



February 21, 2011

Via Electronic Submission: <http://comments.cftc.gov>

Mr. David A. Stawick
Secretary
Commodity Futures Trading Commission
1155 21st Street, NW
Washington, D.C. 20581

Re: Swap Data Repositories; RIN 3038-AD20

Dear Mr. Stawick:

Managed Funds Association (“MFA”)¹ appreciates the opportunity to provide comments to the Commodity Futures Trading Commission (the “Commission”) on its proposed rule related to “Swap Data Repositories” (the “Proposed Rule”)² under Title VII³ of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).⁴ MFA fully supports the objectives of the Dodd-Frank Act and the Proposed Rule to enhance transparency in the swap market.⁵ In addition, MFA strongly supports the Commission’s imposition of privacy requirements on swap data repositories (“SDRs”) as well as a requirement that an SDR confirm the accuracy of data submitted with both counterparties.⁶

In this comment letter, we recommend certain changes to the Proposed Rule that we believe are necessary to protect the information that market participants will provide to SDRs. Our hope is that this comment letter will comprise part of a continuing dialogue with the Commission as the swap market evolves and during the regulatory implementation phase of the Dodd-Frank Act.

¹ MFA is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world managing a substantial portion of the approximately \$1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

² Swap Data Repositories; Proposed Rule, 75 Fed. Reg. 80898, 80898 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 49) (the “Proposed Rule Release”).

³ Entitled “The Wall Street Transparency and Accountability Act”.

⁴ Pub. L. No. 111-203, § 701, 124 Stat. 1376 (2010).

⁵ Proposed Rule Release at 80898.

⁶ *Id.* at 80930.

I. Privacy Obligations of SDRs

We agree with the Commission's concerns about privacy of swap data,⁷ and as a result, we support the requirement of proposed Section 49.16 that an SDR establish, maintain and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of SDR information not subject to real-time public reporting requirements.⁸ We believe such privacy protections will ensure that market participants utilize the services of registered SDRs with confidence.

However, we respectfully request that the Commission add additional safeguards to proposed Section 49.16⁹ related to confidentiality of trading positions. MFA members invest heavily in their customized and proprietary investment strategies, which form the foundation of their businesses. Disclosure of position level information could reveal such strategies to the market, thus, undermining their intellectual property and inviting copycat behavior. To safeguard against disclosure of such positions, our members customarily enter into confidentiality agreements with swap trading counterparties. Therefore, it is essential that the Commission ensure that the scope of information covered under the Proposed Rule and the SDR standard of care is consistent with terms generally requested for confidentiality agreements between swap counterparties. Specifically, we recommend adding to the information covered under proposed Section 49.16: (i) the identity of each market participant; (ii) information related to transactions of a market participant that includes the size and volume of such transactions (to the extent that the SDR is not required to disseminate such data under Part 43); and (iii) the details of any master agreement (to the extent provided) governing the relevant swap.

In addition, we respectfully request that the Commission further expand the requirements set forth in proposed Section 49.16 to include an SDR standard of care that obligates each SDR to have policies and procedures specifying that it will use any confidential information it receives solely for the purposes of fulfilling its regulatory obligations. Further, the Commission should require those SDR policies and procedures to limit access to confidential information exclusively to directors, officers, employees, agents and representatives of the SDR (the "SDR Representatives") who need to know such information to fulfill regulatory obligations. Those policies and procedures should also have a mechanism in place for all SDR Representatives to be informed of, and required to follow, the SDR's policies and procedures related to privacy of information received. Lastly, we suggest that the SDR and current and former SDR

⁷ *Id.* at 80908, where the Commission makes clear that SDR information that is not subject to real-time public reporting should be treated as non-public and strictly confidential, so that the SDR may not access, disclose or use it for purposes unrelated to the SDR's responsibilities under the Commodity Exchange Act ("CEA") or the regulations thereunder, unless the reporting entities (*i.e.*, the submitter(s) of the data) explicitly agree to such use.

⁸ *Id.* at 80931.

⁹ *Id.* Proposed Section 49.16(a)(2) provides that an SDR is required to "establish and maintain safeguards, policies, and procedures reasonably designed to prevent misappropriation or misuse, directly or indirectly, of (i) Section 8 Material; (ii) Other SDR Information; and/or (iii) Intellectual property, such as trading strategies or portfolio positions, by the swap data repository or any person associated with the swap data repository." Section 8 Material is defined as "the business transactions, trade data, or market positions of any person and trade secrets or names of customers." *Id.* at 80927.

Representatives be liable for any breach of the SDR's privacy policies and procedures. We emphasize that it is critical that an SDR's privacy policies and procedures continue to apply to SDR Representatives even after they have terminated their employment and/or affiliation with the SDR. We believe that requiring such robust SDR policies and procedures is consistent with current market practice and will ensure that SDRs and SDR Representatives, current or former, appropriately protect confidential swap transaction information.

