



February 22, 2011

VIA ELECTRONIC SUBMISSION

Mr. David A. Stawick
Secretary
U.S. Commodity Futures Trading Commission
1155 21st Street, NW
Washington, DC 20581

Re: Swap Data Repositories: RIN 3038-AD20

Dear Mr. Stawick:

On December 23, 2010, the U.S. Commodity Futures Trading Commission (the “Commission” or “CFTC”) issued a Notice of Proposed Rulemaking regarding Swap Data Repositories (“SDRs”) in the Federal Register,¹ as required by Section 728 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).² The Commission invited interested persons to comment on all aspects of the proposed rules by February 22, 2011. Argus Media Inc. (“Argus”) hereby submits comments on the SDR Rulemaking.

Argus supports the important goal of collecting and maintaining data and information related to swap transactions, for the purpose of both assisting the Commission and other regulators to monitor properly the swaps markets and for real-time public dissemination. Argus also shares Congress’ and the Commission’s concern about maintaining the confidentiality of information provided to SDRs. On the latter issue, Argus believes it is important to avoid the inadvertent disclosure of confidential core data (“Core Data”) that may result should SDRs, who maintain this Core Data for use by the Commission and other regulators, at the same time be allowed to make commercial use of the non-Core Data similarly maintained by these SDRs. To address this concern, Argus proposes that the Commission clarify that SDRs and their affiliates may not make commercial use of real-time data subject to public dissemination (“Real-Time Data”) to the extent that they also have access to the Core Data. Instead, the commercial use of Real-Time Data, if any, should be limited to those entities that have access to only this non-Core Data. At the very least, the Commission should ensure that SDRs and their affiliates that use Real-Time Data for commercial purposes have strong firewalls in place to prevent the use of Core Data in any analysis performed by a SDR of the Real-Time Data for commercial purposes.

¹ *Swap Data Repositories*, 75 Fed. Reg. 80,898 (Dec. 23, 2010) (to be codified at 17 C.F.R. Part 49) (“SDR Rulemaking”).

² Pub. L. No. 111-203 (2010) (to be codified as an amendment to the Commodity Exchange Act (“CEA”) in 7 U.S.C. ch. 1).

Argus is a leading independent provider of price information, market data and business intelligence for the global, physical petroleum, natural gas, electricity, emissions, biofuels and coal industries. Argus is incorporated in the United States as Argus Media Inc., a Delaware corporation, which is a wholly owned subsidiary of Argus Media Ltd., established in 1970.

Headquartered in London, Argus has offices in Washington, D.C., Houston, New Jersey, Moscow, Singapore, Tokyo and Beijing. Argus is owned by its employees and by the family of its founder. Argus staff adhere to a strict ethics policy that forbids them from dealing in energy and commodities or in the stock of energy or commodities companies.

I. SDR Rulemaking

Section 728 of the Dodd-Frank Act created a new entity—the swap data repository—to collect and maintain information related to swap transactions and to make such information available to regulators.³ Section 728 requires that all swaps (both cleared and uncleared) must be reported to a SDR.⁴ This section further outlines the requirements for the registration and regulation of SDRs, directing the Commission to adopt rules governing the duties and responsibilities of these newly-conceived entities.⁵ As part of its duties, a SDR must “maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity.”⁶

The SDR Rulemaking proposes rules for the registration and regulation of SDRs.⁷ Among other things, the proposed rules provide that information maintained by SDRs generally may not be used by a SDR or its affiliates for commercial or business purposes.⁸ SDRs must adopt firewalls to ensure that the data is not improperly used for commercial purposes.⁹ There is, however, a limited exception to this commercial use prohibition, as market participants that submit the data maintained by a SDR may permit the commercial or business use of that data by express written consent.¹⁰

³ Dodd-Frank Act, Section 728 (CEA Section 21).

⁴ Dodd-Frank Act, Section 727 (CEA Section 2(a)(13)(G)).

⁵ Dodd-Frank Act, Section 728 (CEA Section 21).

⁶ *Id.* (CEA Section 21(c)(6)).

⁷ 75 Fed. Reg. at 80,900.

⁸ *Id.* at 80,932 (Proposed 17 C.F.R. § 49.17(g)). “Commercial use” is defined as “the use of swap data held and maintained by a registered swap data repository for a profit or business purposes.” *Id.* (Proposed 17 C.F.R. § 49.2(a)(5)).

⁹ *Id.* (Proposed 17 C.F.R. § 49.17(g)(1)).

¹⁰ *Id.* (Proposed 17 C.F.R. § 49.17(g)(2)).

II. Comments to SDR Rulemaking

Argus shares Congress' and the Commission's concern about maintaining the confidentiality of information provided to SDRs by swap dealers, counterparties, and any other Commission-registered entities, and in particular the proprietary Core Data. Dissemination of this information into the public domain, directly or indirectly, could disrupt the competitive balance among market participants and thereby chill participation in the swaps markets. Argus is interested in ensuring that conflicts of interest do not affect SDR operations. Under the Dodd-Frank Act, registered SDRs play an important dual role in the swaps markets: (i) accepting and publicly disseminating real-time swap transaction and pricing data and (ii) providing the Commission and other regulators with the necessary information to monitor these markets. Thus, as the Commission recognized, SDRs will receive two separate "streams" of data: (i) Real-Time Data related to real-time public reporting which is by nature publicly available and (ii) Core Data that is intended for use by the Commission and other regulators which is subject to statutory confidential treatment.¹¹ Argus is concerned about the indirect commercial use by SDRs of the Core Data that is intended to be used by the Commission and other regulators.

