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June 3, 2011

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

Re: 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); Core Principles and Other Requirements for Swap Execution Facilities – 76 Fed. Reg. 1214 (January 7, 2011); and Proposed Requirements for Derivatives Clearing Organizations, Designated Contract Markets and Swap Execution Facilities Regarding Mitigation of Conflicts of Interest – 75 Fed. Reg. 63732 (October 18, 2010).

Dear Mr. Stawick:

Tradeweb Markets LLC ("***Tradeweb***") welcomes the decision by the Commodity Futures Trading Commission ("***Commission***" or "***CFTC***") to reopen the comment period for its proposed rules governing oversight and regulation of swap execution facilities ("***SEFs***") in connection with reopening the comment periods for various rulemakings implementing Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***Dodd-Frank Act***").[1] We appreciate the opportunity to comment on the Commission's SEF rulemaking proposals holistically and to provide the Commission with our perspective on implementation of the Title VII rules and the key areas affecting SEFs and the over-the-counter ("***OTC***") derivatives market. We would also like to take this opportunity to commend and thank the Commission and its staff for their hard work and willingness to meet with interested members of the public throughout the rulemaking process.

Since 1998, Tradeweb has offered a regulated electronic trading system for OTC fixed income investors and has played an important role in providing greater transparency in and improving the efficiency of the trading of fixed income securities and derivatives. Indeed, Tradeweb has been at the forefront of creating electronic trading solutions which support price transparency and reduce systemic risk, the hallmarks of Title VII of the Dodd-Frank Act, and, accordingly, Tradeweb is supportive of the Dodd-Frank Act and its stated policy objectives relating to Title VII. Indeed, Tradeweb has been an active participant in the ongoing public debate around SEFs, how best to bring greater transparency and accountability to the over-the-counter derivatives market, and the implementation of Title VII of the Dodd-Frank Act. With our background and experience in providing regulated electronic markets to OTC market

[1] Pub. L. 111-203, 124 Stat. 1376 (2010).

professionals, Tradeweb believes that it can provide the Commission with a unique and valuable perspective on the proposed rules and the implementation thereof. For these reasons and the reasons set forth more completely in previous comment letters to the Commission, Tradeweb has a significant interest in the proposed rules which would govern the governance, operations and activities of SEFs and the implementation of such rules.

As we have noted, we are entirely supportive of the Dodd-Frank Act's goal of enhancing transparency and liquidity and reducing risk in the OTC derivatives markets. To further this end, we believe that the Commission should build upon the foundation for transparency, liquidity and risk reduction that has been established by existing OTC derivatives trading platforms and, in so doing, take care to avoid disrupting unnecessarily the substantial benefits that these platforms currently offer participants in the OTC derivatives market.

Implementation

The smooth implementation of Title VII of the Dodd-Frank Act will require cooperation between regulators (both domestically and abroad) in their rulemaking and implementation plan, as well as the cooperation and commitment of market participants. It is critical therefore that in the first instance, the rulemaking is flexible but clear, and that each facet of implementation is thought through, because a lack of confidence in implementation will result in a lack of confidence in the marketplace, the result of which would be a marketplace which would not best serve the interests of the end user. We believe the marketplace needs certainty in terms of how and when these regulations will be implemented, and we applaud the Commission's endeavor to seek public comment on the subject.

At the outset, we encourage the Commission to implement the regulatory requirements over time rather than all at once because a "big bang" approach to implementation would be too disruptive to the marketplace – particularly given the breadth and complexity of new rules to be implemented and the varying states of readiness of market participants. We also support the concepts set out in the April 29, 2011 paper "CFTC Staff Concepts and Questions Regarding Phased Implementation of Effective Dates for Final Dodd-Frank Rules," and specifically its suggestion of bifurcating the registration components from the operational components for market infrastructures such as clearing entities, trading platforms and data repositories.[2]

As we set forth more fully in our March 8, 2011 letter to the Commission, in respect of SEFs for example, the registration process should commence in advance of the implementation of the mandatory trading requirement. Permitting registration of SEFs, including implementation of their policies, procedures, and rulebooks, in advance of the trading mandate will provide predictability to market participants regarding which entities expect to operate as SEFs, enable market participants to make any required technological and operational changes to support mandatory trading, and provide the Commission and the Securities and Exchange Commission ("***SEC***") with the information and time needed to address issues that may be specific to certain classes of market participants or OTC derivatives. The same "open for business" approach can be applied to clearing entities and data repositories, as well as swap dealers and major swap participants.