II. Access to Data Obtained and Maintained by SDRs

Proposed Section 49.17 establishes parameters that permit access to the data maintained by an SDR. Specifically, that section of the Proposed Rule addresses access by regulators and third party service providers to, and general commercial use of, swap data by an SDR. With respect to commercial use by SDRs, MFA strongly supports the Commission's prohibition on use of data maintained by the SDR for commercial or business purposes of the SDR or any of its affiliated entities.¹⁰

With respect to regulator access, the Proposed Rule provides regulators with access to swap transaction data to "promote greater risk management and give regulators a better measure of systematic risk throughout the financial markets."¹¹ MFA supports regulators having appropriate access to swap data maintained by SDRs, as well as the Commission's proposal to limit such access only to a regulator that is acting clearly within the scope of the regulator's authority.¹² We are concerned, however, that in practice foreign regulators will have unlimited access to data maintained by an SDR because the Proposed Rule, as drafted, only requires an SDR to notify the Commission that a foreign regulator seeks access to the swaps data it maintains, but does not require the Commission to play an active role in verifying the validity of such request.¹³ As a result, we would strongly recommend that the Commission actively participate in facilitating appropriate access and confirming a foreign regulator's relevant authority in connection with any SDR data request, and would appreciate it if the Commission could clarify its intentions and processes for doing so.

With respect to third party access, however, MFA is concerned that the Proposed Rule allows third parties that provide technology and data related services to the SDR to access data

¹⁰ *Id.* at 80932.

¹¹ *Id.* at 80925.

¹² *Id.* at 80931-80932. Proposed Section 49.17(d) requires any regulator requesting access to data obtained and maintained by an SDR to first file a request for access with the SDR, certify the statutory authority for such request and detail the basis for such request. The SDR then promptly notifies the CFTC of such request and is subsequently only permitted to provide information to the regulator that is clearly within the scope of its regulatory authority. In addition, prior to receipt of any data from an SDR, the regulator must execute a confidentiality and indemnification agreement with the SDR.

¹³ Section 8(e) of the CEA grants the Commission authority to furnish information obtained by the Commission to a foreign futures authority. Section 8(e) also restricts the Commission from furnishing information to a foreign futures authority, unless the Commission is satisfied that the foreign futures authority will not disclose the information, except in connection with an adjudicatory action or proceeding.

and information maintained by the SDR.¹⁴ We appreciate that the Commission restricts such access to instances where the SDR and third party service provider have strict confidentiality procedures designed to protect data and information from improper disclosure, including a confidentiality agreement. As an additional safeguard, however, we would request that the Commission require such confidentiality procedures to follow the same standard of care that applies to an SDR's obligation to protect confidential swap information. The Commission should not hold any third party service provider receiving confidential information from an SDR to a lesser standard of care than the SDR itself, as the harmful effects of improper disclosure are no different coming from an SDR or a third party.

III. Dispute Resolution Policies for SDRs

MFA supports proposed Section 49.9(a), which mandates that each SDR "confirm with both counterparties to the swap the accuracy of the data that was submitted."¹⁵ Since data maintained by SDRs will be critical to facilitating transparency in the swaps markets, it is important that SDRs maintain and disclose accurate data. Consistent with this position, we note that in our comment letter on the Commission's proposed rule on "Real-time Public Reporting of Swap Transaction Data",¹⁶ we supported the Commission implementing a mechanism to correct erroneous submissions to an SDR by reviewing any disputed data with both parties to the swap in question.¹⁷ Thus, we are pleased to see that the Proposed Rule requires coordination with both parties to a swap transaction and hope to see the inclusion of a consistent standard in the Commission's final adopted rule on real-time public reporting. We believe that both measures will be key steps toward ensuring the accuracy of data that an SDR maintains and discloses.

¹⁴ *Id.*

¹⁵ *Id.* at 80929.

¹⁶ 75 Fed. Reg. 76140 (proposed Dec. 10, 2010) (to be codified at 17 C.F.R. pt. 43).

¹⁷ <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=27562&SearchText=>

Mr. Stawick
February 21, 2011
Page 5 of 5

MFA appreciates the opportunity to comment on the Commission's Proposed Rule. If the Commission or its staff has questions, please do not hesitate to call Carlotta King or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell

Stuart J. Kaswell
Executive Vice President, Managing Director &
General Counsel

cc: The Hon. Gary Gensler, Chairman
The Hon. Michael Dunn, Commissioner
The Hon. Bart Chilton, Commissioner
The Hon. Jill E. Sommers, Commissioner
The Hon. Scott D. O'Malia, Commissioner