

David A. Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581  
United States  
[www.cftc.gov](http://www.cftc.gov)

Chris Barnard  
Germany

17 May 2011

- **17 CFR Part 45**
- **RIN Number 3038-AD19**
- **Swap Data Recordkeeping and Reporting Requirements**

Dear Mr. Stawick.

Thank you for giving us the opportunity to comment on your proposed rulemaking: Swap Data Recordkeeping and Reporting Requirements.

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). These proposed rules apply to swap data recordkeeping and reporting requirements for swap data repositories (SDRs), derivatives clearing organizations (DCOs), designated contract markets (DCMs), swap execution facilities (SEFs), swap dealers (SDs), major swap participants (MSPs), and swap counterparties who are neither SDs nor MSPs (including counterparties who qualify for the end user exception with respect to particular swaps).

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 just within their individual silos.

---

<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.

### Swap data requirements

I agree with the proposed data requirements. These should be sufficient and complete enough to enhance transparency and provide an accurate data set for regulatory oversight purposes.

§ 45.1(r) references the primary economic terms required to be reported for interest rate, other commodity or currency swaps, "including at a minimum each of the terms included in the most recent Federal Register release by the Commission". I strongly support this approach of publishing the data tables in the Federal Register. I agree that this would allow you to update the tables in response to swap market developments, without a need to issue new regulations.<sup>3</sup> I would support this approach for all of the swap data requirements proposed here.

### Swap recordkeeping

§ 45.2 establishes the swap recordkeeping requirements. I would recommend that records should be required to be kept by DCOs, DCMs, SEFs, SDs, MSPs, and non-SD/MSP counterparties indefinitely following final termination of a swap rather than the five years proposed here. There is no technological or practical reason for limiting this period, and it would be useful to keep this information for future analytical purposes.

### Swap data reporting

§ 45.3 establishes the general swap data reporting obligations of SDs, MSPs, non-SD/MSP counterparties, SEFs, DCMs, and DCOs to report swap data to an SDR. I can appreciate the balanced reporting solution that you have proposed, but I think that we can certainly streamline the obligations. For example, I would suggest that the DCO should be sufficient enough to report the required valuation data for cleared swaps, rather than duplicating the reporting with the SD or MSP, as the DCO is anyway responsible for settlement and mark-to-market valuation for its swaps.

§ 45.7 proposes that all data required to be reported for a swap must be reported to a single SDR, which is the SDR to which the primary economic terms data was initially reported. This is sensible. However, the commentary states that where the initial report of required primary economic terms data is made by the SEF or DCM on which a swap is executed, or by an SD or MSP counterparty in the case of a swap not executed on a SEF or DCM, the choice of the

---

<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> See current proposed rules, 75 FR 76580, footnote 40.

SDR to receive the initial report shall be determined by the Commission prior to adoption of its final swap data reporting regulations. I find it odd that this determination has not yet been proposed, and I would request some further clarification here.

§ 45.8 concerns data reporting for swaps in a swap asset class not accepted by any SDR. In response to your specific question here: should SDRs that accept data for any swap in a swap asset class be required to accept data for all swaps in that asset class? I would suggest that this is reasonable condition. I would further recommend that the CFTC should be pragmatic on the time, form and manner of reporting required with respect to data reporting for swaps that must be reported to the CFTC because no SDR presently accepts swap data for swaps in the asset class proposed. Such swaps should be limited to new-concept swap products, and we must allow bespoke solutions for the reporting requirements here.

### Summary

These proposed rules are critical and will promote transparency and accountability in swap markets. I support the proposed data capture, recordkeeping and reporting requirements contained therein, which should apply to all swaps. I also support the required unique identifiers for swaps, counterparties and products which will aid regulatory oversight and improve operational efficiency for market participants in the future.

Yours sincerely

Chris Barnard