CEA §§ 2(h), 2(i), 4r, 4s and 21
CFTC Regulations § 3.10
and Parts 23, 43, 45, 46 and 50

November 30, 2012

Chairman Gary Gensler
Commissioner Jill Sommers
Commissioner Bart Chilton
Commissioner Scott O'Malia
Commissioner Mark Wetjen

Richard Shilts, Director, Division of Market Oversight
Gary Barnett, Director, Division of Swap Dealer and Intermediary Oversight

Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Request for Supplemental Transition Relief under Title VII

Ladies and Gentlemen:

The undersigned trade associations (the "Associations"), on behalf of their members and similarly situated participants in the swap markets, urgently request that the Commodity Futures Trading Commission (the "CFTC" or "Commission") take steps to ensure an orderly implementation of amendments made to the Commodity Exchange Act (the "CEA") by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and minimize the potential for very significant market disruption and uncertainty. Specifically, we are writing to request that the Commission adopt the relief described below, which is intended to supplement the other transition relief requests pending before the Commission by addressing the remaining residual issues identified by our members to-date. Where relevant, we have also referenced certain key pending requests, to provide the Commission with a more complete overview of the transition relief framework being requested by industry participants.

The implementation of Title VII will bring comprehensive and unprecedented change to the swap markets. Since even before the Commission began to finalize its rules under Dodd-Frank, the Associations' members and their affiliates have been engaged in very extensive efforts to prepare for compliance with Dodd-Frank by the deadlines applicable under the CEA and Commission rules. These efforts have included, among other measures: collaborating with swap data repositories ("SDRs") and technology vendors to establish detailed reporting templates and protocols, organize testing schedules and design and roll out reporting systems; working with the International Swaps and Derivatives Association ("ISDA") and Markit to create and publish a Dodd-Frank Protocol designed to comply with Commission external business conduct standards, documentation requirements and other Dodd-Frank rules; making significant changes to reporting lines, risk management policies and recordkeeping systems to comply with Commission internal business conduct standards; and collaborating with clearinghouses to ensure that the requisite operational systems and documentation will be in place once mandatory clearing requirements take effect.

However, our members continue to face many challenges that will preclude full compliance by the relevant deadlines without significant interruption of normal market activity. These challenges are often outside our members' control. For instance, in many cases, compliance with Dodd-Frank depends on the execution of documentation, such as the ISDA Dodd-Frank Protocol, that require the cooperation and consent of one's counterparty. Firms also face substantial bottlenecks in scheduling and completing necessary systems changes, many of which are attributable to capacity constraints at outside vendors or market infrastructure providers. In addition, as the Commission staff are aware, there are a large number of open interpretive questions – including, but by no means limited to, the cross-border application of Dodd-Frank – that pertain to threshold matters under Commission rules. Finally, Hurricane Sandy has caused significant damage to a core infrastructure and disrupted other implementation efforts.

In connection with these challenges, we wish to express our appreciation for the Commission staff's careful but expeditious consideration of the many requests for no-action or interpretive relief pending before them. The Associations strongly support the staff and the Commission in their efforts to respond to as many of those requests as is possible in the first half of December.

However, in several cases our members have identified gaps in the relief framework comprised by the requests pending before the Commission and its staff. In some cases, this is because the requests have not yet identified those idiosyncratic technical issues faced by individual firms that are nevertheless susceptible to being addressed through industry-wide relief. There are also potentially issues that are simply not knowable at this point because the industry-wide testing necessary to identify and address issues has not yet been able to take place. Additionally, open interpretive questions pending before the Commission staff, as well as pending Commission rulemakings, present significant implementation challenges, especially for cross-border activities.

The uncertainty resulting from an incomplete approach to implementation relief can be expected to have very significant and destabilizing effects on the markets. Already, some

firms have begun to curtail their market activity so as to delay the time at which they are required to register and come into compliance with Title VII. Some foreign financial institutions continue to refuse to transact with foreign branches of U.S. banks. As December 31, 2012 approaches, firms are increasingly considering whether to withdraw from the market or stop trading with certain counterparties because of concerns that continued trading will expose them to significant regulatory and private liability that they cannot mitigate in any other way. These dislocations are not necessary to achieve the purposes of Dodd-Frank, nor are they an intended consequence of Dodd-Frank. Further, informal indications that the Commission recognizes that there will be necessary "fine-tuning" during the initial implementation of Dodd-Frank do not provide sufficient comfort to firms, their directors and senior managers, or their clients.

We strongly urge the Commission to adopt the relief described below. We understand that the Commission and its staff are handling several dozen requests, if not more, for consideration in the first half of December, and as a result may not be able to address some of those requests in time. In addition, given the proximity to impending deadlines, when the relevant Division responds to a request, firms often will not have time to modify their implementation plans accordingly. Accordingly, we request that the Commission and its staff confirm that, if they decide not to grant this request or another industry request pending before them as of December 3, 2012, or to grant narrower relief or a different interpretation than what was requested, they will grant-time limited transition relief to permit the requesting party(ies) to engage in discussions with the staff about an appropriate remediation plan, provided that such party(ies) are acting in good faith.