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[2] See CFTC Press Release 6030-11 (April 29, 2011).

In addition, grandfathering relief should permit currently existing OTC derivatives trading platforms to continue operating and introducing new products in the ordinary course of their business as they work to achieve full compliance with the new requirements. In many cases, trading platform operators may not be able to comply with the proposed terms of such relief due to their dependence on third parties for achieving compliance. Therefore, rather than representing that they are in full compliance with the core principles, applicants for relief should be permitted to certify that, to the best of their knowledge and belief, they have implemented adequate procedures that are designed to ensure material compliance with the core principles.

We also encourage the Commission to leverage the infrastructure that already exists for the trading and clearing of OTC derivatives. In so doing, the Commission will not need to wait for one aspect of the rules (e.g., clearing) to be fully implemented for all market participants before another aspect of the rules (e.g., trading or reporting) can begin to be implemented. For example, delaying the implementation of the trade execution mandate until the clearing mandate is fully achieved – in effect, deferring implementation of the trade execution requirement until all operational and technological issues associated with the mandatory clearing requirement are resolved for all asset classes and categories of market participants – would needlessly deprive many of the most systemically important market participants of the readily achievable benefits associated with trading OTC derivatives through existing trading platforms, which would run counter to the objectives of the Dodd-Frank Act. Furthermore, the data created by reporting of transactions effected on SEFs that occur prior to full implementation of the trade execution mandate could inform the Commission's rulemaking in certain areas, such as block trade sizes.

In light of the foregoing, we believe it is most practical to take a "class of market participant and asset class" approach to phasing in the clearing, trade execution and reporting mandates. For example, given that many interest rate and credit derivatives dealer-to-dealer trades are already cleared, the Commission could commence implementing the clearing and shortly thereafter, trading requirements for interest rate swaps and credit default swaps that are cleared today between dealers. After the dealer-to-dealer phase, the Commission could then look to phase in dealer-to-customer clearing and trading for customers that do not have any (or have few) subaccounts, and thereafter, those with many subaccounts (e.g., asset managers).

Harmonization

As we have stated previously, in addition to taking a flexible principles-based approach to the rulemaking (and implementation), it is critically important for the Commission and the SEC to harmonize their rules as much as possible. Because of the overlapping nature of the proposed Commission and SEC rules, we believe it is imperative that the agencies cooperate in developing final rules to avoid unnecessary cost and duplication for market participants. Bifurcated rulemaking with respect to the swaps market will result in confusion and lack of confidence in the marketplace, and significant increase in cost for market participants, all of which could potentially drive participants away from the market altogether. For example, in respect of SEFs:

- SEFs should not have to file separate SEF applications for each mode of execution to be offered, and where a SEF is offering both swaps and security-based swaps the SEF should only be required to file one uniform application with both agencies.

- Many SEFs will be simultaneously registering as SEFs and security-based SEFs, so it is imperative that the Commission and the SEC promulgate consistent and harmonized conflicts of interest rules. If they do not, the competing rules will cause SEFs to have multiple and/or unworkable governance mandates, potentially necessitating the establishment of multiple boards of directors.

It is also critically important that there is a consistent approach between regulators globally as overly rigid regulation in one jurisdiction will materially impact how other regulators promulgate rules in an effort to maintain a harmonized approach to overseeing the derivatives markets. The swaps market is a global market and if the rules in the U.S. are too prescriptive, the potential result could lead to a migration of the market outside the U.S. – which would be an unfortunate unintended consequence.

