



**Americans for Financial Reform**  
1825 K St NW, Suite 210, Washington, DC, 20006  
202.263.4533

February 22<sup>nd</sup>, 2011

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

Re: CFTC RIN 3038–AC20; Swap Data Repositories

Dear Mr. Stawick:

On behalf of Americans for Financial Reform, thank you for the opportunity to comment on the proposed rule setting out the registration requirements, duties, and core governance principles for swap data repositories. Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as economists.

Swap data repositories (SDRs) are a key component of the market infrastructure envisioned in the Dodd-Frank Act. Central goals of the legislation, such as greater transparency in the derivatives market and improved regulatory oversight of the systemic implications of derivatives exposures, cannot be attained without the derivatives transaction records gathered by SDRs. For this reason, the legislation mandates that market participants submit their trade information to SDRs for storage and analysis, that regulators have access to this data, and that elements of the data be made publicly accessible in real time to improve market transparency.

AFR believes that SDRs have important characteristics of a public utility. For both SDRs and public utilities, government mandates universal participation in order to create benefits that could not otherwise be attained, and guarantees general access to these benefits. Public utilities are frequently publicly owned. But SDRs will be privately owned and managed. This makes them vulnerable to significant conflicts of interest that could interfere with their public utility mission. This could have serious consequences. If swaps data is not effectively processed, stored, and analyzed then proper regulatory oversight will be hampered and serious risks to the stability of the financial system could

escape notice. The owners of SDRs could use preferential access to the information gathered to favor some market participants at the expense of others, or to deny transparent pricing information to customers.

Regulation of SDRs must reflect their public utility mission and ensure that conflicts of interest do not hamper or distort their operations. There are several ways the Commission can ensure this. One is through the governance and conflict of interest requirements for SDRs. Another is through the affirmative duties imposed on SDRs. An additional issue is the potential dependence of the overall regulatory system on complex analysis of SDR data to generate aggregate position-level data on risk exposures. So long as SDRs are structured as a number of competing for-profit entities it will be difficult for them to cooperate well enough to perform this kind of analysis. The Commission should ensure this analysis can be done smoothly and mandate uniform data standards so swaps information can be easily be analyzed on a common platform even when generated by different SDRs. Where possible, aggregate data analysis should be performed by the regulators themselves, using raw trade data from SDRs as an input.

Additionally, as rapid access to SDR data is necessary for proper regulatory oversight, AFR believes that regulators should be provided with real-time streaming access to the necessary trade data from repositories, as opposed to periodic retrospective reports.

### ***Governance and Conflict of Interest Requirements***

The Proposed Rule clearly recognizes the potential for conflict of interest in SDR management, which is not surprising as this issue is addressed directly in the statute. However, AFR strongly favors more aggressive and more specific actions to prevent such conflicts than are laid out in this proposed regulation.

At a minimum, SDR governance rules should incorporate the same restrictions on board membership and ownership that have been proposed for other derivatives infrastructure organizations such as Derivatives Clearing Organizations (DCOs), Designated Clearing Facilities (DCFs), and Swaps Execution Facilities (SEFs). For example, these rules include requirements that at least 35 percent of board directors and at least 51 percent of members of the nominating committee must be independent public directors. They also include ownership limitations, e.g. no single member may directly or indirectly vote more than 20 percent of shares, and no enumerated entities with an interest in the regulated market may directly or indirectly own more than 40 percent of shares. Since the information controlled by SDRs can create conflicts of interest that are potentially as great as many of the conflicts that could exist for other derivatives infrastructure organizations, it is hard to see why their governance rules should be less stringent.

In some cases, AFR would favor stricter governance controls than those already proposed for DCOs and DCFs. In our comments on the governance rules for DCOs and DCFs we

proposed an aggregate ownership limit of 25 percent for these organizations, and a requirement that a majority of members of the board be independent. We favor these restrictions for SDRs as well.

### *Affirmative Duties*

In addition to setting rules for implementing the statutory core principles, the Dodd-Frank legislation allows the Commission to impose additional affirmative duties on SDRs. AFR is concerned that the additional duties laid out in the proposed rule would not go far enough in requiring SDRs to serve all market participants equally.

I

n particular, the access and pricing requirements laid out in proposed 49.27 of the rule should be more stringent and more detailed. The current proposal simply requires fees to be uniform, equitable, and non-discriminatory. However, these requirements are vague and non-specific. They also do not establish any relationship between SDR pricing and actual costs of SDR operations. As entities with a public utility mission, SDRs should be required to serve the broadest possible range of market participants compatible with earning a reasonable profit. This may not occur if SDRs set the highest possible fees the market will bear. There are natural economies of scale in the operation of SDRs, which may lead to some SDRs having significant market and therefore pricing power. SDRs should be required to set fees that are reasonable in relation to their costs of operation and to justify such fees to their regulator.

