

# BLACKROCK

June 3, 2011

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

**Re: Opening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act**

Dear Mr. Stawick:

BlackRock, Inc.<sup>1</sup> submits these comments in response to the Commodity Futures Trading Commission's (the "CFTC" or "Commission") Federal Register release entitled "Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act," 76 Fed. Reg. 25274 (May 4, 2011) (the "Proposed Rule"). In the Proposed Rule, the Commission reopens or extends comment periods for certain rulemakings under the Dodd-Frank Act (such rules including others proposed under Title VII of the Dodd-Frank Act referred to herein as the "Prior Rules"). The Commission has solicited comment both on the proposed regulatory framework for swaps and on the order in which the final rules should be considered for adoption (referred to herein as the "Sequence of Rules" or the "Sequencing of Rules") and implemented. BlackRock appreciates this opportunity to comment on these areas of importance to our business and clients.

BlackRock supports the Dodd-Frank Act's objectives of creating a regulatory framework for swaps that will reduce systemic risk, increase price transparency, and promote market integrity while maintaining liquidity. As the voice of and a fiduciary for our clients, BlackRock has a vested interest in the development of a sustainable and fair regulatory regime. We support the Commission's request for comment on the Sequencing of Rules and implementation from market participants demonstrating a commitment to transparent and open rulemaking.

An appropriate Sequence of Rules will help address some of the interdependency that currently exists among many of the Prior Rules and will create the right foundation for establishing a viable implementation plan.<sup>2</sup> Some of these interdependencies that exist among the Prior Rules have also resulted in conflicts or in some instances have had the unintended consequence of undermining the stated objectives of the Dodd Frank Act. In addition, a proper sequencing of final consideration of rules will enable the Commission to take into account international regulatory developments as they arise when foreign regulators seek to address comparable regulatory issues.

A proper sequencing of the Commission's consideration of final rules and a phased, publicly-vetted schedule for implementation of compliance with such final rules will promote a more orderly transition from the current OTC bilateral market and will allow for the development of a

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<sup>1</sup> BlackRock is one of the world's leading asset management firms. We manage over \$3.6 trillion on behalf of institutional and individual clients worldwide through a variety of equity, fixed income, cash management, alternative investment, real estate and advisory products. Our client base includes corporate, public, multi-employer pension plans, insurance companies, third-party mutual funds, endowments, foundations, charities, corporations, official institutions, banks, and individuals around the world.

<sup>2</sup> For example many Prior Rules depend upon key terms being defined such as the definition of swap (and what is excluded from that definition), block trade, swap dealer and major swap participant. Without such key definitions meaningful comment cannot be given on any Proposed Rules that are impacted by such definitions.

new market structure for cleared derivatives where the interdependent and interoperable relationships among the various entities and market participants (including some new participants) is well thought through so as to preserve and even enhance liquidity. BlackRock generally agrees with the four phases of the Sequencing of Rules as recommended by Commissioner O'Malia<sup>3</sup> in the Proposed Rule in order to facilitate debate for purposes of the Commission and public's consideration (each individual phase referred to as a "Final Rule Phase" and collectively the "Final Rule Phases."<sup>4</sup>

BlackRock agrees with Commissioner O'Malia's recommendation that the Commission should propose for public comment, a schedule for implementation of compliance with such final rules. A well-thought out implementation schedule is essential for an orderly transition to a new market structure. Many newly regulated entities will be required to be created under the new regulatory regime of the Dodd-Frank Act. Other existing market participants will need to make material changes to their business models and their business workflows to adapt to the new regulatory requirements. For both types of entities, care must be taken to accommodate their needs in making certain they are in compliance with the new rules under the Dodd-Frank Act. This can only be achieved by requiring each entity/market participant prescribed under the Dodd-Frank Act, such as, without limitation, Derivative Clearing Organizations, Designated Contact Markets ("DCM's") and Swap Execution Facilities ("SEFs"), to be in a state of readiness and operationally ready for business for all market participants on the prescribed date of compliance for that particular entity or market participant. A phased approach based on the type of market participant will fracture the design of an efficient market structure and should not be adopted.<sup>5</sup>

In the initial stage of on-boarding, to avoid a big bang onto the new market structure and to accommodate an orderly process, different types of market participants should be given staggered dates to meet compliance with the Dodd-Frank Act. For example, liquidity providers may be given a shorter time period for their first date of compliance than a large asset manager that needs to on-board several funds and accounts and requires a longer period of time. This should not be interpreted to be a sequential approach but rather a parallel approach with the same start date for all buy and sell side market participants but with staggered end dates to begin compliance for the particular market participant.

In developing for public comment a Commission proposed schedule for a phased-implementation of the new regulations, referred to as the "Implementation Sequence" we believe the Commission's schedule should take into account the following order beginning with:

(i) **Implementation Phase 1**

Clearing of CFTC-determined swap that are required to be cleared for all nonexempt market participants, and end of day risk reporting.

Clearing and end of day risk reporting should be followed by Implementation Phase 2.

(ii) **Implementation Phase 2**

Introduction of swap market execution facilities (SEFs and DCMs).

