty capital

While it is impractical to expect these market sectors to function identically, it is important that the Commission examines a few key mechanisms in the uncleared trades market sector that could effectively narrow the differences among the market sectors and improve the Commission’s ability to monitor systemic risk. It is for this goal of Reform that the SDR needs to be more of a provider of proper data analysis and reporting than merely a warehouse of trade data.

A few key ideas for the Commission to consider are:

- **The SDR should be required to provide an independent valuation of the Swaps submitted.** While the expectation is that market participants would adhere to the regulations and provide an accurate, objective valuation, it would be far from best practice to accept the valuation without any verification. In fact, current GAAP have steered companies to not be able to use Swap Dealer provided valuations as the requirements under ASC 820 (FAS 157) require models and methods used to value derivatives to be disclosed, which generally is not possible as Swap Dealers do not provide this proprietary information. Therefore it would seem logical that the Commission follow the same requirement.

In order for the SDR to be able to accurately calculate the valuation of the Swap, the data field requirements are not extensive enough. Please refer to Reval's submission entitled: Reval Comment Letter to CFTC 17 CFR Part 45 RIN 3038-AD19 Jan 24 2011, for an example demonstrating the impact of missing data fields to a cross-currency Swap.

- **Swap Dealers should also provide the relevant market data that goes into the calculation of the Swap value.** Although market data information can be obtained in the market, there are components, like implied option volatilities, that are not readily disseminated and ultimately there is much subjectivity that goes into market data inputs. As the Dodd-Frank bill requires more transparency in pricing, this data should not only become more publicly available, but should be submitted to the SDR to verify valuations.
- **SDRs should be able to verify, if not provide, CVA for uncleared trades.** For cleared trades, the daily valuation/settlement will represent the true fair value as the credit risk has been removed from the price via the clearing house margining process. However, any uncleared trades will have to be adjusted to reflect the credit risk associated with the counterparty. This credit value adjustment (CVA) is impacted by whether or not the net counterparty exposure is positive (asset position) or negative (liability position). The market participant would need to be able to provide the CVA price along with the credit information that helped determine the proper fair value and again the SDR should be able to verify the CVA. Similarly, the SDR would need to be able to net positions across counterparties, asset classes and potentially take in data from other SDRs to help the Commission understand holistically where the true risk lies.
- **The Commission should have the ability to consolidate data across all SDRs.** For the Commission to review counterparty net exposures it will, in many instances, need to access the required data across all SDRs for all asset classes and combine that information with the corresponding Master Agreement (i.e. the "road map" for netting) and any collateral posted under the Master Agreement/CSA. Therefore, the Commission will either need to be its own "Consolidator" in this process or will have to designate a service provider performing this function (which may be an SDR or SDRs).
- **SDRs should provide the Commission with historic, current and future risk analysis to anticipate systemic risk.** The Commission will be able to analyze the historic risk or the current risk to the system with the proper reporting from the SDR of the most recently submitted positions. This would help in understanding the current situations in a more timely fashion than in the past, but will provide limited value to seeing the potential future risk to the system. The SDR should be required to provide risk reporting tools, like stress-testing, that would provide scenarios where there future systemic risk could be better anticipated.

In addition to the independent valuations and risk reporting, the SDR should provide flexibility to the Commission for ad hoc reporting on general Swap activity and inventory. Alert reports should also be created where the SDR can automatically notify the Commission on any key activities or breaches, such as position limits.

§ 49.14 Monitoring, screening and analyzing end-user clearing exemption claims by individual and affiliated entities.

17 CFR Part 45 RIN 3038–AD19 Swap Data Recordkeeping and Reporting Requirements requires Reporting Entities to only submit in the Potential Confirmation/Clearance Data section that the trade is not cleared because of the end-user exemption⁵. However, 17 CFR Part 39 RIN 3038–AD10 End-User Exception to Mandatory Clearing of Swaps § 39.6 (b) requires the Reporting Entity to submit several items to demonstrate that the end-user does qualify for the clearing exemption (i.e. that it can meet the financial obligations of the Swap, that it is not a Financial Entity, that it is hedging commercial risk using FAS 133 etc.).

If the intent is for the SDR to do more than just report on the number of end-user exemptions then no other data information is required, but if the SDR is expected to really screen and analyze then the end-user exemption data fields need to be added as data field reporting requirements.

§ 49.15 Real-time public reporting of swap data.

Refer to our comment letter Reval Comment Letter to the CFTC 17 Part 43, submitted on February 7, 2011.

§ 49.17 Access to SDR data.

The Commission should always be in a position to request information on demand, and the SDR should have the capabilities to provide this or not be accepted for registration. The need for the SDR to stream the data periodically is probably not as important as having user friendly reporting and alerts as the Commission's staff would be overwhelmed with all of the data streaming in. Furthermore, the cost of the Commission to then store the data and report on the data would be costly and, in theory, cost as much as the investments that all of the SDRs will be putting into place in terms of hardware, software, maintenance and support perspective.

The most feasible and cost-effective method for direct access would be for the SDR to provide to the Commission Internet browser-based access to a hosted SDR solution. Client-server or locally installed hardware and software would involve an increase in infrastructure costs to the Commission and Market Participants. Technology requiring customized "pipes" or connectivity between Market Participants and the SDR and then to the Commission would be cost-prohibitive to deploy and expensive to maintain. The SDR should be able to host the application and the data remotely and take care of all of the hardware, software, security, disaster recovery and IT costs as part of the service, paid for by the fees charged to the market participants. The Internet browser-based access should be delivered as a thin-client application (e.g. Microsoft Internet Explorer) with no add-ins or plug-ins, allowing the Commission or its designee to securely access the data from any location that has Internet access.