The proposal also allows volume discounts under certain circumstances, so long as they are not limited to a “select number” of market participants. But such discounts by their nature are limited to a select number of large customers. AFR believes volume discounts are discriminatory and urges the Commission to prohibit them in the final rule.

### *Data Access and Analysis*

Section 49.17 of the proposed rule requires that SDRs provide the Commission with direct access to swaps trading data. The Commission asks for comment as to whether such direct access should be streaming or in the form of periodic reports. AFR believes that SDRs should provide regulators with a direct stream of trading data so that swaps markets can be tracked in real time. Periodic and retrospective data reporting is insufficient to analyze all the actions of market participants, some of whom may move in and out of positions very quickly.

Section 49.13 of the proposed rule requires SDRs to perform as yet unspecified data analysis tasks to assist the Commission and other regulators with market oversight. This data analysis are is likely to be crucial in allowing regulators to monitor aggregate exposures to risk at the company and asset class level, as well as aggregate ownership

positions. Yet it will be difficult to perform such aggregation across many different and potentially competing SDRs. The Commission should require uniform data reporting to insure that these analyses can be performed. In addition, the Commission should develop the capacity to perform key data analysis in-house, using raw data from the SDRs, instead of becoming dependent on privately owned SDRs to measure aggregate exposures.

---

In sum, AFR believes that SDRs have a significant public utility mission and face potentially major conflicts of interest in executing this mission. To address this, the Commission should incorporate restrictions on the governance, ownership, and practices of SDRs that are more specific and more stringent than those described in this rule. The governance requirements for SDRs should be at least as strict as those already proposed for other derivatives infrastructure organizations such as DCOs and DCFs. SDRs should also be required to set fee levels that are reasonably related to their costs of operation and to justify such fees.

We appreciate the opportunity to comment on the proposed rule. If you have any questions, please contact Heather Slavkin at [Hslavkin@aflcio.org](mailto:Hslavkin@aflcio.org) or (202) 637-5318.

Sincerely,

Americans for Financial Reform

Dr. Michael Greenberger, University of Maryland Law Center

## **Following are the partners of Americans for Financial Reform.**

*All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

### **National Organizations**

- A New Way Forward
- AARP
- Accountable America
- Adler and Colvin
- AFL-CIO
- AFSCME
- Alliance For Justice
- American Family Voices
- American Income Life Insurance
- Americans for Democratic Action, Inc.
- Americans for Fairness in Lending
- American Sustainable Business Council
- Americans United for Change
- Business for Shared Prosperity
- Calvert Asset Management Company, Inc.
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Community Law Center
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action
- Green America
- Greenlining Institute
- Good Business International
- Help Is On the Way, Inc
- HNMA Funding
- Home Actions
- Housing Counseling Services

- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Keystone Research Center
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- The Leadership Conference on Civil and Human Rights
- MoveOn.org Political Action
- NAACP
- NASCAT
- National Association of Consumer Advocates
- National Association of Investment Professionals
- National Association of Neighborhoods
- National Coalition for Asian Pacific American Community Development
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Institute
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Council of Women's Organizations
- National Worksright Institute
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Responsible Endowments Coalition
- Sargent Shriver Center on Poverty Law
- Scam Victims United
- SEIU
- Sojourners
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Carrots and Sticks Project
- The Fuel Savers Club
- The Seminal
- UNET
- Union Plus
- United for a Fair Economy
- U.S. PIRG
- Unitarian Universalist for a Just Economic Community
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Veterans Chamber of Commerce
- We The People Now
- Western States Center

- Woodstock Institute
- Working America
- World Business Academy
- World Privacy Forum