<u>Trade Execution and Core Principles</u>

As we have noted many times, Tradeweb is supportive of the Commission's goals of promoting increased price transparency and regulatory oversight in the swaps market, and we appreciate the Commission's efforts to provide SEFs with flexibility in determining the manner in which its participants will trade swaps. Indeed, we applaud the Commission's recognition that market participants may want and SEFs may offer order book and/or Request-For-Quote ("***RFQ***") functionality.[3] This was an important first step in providing market participants the flexibility they need to transact effectively in derivatives. However, we believe that the aim must be to achieve the goals of the Dodd-Frank Act without materially disrupting the market and the liquidity it provides to end users who use derivatives to manage their varying risk profiles. Market participants need confidence to participate in these markets and if the rules are too prescriptive in terms of how market participants must interact with each other, we are concerned that this confidence could be materially shaken.

To that end, as we have stated previously, we believe the Commission's rules should be principles-based, and the SEFs (and other market participants and infrastructures) should have broad, but reasonable discretion in their provision of services so that they can meet the evolving and varying needs of their participants. Such discretion will foster greater transparency and liquidity in the swap market by promoting competition among SEFs, providing market participants with alternative methods of trade execution to accommodate their varying business needs and thereby encouraging the trading of swaps on SEFs, a core objective of the Dodd-Frank Act.

Flexibility is especially important in implementing the SEF core principles of the Dodd-Frank Act because the Commission has been charged with applying principles that are derived from principles currently applicable to the trading of derivatives on designated contract markets ("***DCMs***") to the related, but nonetheless quite different, context of OTC derivatives trading on SEFs. In broad form, the Core Principles are good guiding principles for the operation of trading venues and maintaining market integrity. However, it is important for the Commission to recognize the distinctions between DCMs and SEFs, and to apply the principles with flexibility given the fledgling market structure in which swaps are traded. While many of the SEF Core Principles are broad, principles-based concepts – which make sense given the potential for

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[3] <u>See</u> 76 Fed. Reg. 1214 (January 7, 2011).

different types of SEFs and trading models – some of the Core Principles are potentially problematic for SEFs that do not operate a central limit order book. Additionally, unduly prescriptive rules could impose an unreasonable burden and substantial costs on existing swaps-trading platforms prior to registering as SEFs and could discourage new entrants into the swaps market.

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As we explained in our March 8, 2011 comment letter to the Commission and in subsequent public testimony, among the many considerations for their SEF rulemaking, the Commission should give consideration to the following areas:

1. **Trade Execution**[4]

    - SEFs should be able to operate a disclosed (or if they choose, an anonymous or partially anonymous) RFQ system and a separate and distinct anonymous order book – each with different participation standards and rules of engagement and each utilizing different technology. A SEF that chooses to operate both an RFQ and order book system may not want to (and should not be required to) have its order book system interoperable with an RFQ system. For example, if two separate SEFs operated by separate and independent legal entities were to operate an RFQ system and an order book, respectively, their technologies and orders would not be required to interact with each other. We see no reason why a single SEF operating separate and distinct markets on entirely separate technologies (that may not be able to interoperate) should have a different set of obligations and requirements than separate SEFs.

    - The proposed requirement that there be a minimum of five (5) recipients of an RFQ does not provide market participants with enough flexibility and could ultimately lead to less pre-trade liquidity and transparency in some swap markets. We believe that market participants should have the ability to decide, on a case-by-case basis, how many liquidity providers receive their RFQs.

    - The Commission should not require SEFs to display RFQs to participants not participating in the RFQ. Requiring such disclosure might force the liquidity provider to widen its bid/offer spread so as to price in the risk associated with the information on that trade being disseminated to the entire market. We believe that sufficient transparency would exist with a centralized screen of bids and offers for each instrument on the system and that imposing a requirement for an entirely "transparent RFQ" or any similar requirement would harm market participants more than it would help.

2. **Core Principles**

    - We agree with the Commission that "impartial access" to a SEF's markets and market services (including indicative order screens) should not require a SEF to

[4] See generally id. at 1220-21.

grant access to anyone who requests it, as guaranteed universal access could greatly harm market efficiency and integrity.[5] To that end, the SEF should have discretion to establish differing sets of objective, pre-determined criteria appropriate for participating in different types of marketplaces (e.g., RFQ market v. an order book market), participation within a market (e.g., liquidity providers and liquidity takers) – so long as the SEF applies the applicable criteria in a fair and impartial manner.