If the prospective SDR does not already have a track record for hosting an application under what is known as Software-as-a-Service (SaaS), delivering thin-client web reporting, then the costs for that entity to start up will be higher, along with the risk that the SDR will not be able to deliver because it has no experience in SaaS delivery.

Without a user-friendly, flexible interface that is accessible remotely via the Internet, the Commission will have an over abundance of data that will have little value or a myriad of reports that may not be consistent or useful unless aggregated. Manually aggregating the data by the Commission will also be time consuming and could pose operational risk where errors could easily be created through non-automated processes.

⁵ 17 CFR Part 45 RIN 3038–AD19 Swap Data Recordkeeping and Reporting Requirements, p. 76608.

§ 49.22 Chief Compliance Officer.

The CCO should have a direct reporting line to the senior officer of the company, who in turn has a day-to-day fiduciary responsibility to ensure the SDR meets all of its requirements. The CCO should report into a compliance or audit committee at the board level and have the ability to escalate directly to the committee should the CCO feel that any compliance matters are not being addressed properly by the SDR or its senior officer.

It is not necessary for the Rule to define the senior officer as the Commission should be able to use its good judgment when evaluating the registrations to ensure that a senior officer is “senior” enough. Within the registration application, if the titles of CEO, CFO, COO, President, Managing Director, Partner or similar variations of these titles are not used, then the Commission should seek clarification or reject the registration.

The main conflict of interest that could arise is when a CCO feels compelled to raise a compliance issue but does not do so for fear of any repercussions to his or her position or compensation. This dynamic is not new to any corporation where a controller, accountant or other employee may discover a situation that could be damaging to the company, but it can be managed by having proper internal controls, processes and validation of those processes by third parties. Furthermore, individuals should be protected under the Whistleblower Provision⁶ from being fired for raising concerns about fraud or other crimes. Giving the CCO a forum to present to a board level committee and a means to escalate an issue around the senior officer should mitigate this conflict. Having an external firm come in and review and audit the CCO’s activities would also be another way to mitigate this conflict.

§ 49.25 Financial Resources

The need for the SDR to have adequate financial resources to operate is clear, but the requirement for the SDR to have 12 months of operating expenses on hand would not be how most businesses operate and would be prohibitive to many new businesses from forming an SDR, and in essence would limit competition.

Not allowing the SDR to be financially supported by a parent company may also limit the pool of companies willing to register to become an SDR as it would involve raising new capital for a start-up business.

As stated, the requirement to always have 12 months of operating expense on an on-going basis would be a constraint limiting the SDRs from:

- improving technology
- having the proper resources
- making other long-term investments

The consequence of this constraint would be higher cost to Reporting Entities.

There are other measures for determining if the SDR has sufficient resources to ensure the financial integrity of the SDR that the Commission should consider. For example, the profitability of the SDR, the level of positive operating cash flow and cash balance could be used as equally valid indicators of the financial health of the SDR.

The biggest risk is most likely the initial years of the SDR first setting up and then establishing Reporting Entities as clients, so perhaps initially the SDR should have enough working capital for 12 months, either directly or through its parent company. Debt, Letters of Credit or Capital Call Structures should also be

⁶ 17 CFR Part 165 RIN 3038-AD04 Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act; Proposed Rule.

allowed initially. After 12 months the SDR should be able to demonstrate that it has adequate financial resources from one or more of the following:

- positive operating cash flow,
- six months of operating expenses on hand, or
- profitability on a quarterly basis,

Realistically, if the SDR is not able to run its business profitably or at least with positive operating cash flow shortly after 12 months, then the SDR would probably withdraw as it is either not meeting the requirements or the competition is too strong.

§ 49.27 Access and Fees.

The core component pricing will ultimately be per transaction charge. Because volume discounting is not allowed and pricing will be transparent, there should be healthy price competition, assuming enough SDRs register.

However, as standards for data definition, service level agreements, security, back-up, disaster recovery and other requirements are not set by the Commission, each SDR will have varying costs and quality of service. Therefore it would be hard to compare on an “apples to apples” basis many aspects of SDR pricing. For example a Swap Dealer submitting data via a spreadsheet (.csv or .xls) with its own customized definitions vs. a Swap Dealer submitting data using .xml or Fpml would have different set-up and implementation costs and different on-going interface support costs.

One area of variable pricing that SDR will have to be able to charge is for client implementation, consulting or development services. For example, an hourly or daily consulting rate can be publicized for this work, but ultimately the length of the project will determine the total cost. As there is no practical way to monitor or measure this aspect of pricing, this should be left to the market participants to negotiate privately.

Conclusion

Over the course of the enactment of the Dodd-Frank Act, already at five months, it has become clear how monumental the task is at hand to regulate the OTC derivatives market. The rules around Data and the requirements of the Swap Data Repositories will be the cornerstone for the ultimate success of the OTC derivatives component of the Dodd-Frank Act and the effort to understand this complex, non-transparent market.

The Commission needs to ensure that there are enough prospective SDRs compelled to register, and it needs to approve those that have a track record for developing cutting-edge technology and a willingness to adapt to regulatory change. The reality will be that many of the initial concepts considered now and made final in the rules will have to be adjusted as the entire OTC derivatives market will change. The sooner the final rules on Data can be released the better it will be for Reporting Entities, prospective SDRs, and for the overall success of the reform of the OTC derivatives market.

Sincerely,



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