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- **17 CFR Part 43**
- **RIN Number 3038-AD08**
- **Real-Time Public Reporting of Swap Transaction Data**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your notice of proposed rulemaking: Real-Time Public Reporting of Swap Transaction Data.

You are proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank). Specifically, in accordance with Section 727 of Dodd-Frank, the CFTC is proposing rules to implement a new framework for the real-time public reporting of swap transaction and pricing data for all swap transactions. Additionally, the CFTC is proposing rules to address the appropriate minimum size and time delay relating to block trades on swaps and large notional swap transactions.

I would first comment that the proposed rules should ideally be as close as possible to the reporting rules proposed by the Securities and Exchange Commission for security-based swaps.<sup>1</sup> I would suggest that there is little administrative or economic rationale for proposing very different rules, and rule differences lead to duplication of reporting regimes at the lowest level of the reporting entities, which is counterproductive, confusing and wasteful. I would therefore recommend that the CFTC and the SEC should work more closely together to propose one set of robust rules regarding the reporting of swap data. This will reduce cost and complexity, and is in itself a strong signal to the markets that regulators are seen to be working more closely together, rather than within their individual silos.

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<sup>1</sup> SEC proposed rules, File no. S7-34-10: Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, RIN 3235-AK80, November 2010.

I have commented in detail on the SEC's proposed rules, and I would refer to my comment letter thereon for further information.<sup>2</sup> I would like to comment here on some key points where I hope to add more value.

#### Information required to be reported

I agree with the information that must be reported when the swap is executed. I would ask for more clarity on the information that should be reported for subsequent "reportable swap transactions". § 43.2 defines a Reportable swap transaction to include "such post-execution events that affect the pricing of a swap". This definition is sufficient and complete in order to enhance price discovery in the swap market. However, the commentary states that: "In addition to novations and swap unwinds, other price-affecting events over the life of a swap may be considered reportable swap transactions".<sup>3</sup> I would strongly recommend instead the inclusion of an unconditional requirement to report any information which could affect prices or pricing attributes during the life of a swap.

#### Rounding of notional amounts

§ 43.4(i) proposes that swap notional or principal amounts should be publicly disseminated pursuant to a specific rounding convention. For example notional or principal amounts of greater than 250 million should be reported as 250+. I do not support this specific proposal, as it takes value away from the purposes of reporting. I would suggest that all swap notional or principal amounts should be published unrounded.

#### Minimum block size

§ 43.5(g) requires that a registered swap data repository (SDR) shall determine the appropriate minimum block size for each swap instrument as the greater of the numbers determined from the "distribution test" and the "multiple test". Under the multiple test the SDR calculates "social size" as the greatest of the mode, mean and median transaction sizes for each category of swap instrument and multiplies this by the "block multiple" of 5. My only concern here is that the calculation of the social size is rather arbitrary. Because of the skewed nature of most swaps trading, the social size will almost always be equal to the mean of the transaction sizes. I would argue that the social size, which represents the customary transaction size for a swap, would be more correctly based on either the mode or the median transaction size. Given the grouping of swap transaction sizes around certain notional amounts, I believe that the mode would best represent the social size. In any event, I would recommend that you should choose one from the mode or median as the social size, base the multiple test on this, and therefore multiply this by the appropriate block multiple. This change would better represent market transaction structure and is a more robust and credible calculation.

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<sup>2</sup> See my comment letter on the SEC's proposed rules at <http://www.sec.gov/comments/s7-34-10/s73410-4.pdf>

<sup>3</sup> Current proposed rules, 75 FR 76144.

### Real-time reporting

§ 43.2 defines: Real-time public reporting to be “as soon as technologically practicable after the time at which the swap transaction has been executed”; Executed to be “the completion of the execution process”; Execution to be “an agreement by the parties (whether orally, in writing, electronically, or otherwise) to the terms of a swap that legally binds the parties to such swap terms under applicable law. Execution occurs immediately following or simultaneous with the affirmation of the swap”; Affirmation to be “the process by which parties to a swap verify (orally, in writing, electronically or otherwise) that they agree on the primary economic terms of a swap (but not necessarily all terms of the swap). Affirmation may constitute “execution” of the swap or may provide evidence of execution of the swap, but does not constitute confirmation (or confirmation by affirmation) of the swap”. This rather tortuous definition is subtly different from the definition proposed by the SEC, which defines Real time to be “as soon as technologically practicable, but in no event later than 15 minutes after the time of execution of the security-based swap transaction”, and Time of execution to be “the point at which the counterparties to a security-based swap become irrevocably bound under applicable law”. This definition more easily replicates current market practice. In any event I would recommend that the CFTC and SEC should propose one consistent definition of real-time reporting for both proposals.

### Summary

These proposed rules are very important and will contribute to improving transparency and accountability in swap markets. They will also enhance price discovery and liquidity for all swaps. I therefore support that the proposed rules should apply to all swaps, including both standardized and customized (or bespoke) swaps.

Yours sincerely

Chris Barnard