### *State Organizations*

- 207 CCAG
- 9 to 5, the National Association of Working Women (CO)
- AARP Rhode Island
- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans for Responsible Lending
- Arkansas Community Organizations
- Arkansas Public Policy Panel
- Association for Neighborhood and Housing Development (NY)
- Audubon Partnership for Economic Development LDC (New York, NY)
- Aurora NAACP
- BAC Funding Consortium Inc. (Miami, FL)
- Beech Capital Venture Corporation (Philadelphia, PA)
- Bell Policy Center (CO)
- California PIRG
- California Reinvestment Coalition
- Center for Media and Democracy
- Center for NYC Neighborhoods
- Century Housing Corporation (Culver City, CA)
- Changer(NY)
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund (Chicago, IL)
- Chicago Community Ventures (Chicago, IL)
- Chicago Consumer Coalition
- Citizen Potawatomi CDC (Shawnee, OK)
- Club Change of Martin County (Florida)
- Coalition on Homeless Housing in Ohio
- Coffee Party of Pensacola, Florida
- Coffee Party of Union Square, New York City
- Colorado AFL-CIO
- Colorado Center on Law and Policy
- Colorado Immigrants Rights Coalition
- Colorado PIRG
- Colorado Spring NAACP
- Community Action of Nebraska
- Community Capital Development
- Community Capital Fund (Bridgeport, CT)
- Community Capital of Maryland (Baltimore, MD)
- Community Development Financial Institution of the Tohono O'odham Nation (Sells, AZ)
- Community Redevelopment Loan and Investment Fund, (Atlanta, GA)
- Community Reinvestment Association of North Carolina
- Community Resource Group (Fayetteville, AR)
- Connecticut Association for Human Services
- Connecticut Citizen Action Group
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (New York, NY)
- Cooperative Fund of New England (Wilmington, NC)
- Corporacion de Desarrollo Economico de Ceiba (Ceiba, PR)
- CWA 7777 (CO)
- Delta Foundation, Inc. (Greenville, MS)
- Economic Opportunity Fund (EOF) (Philadelphia, PA)
- Empire Justice Center (NY)
- Enterprises, Inc., Berea KY

- Fair Housing Contact Service OH
- Federation of Appalachian Housing Enterprises, Inc. (Berea, KY)
- Fitness and Praise Youth Development, Inc. (Baton Rouge, LA)
- Florida Consumer Action Network
- Florida PIRG
- Forward Community Investments (Madison, WI)
- Funding Partners for Housing Solutions (Ft. Collins, CO)
- Georgia PIRG
- Grow Iowa Foundation (Greenfield, IA)
- Homewise, Inc. (Santa Fe, NM)
- Humanitas Community Development Corporation
- Idaho Chapter, National Association of Social Workers
- Idaho Community Action Network
- Idaho Nevada CDFI (Pocatello, ID)
- Illinois PIRG
- Impact Capital (Seattle, WA)
- Indiana PIRG
- Indiana University PIRG
- Information Press (CA)
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc. (Mayville, NY)
- Keystone Research Center
- La Casa Federal Credit Union (Newark, NJ)
- Low Income Investment Fund (San Francisco, CA)
- Long Island Housing Services NY
- MaineStream Finance (Bangor, ME)
- Maryland PIRG
- Massachusetts Consumers' Coalition
- Massachusetts Fair Housing Center
- MASSPIRG
- Michigan PIRG
- Midland Community Development Corporation (Midland, TX)
- Midwest Minnesota Community Development Corporation (Detroit Lakes, MN)
- Mile High Community Loan Fund (Denver, CO)
- Missouri PIRG
- Montana Community Development Corporation (Missoula, MT)
- Montana PIRG
- Mortgage Recovery Service Center of L.A.
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital (Trenton, NJ)
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City AIDS Housing Network
- Next Step (MN)
- NOAH Community Development Fund, Inc. (Boston, MA)
- Nonprofit Finance Fund (New York, NY)
- Nonprofits Assistance Fund (Minneapolis, MN)
- North Carolina Association of Community Development Corporations
- North Carolina PIRG
- Northern Community Investment Corporation (St. Johnsbury, VT)
- Northside Community Development Fund (Pittsburgh, PA)
- Ohio Capital Corporation for Housing (Columbus, OH)
- Ohio PIRG
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance (Charlottesville, VA)
- Rhode Island PIRG
- Rights for All People



- The Rocky Mountain Peace and Justice Center
- Rural Community Assistance Corporation (West Sacramento, CA)
- Rural Organizing Project OR
- San Francisco Metropolitan Transportation Authority
- Seattle Economic Development Fund dba Community Capital Development
- SEIU Local 105 (Colorado)
- SEIU Rhode Island
- Siouxland Economic Development Corporation (Sioux City, IA)
- Southern Bancorp (Arkadelphia, AR)
- TexPIRG
- The Association for Housing and Neighborhood Development
- The Fair Housing Council of Central New York
- The Help Network
- The Loan Fund (Albuquerque, NM)
- Third Reconstruction Institute (NC)
- V-Family, Inc.
- Vermont PIRG
- Village Capital Corporation (Cleveland, OH)
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty – Florida
- Washington Community Action Network
- WashPIRG
- Westchester Residential Opportunities Inc. NY
- Wigamig Owners Loan Fund, Inc. (Lac du Flambeau, WI)
- WISPIRG

***Businesses***

- Blu
- Bowden-Gill Environmental
- Community MedPAC
- Diversified Env. Planning
- Hayden & Craig, PLLC\
- The Holographic Repatterning Institute at Austin
- Mid City Animal Hospital (Phoenix, AZ)
- UNET