As confidence in the trade execution venues is achieved and liquidity begins to concentrate, this should be followed by Implementation Phase 3.

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<sup>3</sup> We are assuming the swap definition will be addressed in Final Rule Phase I as part of the process to define a clearable swap.

<sup>4</sup> See Appendix 2 of the Proposed Rule- Statement of Commissioner Scott D. O'Malia.

<sup>5</sup> See BlackRock Presentation to the CFTC Technology Advisory Committee entitled "Dodd-Frank Derivatives Regulation Interconnectivity" dated March 1, 2011.

(iii) Implementation Phase 3

Block trading and real time public reporting.

This approach will minimize business disruption and help reduce implementation costs to all market participants.

The Final Rule Phases allow for the preferred Implementation Sequence described above. In some instances the date for compliance may need to allow for sufficient time to collect data and metrics before the rules can be successfully implemented. For example, phase III of the Final Rule Phases includes implementation of block trading rules, however, block trading rules may need to be deferred or adopted on only an interim basis until the Commission can receive and evaluate actual data to determine the proper minimum size of a swap block. We also suggest that the Commission wait and be informed by additional data gathered pursuant to regulatory reporting requirements before determining the details of market data-dependent rules (such as the block size definition and position limits).

The Final Rule Phases are in alignment with the Implementation Sequence described above for the following reasons:

(i) Final Rule Phase I

Final Rule Phase I include the rules that define the components related to defining data in swap data repositories and the process for defining clearable swaps which will help to determine what products will need to migrate to clearing. This will help with the development and implementation of functionality that is dependent on trade data requirements and record-keeping. Clarity in data is a necessary prerequisite to many of the rules mentioned in the following phases. Clarity on the process for defining clearable swaps will enable market participants to make educated assumptions on which swaps will become clearable and what the timing of transition will be from the bilateral OTC market to clearing.

(ii) Final Rule Phase II

Final Rule Phase II will allow businesses to determine capital and margin requirements based on their status for clearable and uncleared swaps as anticipated from the information provided in Phase I. This will facilitate analysis of the viability of current business models, investment strategies or adaptations that may need to be made to existing business models. The rules in this phase will also give clarity on business conduct and inter-affiliations which will help begin defining the selection process of external service providers such as liquidity providers and clearing members.

(iii) Final Rule Phase III

Final Rule Phase III include rules relating to the functioning of clearing, trade execution and real time reporting, the three biggest drivers of the trade cycle for the cleared derivatives market structure.

(iv) Final Rule Phase IV

Final Rule Phase IV includes rules that govern customer protection, trading practices and behaviors for trading products that are defined in Final Rule Phase I, by market participants defined in Final Rule Phase II using functionality that is defined in Final Rule Phase III.

An important aspect of the Sequencing of Rules is to harmonize rules to the extent possible across the Commission and Securities and Exchange Commission (the "SEC") who are responsible for the rules under Title VII for security-based swaps. Some of the Prior Rules issued by the CFTC differ dramatically from the SEC. We recognize that some differences may be inevitable since the swap and security-based swap markets differ in some respects, but greater harmonization is possible and desirable for market participants. Differences in the rules between the CFTC's and SEC's rules that are not required by differences between the financial products each agency regulates will "drive up the cost of implementation, without improving the regulatory structure."<sup>6</sup> Before either the CFTC or the SEC adopts final rules, we urge them to meet and harmonize their rules the as much as possible and adopt a similar Sequence of Rules.

We encourage the Commissions to issue joint final rules to ensure that entities with dual registrations do not find themselves operating under competing regulatory regimes. In addition, where other regulatory agencies are adopting rules on the same subjects that the Commissions are addressing, such as the prudential regulators' rules on margin, we likewise encourage the Commissions to effect a joint rulemaking.

In addition, we encourage the CFTC and SEC to engage foreign regulators to take a flexible, harmonized approach towards devising regulatory framework for swaps. Swaps in one market are often hedged in or linked to other markets, and it is critical that market participants and swap trading in different jurisdictions operate in a compatible manner so that some rules are not more rigid than others.

We appreciate the Commission's recognition of the need for additional comment and feedback on the Sequence of Rules given the volume and complexity of the proposed rules required by Title VII of the Dodd Frank Act. The process for finalizing the final rules is critical and market participants should have an opportunity to review the text of the final rules the Commission will consider for adoption for at least 10 days in order to allow the private sector to alert the Commission before adoption any areas where adjustments would be necessary or appropriate. We know this kind of public notice of final rules prior to formal adoption is unusual, however, the massive number of rules the Commission will be adopting as well as the importance of those rules to ongoing, vital financial market transactions is unprecedented. We know the Commission has taken and will take great care in its rule making process to avoid unintended consequences and offer this suggestion in the same spirit.

Thank you for the opportunity to share our views on this important issue. If you would like to discuss further, please contact any of us.

Sincerely,

Joanne Medero  
Richard Prager  
Supurna VedBrat

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<sup>6</sup> See Letter from Barney Frank, House Committee on Financial Services, to Mary L. Schapiro and Gary Gensler (Feb. 18, 2011).