- SEFs should not be responsible for monitoring compliance across markets. We believe that it is appropriate for each SEF to bear some responsibility for monitoring trading in its own market, but it would be highly problematic to require, as certain of the proposed rules apparently would, a SEF to monitor the trading of swaps on other SEFs or elsewhere in the market (e.g., for purposes of position limits).[6]

- The proposed requirement that each SEF conduct an annual audit of member and market participant compliance with audit trail requirements is unreasonably burdensome, especially since no such requirement is applicable to DCMs.[7] SEFs should have the same discretion that DCMs have to implement policies and procedures that are reasonably designed to ensure compliance with audit trail requirements.[8]

- Although we support the creation of a dedicated chief compliance officer ("***CCO***") to oversee the SEF's compliance matters, we believe that SEFs should be permitted to determine the qualifications, duties and conditions for supervision and removal of their CCOs.[9] We also believe that it is unreasonable to require a CCO to ensure compliance with the Dodd-Frank Act and Commission regulations because the CCO, by the nature of his duties, would not have control over the

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[5] See id. at 1223.
[6] See id at 1227-28.
[7] See id at 1225.
[8] In a similar vein, proposed Rule 39.13(g)(2) sets forth requirements regarding DCO margin methodology. The proposed rule requires, *inter alia,* that DCOs establish initial margin requirements commensurate with the risks associated with each product and portfolio cleared by such DCO. In addition, a DCO is required to use models that generate initial margin requirements sufficient to cover the DCO's potential exposure to clearing members based on the time, estimated by the DCO, that it would take to liquidate a defaulting clearing member's positions (the "***Liquidation Time***"). The proposed rule provides that the Liquidation Time will be a minimum of five business days for cleared swaps that are not executed on a DCM and one business day for all other products cleared by the DCO. 76 Fed. Reg. 3698 at 3704 (January 20, 2011). As written, the disparity between Liquidation Times would potentially mean that higher margin requirements would apply to swaps that are executed on SEFs than to swaps that are executed on DCMs. It is not clear what the rationale is for requiring significantly different Liquidation Times for swaps traded on SEFs and DCMs, and, as other commenters have noted, no such guidance has been provided by the Commission in this regard. We believe the DCO should be able to make its own determination of the appropriate Liquidation Time for such swaps, subject to a harmonized one business day minimum standard. This approach would afford a DCO discretion to set prudent margin requirements without discriminating against participants executing swap transactions on a SEF. Indeed, in the absence of such revision, market participants would be penalized for effecting swap transactions on a SEF, which would effectively undermine the goals for SEFs as stated in the Dodd-Frank Act – i.e., to promote trading of swaps on SEFs.
[9] See 76 Fed. Reg. 1214 at 1231-35.

operations and activities of the SEF; imposing such duty is inconsistent with a CCO's authority and role as adviser to the SEF, and SEFs will likely find it difficult to hire CCOs who are willing to undertake a duty to ensure such compliance. Instead, we urge the Commission to specify that the duty of the CCO is to adopt procedures and safeguards reasonably designed to ensure compliance with the Commodity Exchange Act ("***CEA***") and Commission regulations.

Mitigating Conflicts of Interest

Tradeweb supports the Commission's objectives in proposing rules implementing the Dodd-Frank Act's mandate to adopt rules mitigating conflicts of interest.[10] We appreciate that the Commission has attempted to provide SEFs with some degree of flexibility in mitigating conflicts of interest and has not proposed rigid percentage limitations on the ownership of SEFs. As set forth more completely in our November 17, 2010 letter, we nonetheless believe that the Commission could accomplish its goal of mitigating conflicts of interest in a manner that is somewhat less burdensome, but equally effective.