Argus believes that the dual role of SDRs as custodian of both Real-Time Data for public dissemination and Core Data accessible only by regulators may present the potential for a conflict of interest. On one hand, SDRs are prohibited from using Core Data for commercial or business purposes (unless they have the express written consent of both parties).¹² At the same time, SDRs may be allowed to make commercial use of the Real-Time Data.¹³ The SDR Rulemaking also permits the public dissemination of aggregated data that cannot be attributed to individual transactions or market participants.¹⁴ By having access to two streams of data—only one of which may be used for commercial purposes—SDRs may indirectly use their position for commercial gain.

In their role of collecting and disseminating information for real-time reporting of swap transactions, SDRs may seek to analyze the Real-Time Data that they receive for profit. As the Commission recognized, "[a]dditionally, because the Dodd-Frank Act requires all swaps (whether cleared or uncleared) to be reported to a registered SDR, swap data and SDR analyses of SDR Information could have great commercial value."¹⁵ Given their access to the Core Data,

¹¹ *Id.* at 80,908.

¹² *See id.* at 80,932 (Proposed 17 C.F.R. § 49.17(g)).

¹³ *See id.* at 80,911 ("[T]he Commission has identified certain conflicts of interest that may implicate commercial use of SDR Information (*other than swap data subject to real-time public dissemination*). . . . The privacy and confidentiality concerns set forth in Section 21(c)(6) of the CEA *do not apply* to the swap data subject to proposed part 43 of the Commission's Regulations, which set forth the requirements for real-time public reporting of swap data by SDRs.") (emphasis added).

¹⁴ *Id.* at 80,908.

¹⁵ *Id.* at 80,918-19.

any such analyses of the Real-Time Data will inevitably be informed by a SDR's knowledge of the more extensive Core Data. For example, while a SDR may limit its commentary to the Real-Time Data that it receives, it could also make predictions based on trends in the underlying Core Data, although it would not technically be publicly disseminating this Core Data. Conversely, based on its familiarity with the underlying Core Data, a SDR may purposely avoid making a prediction that it knows will not occur. Thus, while a SDR may not explicitly utilize the Core Data for business purposes, it may indirectly receive commercial benefit from this information.

As an adjunct to this potential conflict of interest, a SDR's receipt of these two data streams also puts non-SDR entities at a competitive disadvantage. Recently, the Commission proposed rules for the real-time reporting of all swaps.¹⁶ The Commission's rules generally permit a reporting party to submit Real-Time Data to any real-time disseminator, which includes both registered SDRs and third-party service providers.¹⁷ If the reporting party sends the Real-Time Data to a registered SDR, then the reporting party has met its reporting requirements.¹⁸ However, if the Real-Time Data is sent to a third-party service provider, then the reporting party has not met its requirements until such data is actually publicly disseminated by the third-party service provider.¹⁹ Under the SDR Rulemaking, third-party service providers face a competitive disadvantage because they do not have access to the Core Data that is available to registered SDRs. Accordingly, any third-party service provider that seeks to analyze the Real-Time Data for commercial gain would have less fulsome information than a SDR, potentially making its analyses less precise. Stated differently, potential subscribers to these analyses may gravitate to the information offered by SDRs, knowing that the SDR's analysis of the Real-Time Data is informed by its access to the non-public Core Data. Further exacerbating this potential problem, the opportunity to perform the role of a SDR will not be available to any entity that desires to be a SDR. Instead, to become a SDR, an entity will have to meet certain threshold requirements and receive Commission approval.²⁰ Thus, those entities that are permitted to become a SDR will have a built-in advantage over non-SDR entities through the receipt of both the Core Data and Real-Time Data.

Based on the potential conflicts of interest and inherent competitive advantage that SDRs possess, the Commission should clarify that SDRs and their affiliates may not make commercial use of Real-Time Data to the extent that they also have access to Core Data. Alternatively, at a minimum, the Commission should ensure that SDRs and their affiliates have strong firewalls in place to prevent the use of Core Data in any analysis of non-Core Data performed for

¹⁶ *Real-Time Public Reporting of Swap Transaction Data*, 75 Fed. Reg. 76,140 (Dec. 7, 2010) (to be codified at 17 C.F.R. Part 43).

¹⁷ *See id.* at 76,173 (Proposed 17 C.F.R. § 43.3).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See* Dodd-Frank Act, Section 728 (CEA Section 21).

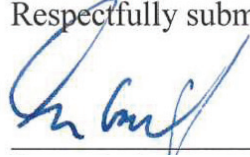
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commercial purposes. This approach would strike the proper balance between preventing improper commercial use of data maintained by SDRs and permitting independent analyses of swap transaction data. As such, it is fully in line with Congress' goal of preventing conflicts of interest in SDR operations.²¹

III. Conclusion

Argus appreciates the opportunity to provide the Commission with its perspective on the SDR Rulemaking. Argus welcomes the opportunity to discuss these issues further with the Commission and its Staff.

Respectfully submitted,



Euan Craik
Chief Executive Officer Americas
Argus Media Inc.
3040 Post Oak Boulevard, Suite 550
Houston, TX 77056
Tel: (713) 968-0000
Fax: (713) 622-2991

²¹ See 75 Fed. Reg. at 80,911.