

June 2, 2011

By Electronic Submission

David A. Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Reopening and Extension of Comment Periods and Request for Comment on the Order in which the CFTC Should Consider Final Rulemakings (76 Fed. Reg. 25274)

Dear Mr. Stawick:

The International Swaps and Derivatives Association (“**ISDA**”) appreciates the opportunity to submit this letter to the Commodity Futures Trading Commission (the “**Commission**”) regarding its notice reopening and extending comment periods and requesting comment on the order in which proposed rules (the “**Proposed Rules**”) implementing provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Dodd-Frank Act**” or “**Act**”) should be finalized.

Since 1985, ISDA has worked to make the global over-the-counter (“**OTC**”) derivatives markets safer and more efficient. Today, ISDA is one of the world’s largest global financial trade associations, with over 800 member institutions from 56 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.¹

ISDA's members strongly support the Dodd-Frank Act’s goals of enhancing market integrity, improving market practices and mitigating systemic risk, and we appreciate the Commission’s attempts to provide adequate notice and opportunities for consultation regarding rules to be promulgated under the Act, notwithstanding extremely tight statutory deadlines.

¹ Information about ISDA and its activities is available on the Association's web site: www.isda.org.

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I. Extension of Comment Periods

ISDA has filed over 50 comment letters related to implementation of the Dodd-Frank Act and, while we applaud the Commission for reopening many of the comment periods, we believe that our comments need no further clarification pending release of the final rules. However, we hope that Commission staff will revisit our comments as they finalize the proposals and we look forward to continuing our discussions with staff to provide our thoughts and expertise where appropriate.

II. A Post-finalization Review is Required

ISDA is grateful for the Commission's recognition that the Dodd-Frank rulemaking process requires further review. ISDA suggests, however, that although the opportunity to review what the Commission characterizes as "a substantially complete mosaic of the Commission's proposed regulatory framework for swaps" (FR 25274) will be useful, what is *necessary* is a meaningful period after the *final* framework is revealed for interested persons to review and comment on the entire "mosaic", and how the various related and interlinked rulemakings fit together. Many commenters have noted the unprecedented breadth of the Dodd-Frank rulemaking process, as it would establish a complete and brand new regulatory scheme for a large and complicated market. This is not an instance of simply adding additional or amended regulatory provisions to an existing, known base of regulation. The impact of one new, finished regulation upon another and the combined effect of the new body of regulation as a whole, simply cannot be gauged until the framework can be viewed and assessed as a whole. We emphatically suggest that, after finalization of the entire framework, the Commission designate at least a 90-day comment period in which the market and the public may study and comment upon the whole.

III. Progression of Rules and Implementation

ISDA appreciates the opportunity to comment on the order of final rulemaking, and also to respond to Commissioner O'Malia's invitation (FR 25276) to comment on the phasing-in of regulation after rulemaking is complete. It is generally, but not always, the case that the order of rulemaking and the order of implementation should be the same (with implementation to follow the final review period we suggest above). This is because both the order of final rulemaking and the phase-in of regulation should reflect a rational process of establishing a clear conceptual and definitional foundation upon which adequately precise rules may be layered. Implementation of course must also heed the embedded logistical requirements of the facilities and systems build-out required to give effect to the new regulations, as well as the differences between specific asset classes and categories of market participants and their readiness to comply with the new requirements. Finally, finalization and implementation ordering may reflect priorities in achieving legislative goals. We will discuss this

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combined concept of ordering as regulatory “progression”, noting any particular points relevant to only one of finalization or implementation.

We agree with Commissioner O’Malia that it is useful to divide rule progression into phases. Although ordering of discrete elements within phases may indeed be important, the division into phases recognizes the interrelationships among the pieces of the regulatory “mosaic”. We are fundamentally in agreement with Commissioner O’Malia’s proposed phasing, subject to the following modifications:

1. Definitions and exemptions, particularly of products and registrants to be subject to the regulations, should have the highest priority within Phase I. These definitions are fundamental prerequisites to the drafting and understanding of the remainder of the regulatory scheme.
2. Creation of standard entity and product identifiers is a prerequisite to building out data repositories and reporting mechanisms and should have a high Phase I priority.
3. DCO governance issues and operating principles should be within Phase I. DCO’s are fundamental to clearing and clearing is fundamental to the systemic risk reduction goal of the statute. DCO’s cannot come into being without, first, an understanding of permitted sources of capital and allocations of voting and management powers. DCO’s, furthermore, will not be functional within a reasonable time-period unless the relevant capital and margin requirements and risk management/customer protection responsibilities are available early enough to allow careful facility development.
4. Principles of extraterritorial application of regulations are a necessary part of Phase I of regulation finalization. The market to be regulated is international, in terms of settlement currencies and calculational bases, and in terms of the institutions that are market participants and potential registrants. Deciding principles of extraterritorial application will allow market participants to comment on regulations relevant to them, and to evaluate their existing business models and any necessary changes in an orderly way. The United States is the first mover-nation in terms of OTC derivatives-specific regulation. U.S. extraterritoriality principles must take account of the fact that other jurisdictions are years behind and that maintaining a “level playing field” with the rest of the world is of elemental importance. Furthermore, lack of clarity with regards to extraterritoriality application of the regulations could limit participation by non-U.S. firms in the U.S. capital markets.
5. Designation of compliance officers should take place as registered entity regulations are implemented.

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It is important to recognize that this approach is complementary to and not a substitute for the "phase-in" discussions currently underway between market participants, including ISDA, and the federal financial regulatory agencies.²

IV. Implementation Scheduling

Implementation of the massive new regulatory structure will require study, hiring and build-out in all involved parties as well as a comprehensive customer education effort on the part of regulators, dealers and reporting, clearing and execution firms. The Commission should, as Commissioner O'Malia suggests, propose a step-by-step implementation schedule upon which the public may comment that builds on the discussions currently underway between the financial regulators and the industry. Such a schedule will be a necessary planning tool for affected businesses and the Commission itself.

ISDA is eager to see the challenging Title VII rulemaking program concluded through an orderly and well-disclosed progression of final rulemaking and implementation. We again stress the very important need for a post-finalization reconsideration period during which the Commission should once again encourage public comment upon the finalized body of regulations. After such reconsideration (and appropriate Commission response), judiciously scheduled implementation should take place in a manner intended to foster prompt compliance and minimize disruption.

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ISDA appreciates the opportunity to provide comments on the proposed finalization of rulemakings implementing the Dodd-Frank Act and looks forward to working with the Commission as you continue the rulemaking process. Please feel free to contact me or ISDA's staff at your convenience.

Sincerely,



Robert Pickel
Executive Vice Chairman
ISDA

² For example, see May 4, 2011 letter from ISDA, Securities Industry and Financial Markets Association, Financial Services Forum and Futures Industry Association to CFTC and Securities and Exchange Commission.