

Via Electronic Submission

June 3, 2011

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

Re: Reopening and Extension of Comment Periods for Rulemakings Implementing Dodd-Frank Wall Street Reform and Consumer Protection Act; 76 FR 25274 (May 4, 2011)

Dear Mr. Stawick:

Bloomberg L.P. appreciates the opportunity to provide the Commodity Futures Trading Commission ("Commission") with our comments in response to the re-opening and extension of the comment period for the proposed rules identified in the above-referenced release ("Release"). The Release and the underlying rule proposals relate to the Commission's effort to implement the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") in order to establish a comprehensive framework for the regulation of swaps. Bloomberg intends to register as a swap execution facility ("SEF") in order to continue to facilitate trading in the swap markets under the new regulatory regime.

Bloomberg Background

Bloomberg is a leading, privately-held independent platform for electronic trading and processing of over-the-counter ("OTC") derivatives. Bloomberg's core business is the delivery of analytics and data on approximately 5 million financial instruments, as well as information and news on almost every publicly traded company through the Bloomberg Professional service. The Bloomberg Professional service provides comprehensive coverage on all major asset classes and currencies, including all varieties of mortgage-related securities. More than 300,000 professionals in the business and financial community around the world are connected via Bloomberg's proprietary network.

Virtually all major central banks and virtually all investment institutions, commercial banks, government agencies and money managers with a regional or global presence are users of the Bloomberg Professional service, giving Bloomberg extraordinary global reach to all relevant financial institutions that might be involved in swap trading.

Bloomberg employs over 12,900 employees around the world, including more than 2,300 news and multimedia professionals at 146 bureaus in 72 countries, making up one of the world's largest news organizations.

Dodd-Frank Rulemaking Process

We applaud the Commission for its diligent efforts to meet Dodd-Frank's legislative deadlines. As stated previously, Bloomberg fully supports the Commission's efforts to create a swap marketplace that achieve the goals of pre-trade price transparency. Given the volume and complexity of the rules that have been proposed since the adoption of Dodd-Frank we also think it is appropriate for the Commission to seek additional comments on the proposed rules at this juncture. As reflected below we think that the Commission should reconsider certain aspects of its rule proposals particularly as they relate to uniformity and consistency in standards, oversight, governance, and registration and certification.

We again emphasize the importance of the Commission adopting rules that provide the markets with the maximum amount of flexibility in determining the method of trading. We believe that the Dodd-Frank mandatory clearing and reporting requirements will significantly mitigate systemic risk, promote standardization and enhance transparency.¹ Of an equal but different importance is the creation of the newly regulated SEF marketplace. While all three of the foregoing areas are critical under the new Dodd-Frank regulatory regime, we believe that swap clearing and reporting activities benefit from legal certainty and specificity provided by detailed prescriptive rules. SEF trading models, however, will benefit from flexible rules that will help ensure that the markets continue to operate efficiently and effectively.

We also believe it is important for the Commission to extend current exemptions from the Commodity Exchange Act ("CEA") for OTC derivatives transactions until such time the Commission adopts rules providing for the comprehensive regulation of the swap market. The Commodity Futures Modernization Act of 2000 provided exemptions from the CEA for certain OTC derivatives transactions between eligible contract participants ("ECPs").² Dodd-Frank repeals the exemptions as of July 15, 2011, denying participants the comfort of relying on the legal certainty these exemptions afforded them. Absent action by the Commission there will be legal uncertainty that has the potential for a chilling effect on the market. We believe that given the expected delay in adopting the proposed rules necessary for the implementation of Dodd-Frank provisions related to swaps, the Commission should issue exemptive relief for OTC derivatives transactions between ECPs as a bridge until such rules are adopted. This exemptive relief would provide market participants with legal certainty and avoid potential disruptions in the swap market.

I. Swaps Made Available for Trading. (*Core Principles and Other Requirements for Swap Execution Facilities. RIN Number 3038-AD18*)

Swaps subject to the mandatory clearing requirement set out in 2(h)(1) of the CEA must be traded on a SEF or a designated contract market ("DCM") unless no SEF or DCM makes the swap "available for trading."³ Under the proposed rules if one SEF makes the determination that a swap (subject to the

¹ See *Financial Resources Requirements for Derivatives Clearing Organizations*, 75 FR 63113 (October 14, 2010), and *Swap Data Recordkeeping and Reporting Requirements*, 75 FR 76574 (December 8, 2010).

² See currently effective CEA sections 2(d), 2(e), 2(g) and 2(h) repealed by Dodd-Frank.

³ CEA Section 2(h)(8). While swaps may also be traded on a DCM, the comments in this letter are limited to the proposed SEF rules.

mandatory clearing requirement) has been made "available for trading" then this swap could no longer be traded outside a SEF or DCM.⁴ SEFs would be required to conduct an annual review of whether it has made a swap "available for trading." A SEF may consider frequency of transactions (in the same swap or similar swaps), open interest and "any other factor" requested by the Commission in making its assessment.

A SEF should not be in the conflicted position of determining for all SEFs whether a swap has been made "available for trading." Under the proposed rule a SEF is allowed to use its own criteria to gauge whether a swap has been made "available for trading" based on activity on its own trading platform. A SEF may be incentivized for commercial reasons to declare a swap subject to mandatory clearing has been made "available for trading" in order to capture market share on its platform.⁵ Instead, we believe that the Commission should establish objective measures for determining when a swap is "available for trading" based on swap trading data across all SEFs based on fixed criteria such as volume and liquidity.⁶ We believe this approach would provide for consistent, meaningful assessment of trading activity for the purposes of determining whether a transaction must occur on a SEF.

