

**Comments of SunGard Energy & Commodities re:  
Swap Data Repositories  
17 CFR Part 49; RIN 3038–AD20**

February 22, 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. 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.

On February 7, 2011, we posted on the CFTC Website our comments on the Swap Data Reporting requirements in 17 CFR Part 45; RIN 3038-AD19. Today we turn our attention to the related topic of the proposed rules in CFR Part 49; RIN 3038-AD20 for the custodians of reported swap data -- Swap Data Repositories. Our interest in both of these proposed rules is twofold. First, as a vendor of software and services in this space with hundreds of customers among all participant groups, we hope our perspective may assist the Commission to achieve its regulatory goals in an efficient and sensible manner. Second, with over 15 years experience and expertise in capturing and managing both cleared and bi-lateral OTC swap information for those hundreds of customers, and in providing them with independent market data and valuation of swap positions in both real time and as a system of record, we feel it would be natural for us to offer SDR services; for this purpose, we seek regulatory clarity in order to better conceptualize and evaluate the commercial venture. Our comments on the proposed rule are as follows:

**Background**

In 17 CFR Part 49, CFTC proposes rules to implement Section 728 of the Dodd-Frank Act (DFA), which “establishes a newly-created registered entity – the SDR – to collect and maintain data and information related to swap transactions as prescribed by the Commission, and to make such information directly and electronically available to regulators.” [75 FR 80898-9]

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## Monitoring, Screening and Analyzing

Section 21(c)(5) of the Commodity Exchange Act (CEA), as modified by Section 728 of the DFA, requires SDRs to implement such automated systems as the [CFTC] shall direct for “monitoring, screening and analyzing swap data” [75 FR 80907]. CFTC proposes rule 49.13 to implement this requirement. We are concerned that this proposed rule provides only limited guidance on the actual requirements for such automated systems. “The [CFTC] expects that SDRs will be required to compile, extract, filter, and report information necessary to assist the [CFTC] in the fulfillment of its regulatory obligations with respect to swap markets. However, the [CFTC] will consider specific tasks to be performed by SDRs at a *later date*, as its knowledge of the regulatory markets increases [49.13(a) emphasis added]. We suggest that the final rule 49.13(a) provide an implementation period and effective date which are based on such later date.

In addition, Proposed 49.13(b) obligates the SDR to:

- “maintain sufficient information technology, staff, and other resources as necessary to fulfill any requirements that may arise through proposed 49.13(a)”;
- “monitor their resources at least annually”; and
- “make adjustments as needed to remain in regulatory compliance”

Since the proposed rule 49.13(b) fails to identify any cost to the CFTC or the taxpayer for the SDR providing these services, we conclude that the CFTC intends the SDR recover these costs through user fees as outlined in proposed rule 49.27. After observing the many public protests by CFTC Commissioners concerning the lack of congressional funding for DFA rule enforcement, we can appreciate the reasons why the CFTC may be looking to externalize these costs. We are concerned, however, that the market will not support continually increasing rates by an SDR to cover these costs, thus reducing the commercial viability of SDRs, and negatively impacting CFTC objectives. The final rule 49.13(b) must include either a constraint on this growth in required SDR resources, a mechanism for the SDR to recover at least a portion of these costs in a manner other than user fees, or perhaps some other mechanism to allow for the business planning necessary for the SDR to function while being certain of compliance with applicable rules.

## Fees

As noted above, proposed rule 49.27 acknowledges the need for SDRs to charge reasonable fees “in connection with the reporting of swap data and any other supplemental or ancillary services provided”. It does so by providing restrictions that any such fees must be:

- “equitable”;
- “established in a uniform and non-discriminatory manner”;
- “not used as an artificial barrier to access to the SDR”;
- “[do not] involve an offer of preferential pricing [that does not] apply to all market participants uniformly”; and
- “[are not] established in a manner that would effectively limit the application of such discount or reduction to a select number of market participants.” [49.27 (b)(1)]

We understand the rationale for equitable treatment of market participants by SDRs in the establishment of fees. Similarly equitable use of SDR resources for monitoring, screening and analysis is also necessary to ensure a level playing field.

The rule goes on to say that “The [CFTC] will not specifically approve the fees charged by swap data repositories” [49.27(b) (3)], as long as they are “consistent with the principles set forth [in 49.27 (b) (1)]”. We fully support the CFTC’s decision not to constrain the market with the additional uncertainty of utility-like rate reviews.

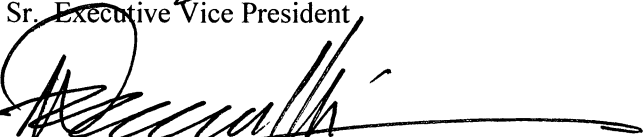
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This concludes our comments on the proposed rule 17 CFR Part 49. We appreciate the opportunity for public comment on these important issues before the CFTC.

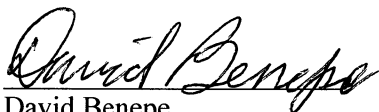
Respectfully yours,



Benjamin Jackson  
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