For example, the Commission's goal of requiring independence in the governance of SEFs could be achieved without imposing the proposed rule's requirement that public directors account for 35% of a SEF's board of directors.[11] We suggest that the Commission should instead mandate that each SEF's board of directors include a minimum of two (2) public directors and that the public directors on a SEF's board account for a minimum of 20% of the board's voting power, irrespective of the actual number or percentage of public directors serving as board members. We believe that imposing these requirements would accomplish the Commission's goal of ensuring independence of governance without the undue burdens and significant costs associated with maintaining a board of directors of a specified size and composition.

Real-Time Reporting

As the Commission has recognized, SEFs will play a key role in creating the transparent derivatives markets envisioned by the Congress. In addition to trading capabilities, SEFs will offer fully automated, straight-through reporting systems, capable of reporting large amounts of data accurately and virtually instantaneously. To that end, they will use sophisticated protocols for reporting information real-time to clearinghouses and counterparties, capable of meeting the most stringent real-time reporting requirements. Accordingly, we applaud the Commission for recognizing that parties to a swap transaction can discharge their reporting obligations through a swap market and would encourage the Commission to go farther in respect of this rulemaking to take full advantage of the capabilities of SEFs and other swap markets. By doing so, the Commission will better serve the goals of the Dodd-Frank Act, and will allow for earlier implementation and adoption of these reporting rules.

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[10] See 75 Fed. Reg. 63732 (October 18, 2010).

[11] Tradeweb certainly does not support having a requirement that the SEF board be composed of a majority of public directors as proposed by the SEC under Regulation MC (see 75 Fed. Reg. 65882 at 65908 (October 26, 2010)), and we encourage the Commission not to adopt such a standard in connection with the harmonization of its rules with the SEC's proposed rules.

The Commission has recognized a number of potential conflicts of interest relating to the use of swap data received by swap data repositories (each, an ***"SDR"***). In light of the unique position of SDRs in the reporting scheme, we believe that the Commission should consider imposing additional requirements and safeguards, including that SDRs (i) make available any data they collect and may properly use for commercial purposes (i.e., the real time reporting information) to all market participants, including SEFs and DCOs, on reasonable terms and pricing and on a non-discriminatory basis, and (ii) share, on commercially reasonable terms, revenue they generate from redistributing such data with parties providing the data to the SDRs (e.g., SEFs). Without such requirements, the Commission is effectively taking away from market participants, including SEFs and DCOs, a potentially significant and valuable component of their market data services. In that regard, although we do not believe there is any legal uncertainty as to the issue, we recommend that the Commission make clear in the final rules or in its commentary to the final rules that nothing in the rules is intended to impose or to imply any limit on the ability of market participants, including transaction parties, SEFs, and DCOs, to use and/or commercialize data they create or receive in connection with the execution or reporting of swap data, consistent with their important confidentiality obligations under the CEA and the Commission's rules. These provisions will help to ensure a robust and competitive market among market participants, as envisioned by Congress, and would help to limit the possibility of overreaching by SDRs due to their unique position in the data-reporting regime.

Conclusion

Tradeweb believes that flexibility in all aspects of the Commission's rules is imperative to promoting the development of swaps trading on SEFs in a manner that can quickly accommodate the varying needs of various participants, provide the most competitive execution of trades and encourage the greatest degree of liquidity. Flexibility will have the added benefit of permitting SEFs and market participants to implement the Commission's final rules more quickly and efficiently and thereby hasten the migration of swaps trading to centralized and transparent markets, a core objective of Title VII of the Dodd-Frank Act.

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If you have any questions concerning our comments, please feel free to contact us. We welcome the opportunity to discuss these issues further with the Commission and its staff.

Sincerely,

Lee H. Olesky
Chief Executive Officer

Douglas L. Friedman
General Counsel

cc: Honorable Gary Gensler, Chairman
Honorable Michael Dunn, Commissioner
Honorable Jill E. Sommers, Commissioner
Honorable Bart Chilton, Commissioner
Honorable Scott O'Malia, Commissioner
Dan Berkovitz, General Counsel, Office of the General Counsel
Richard Shilts, Acting Director, Division of Market Oversight
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