II. SEF Oversight of Participant Positions, Monitoring of Trading and Trade Processing. (*Core Principles and Other Requirements for Swap Execution Facilities. RIN Number 3038-AD18*)

Certain proposed rules contemplate a SEF exercising market oversight role for participants' transactions and activity occurring not only on its own trading facility but also occurring on market facilities not controlled by the SEF operator. We are concerned that if certain rules are adopted as proposed, SEFs will not be in a position to adequately discharge their obligations under the rules.

Among the proposed rules that are problematic are those related to ensuring that swaps are not subject to manipulation, monitoring position limits and liquidating or transferring participant positions under emergency authority. Rules proposed under Core Principle 4 (Rules 37.400 - 37.407) require a SEF to take an active role in monitoring and preventing manipulative activity associated with trading in swaps or related instruments. Proposed Rule 37.600 requires a SEF to adopt position limits for each swap on its facility (including position limits established by the Commission) and to monitor for compliance with those limits. Proposed Rule 37.800 requires a SEF to adopt rules to provide for the exercise of emergency authority to, among other things, "liquidate or transfer [member] open positions" in any swap.

⁴ Proposed Rule 37.10(c) (1). *Core Principles and Other Requirements for Swap Execution Facilities*, 76 FR 1214 (January 7, 2011).

⁵ We understand swaps that are not subject to the mandatory clearing requirement do not have to be traded on a SEF and can be traded on a bilateral OTC basis subject to other applicable Dodd-Frank swap reporting and business conduct requirements.

⁶ The Securities and Exchange Commission ("SEC") proposal regarding security-based swap execution facilities ("SB SEF") contemplates a similar "available to trade" assessment but proposes that the SEC establish objective measures for determining if a swap has been made "available to trade" rather than a determination by one or a group of SB SEFs.

We do not believe that SEFs should be responsible for monitoring and enforcing rules or requirements related to activity beyond the scope of its own facility. Significant obstacles exist for SEFs seeking to comply with these proposed rules. A SEF will not have enough information to confidently declare that a swap is not subject to manipulation or that it can effectively monitor for such manipulation given that trading activity in the same instrument or a related instrument may occur in other marketplaces. Moreover, a SEF will not have access to information about its participants' positions established bilaterally or on some other SEF or DCM nor will a SEF know their participants' net or aggregated positions in a particular swap. Finally, A SEF will not hold a member's swap positions. We believe that the Commission should instead only require a SEF to adopt rules requiring it to coordinate with the applicable DCO to facilitate the liquidation or transfer of positions during an emergency. In adopting final rules the Commission needs to limit the scope of a SEF's obligations under these rules to activities on its own facility and within its control.

III. Conflicts of Interest and Governance. (*Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding Mitigation of Conflicts of Interest. RIN Number 3038-AD01*)

The Commission has proposed to mitigate potential conflicts of interest through ownership limits and structural governance requirements. The structural governance rule proposal requires that a SEF Board of Directors be composed of 35% public directors.⁷ In addition, among other things, the SEF must establish governance committees including a Nominating Committee to administer the process of nominating individuals as public directors of the Board⁸, and a Membership or Participation Committee to insure fair access to the SEF by market participants.

The conflicts of interest that Congress was concerned about arose from control of certain market facilities (e.g., SEFs) by market participants such as swap dealers, major swap participants and bank holding companies. Specifically, the concern was that these enumerated entities may have economic incentives inconsistent with the public policy objectives of the Dodd-Frank and their ownership in market facilities may exacerbate structural conflicts of interest.

We believe that the Commission proposed governance rules should recognize that there may be circumstances where imposition of rigid governance requirements may not be appropriate for certain SEFs. The Commission should include a waiver procedure in which a SEF applicant would be provided the opportunity to submit facts and circumstances which may demonstrate to the Commission's satisfaction that a rigid governance structure is not necessary or appropriate in light of its ownership, its fee structure or its use of a third-party regulatory service provider. The Commission would be able to

⁷ The Commission proposal requires no fewer than two public directors. The Commission's term "public director" essentially excludes individuals as qualifying as a public director if they have a material relationship with an affiliate of the SEF, a SEF member or an affiliate of a SEF member. *Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding Mitigation of Conflicts of Interest*, 75 FR 63732 (October 18, 2010).

⁸ Under the Commission proposal a Nominating Committee must have at least a 51% majority of public directors and the chairman must be a public director.

revoke the waiver at any time if subsequent events or circumstances warranted such action; in such case, the Commission could require an SEF to institute the requisite governance structure upon the Commission's order.

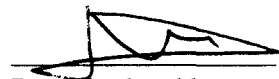
IV. Temporary Grandfather Relief From Registration. (*Core Principles and Other Requirements for Swap Execution Facilities. RIN Number 3038-AD18*)

The Commission appropriately proposed that a SEF applicant may submit a notice requesting temporary grandfather relief from the SEF registration requirement allowing the SEF applicant to continue to operate pending the application process. We are concerned, however, about the proposed additional requirement that a SEF seeking such relief would have to provide to the Commission a certification that the SEF believes it will meet the requirements of Part 37 while its SEF application is pending. Given the scale of the proposed changes including an entirely new compliance regime, trading requirements, monitoring and surveillance requirements, documentation requirements, reporting and clearing requirements we believe it unreasonable to require a SEF to make such a certification. Instead, a SEF should be required to certify that it has implemented rules and procedures reasonably designed to ensure compliance with Part 37.

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We appreciate the opportunity to provide our comments on the proposed rules, and would be pleased to discuss any questions that the Commission may have with respect to this letter.

Very Truly Yours,



Ben Macdonald
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Bloomberg L.P.