A. Reporting

Swap dealers ("SDs") generally must begin reporting swap transaction data pursuant to Parts 43 and 45 of the Commission's regulations by December 31, 2012 for interest rate and credit default swaps and by January 10, 2013 for all other swaps. SDs must report historical swaps pursuant to Part 46 of the Commission's regulations and recent no-action relief by January 30, 2013 for interest rate and credit default swaps and by February 9, 2013 for all other swaps. Major swap participants ("MSPs") will generally be required to begin compliance by February 28, 2013, which is the earliest that an MSP must register. There are, however, a number of issues that must be resolved before compliance is feasible. We have raised many of these issues in recent relief requests, and reiterate those requests here. To summarize, however, these issues include the fact that:[1]

- The compressed timeframe of the different reporting dates – with Part 43 and Part 45 reporting for new swaps in the equities, foreign exchange ("FX") and other commodities asset classes beginning only 10 days after reporting for new swaps in the interest rate and credit asset classes, and reporting for historical swaps under Part 46 beginning only 30 days after reporting for new swaps – limits the ability for SDs and MSPs to focus their resources on assuring smooth implementation for the earlier compliance dates, as well as their ability to correct

[1] In addition, we note that many SDs are still implementing large trader reporting in advance of the March 1, 2013 deadline in Staff Letter 12-04 and expect to identify any idiosyncratic or industry issues in the coming weeks.

issues before later compliance dates. In addition, there are many difficulties capturing and reporting data for expired swaps.

- Many financial institutions institute year-end programming lockdowns in mid-December. As a result, the December 31, 2012 reporting commencement date requires that technological and operational systems for reporting be finalized within the next two or three weeks.

- As a result of Hurricane Sandy, the Depository Trust and Clearing Corporation ("DTCC") has had to delay its swap data reporting pilot program by more than 2 weeks. Given this compressed timeline, there will be insufficient time for basic testing that is essential for any large technology implementation. The result is that financial institutions have lost key test cycles during which they planned to identify and eliminate key issues prior to the compliance date. In addition, testing done after year-end programming lockdowns will not allow adjustments to be made to reporting systems in response to testing.

- Reporting the CFTC Interim Compliant Identifier ("CICI") or other identifier for a counterparty without masking raises issues under the privacy, data protection, blocking or secrecy laws of several non-U.S. jurisdictions.

- Widespread implementation of reporting systems in branches located outside the U.S. presents difficulties due to the more limited systems capabilities and less well-developed market practices in many foreign jurisdictions. For example:

  - the foreign branches of U.S. SDs are in many cases configured to report swaps with non-U.S. persons only on a T+1 basis, rather than the essentially real-time reporting requirements applicable under Part 45 (which themselves are intended to synchronize with Part 43 reporting requirements that will not apply to this swap activity); and

  - more time is needed to establish reporting infrastructure in, or migrate trading activity from, branches in emerging market locations for a trade population comprising a small volume of total transaction activity (in some cases less than 5% of a firm's total trading volume).

- Many of the reporting systems currently being developed by SDRs differ in important ways from the technological and operational systems that SDs have in place. For example:

  - many SDs do not have in place systems to link a report of a partial termination or partial exercise to the original swap;

  - for certain asset classes, many SDs do not automatically capture the execution time-stamp and instead use the time at which the swap capture takes place; and

- for certain asset classes, automated, real-time reporting of the indication of collateralization is not yet possible, although the information can often be included later in an amended data report.

- There remain a number of interpretative questions related to these rules, including:

  - how to report confirmation data for negatively affirmed trades;

  - how to report transactions executed pursuant to derivatives prime brokerage arrangements;

  - how to report swap transactions "as soon as technologically practicable" if key information will not be available until some later time, including allocated trades that are not booked until after allocation, swaps that are priced using "market on close" or "volume weighted average pricing" methodologies and multi-leg exotic swaps; and

  - how the Commission will treat a situation where one party views the trade as reportable and the other does not.

- The Commission and its staff appropriately continues to develop their thinking on implementation of the swap data reporting rules as evidenced, for example, by revisions on November 28 to its previously issued "Frequently Asked Questions on Reporting of Cleared Swaps."

Pending Relief Requests: We strongly support, and urge the Division of Market Oversight ("DMO") to grant, the following no-action requests, which would address many of the key issues described above:

- The request dated November 16, 2012, by ISDA and the Global Foreign Exchange Division of the Global Financial Markets Association, to provide a delay of six weeks in the application of Parts 43, 45 and 46 to swaps in the equity, FX and other commodity asset classes; and

- The request dated November 19, 2012, by ISDA, to provide relief from reporting a counterparty's identity information under Part 20, 43, 45 or 46 where (i) doing so is reasonably believed by the reporting party to violate the privacy laws of a non-U.S. jurisdiction, subject to conditions to obtain consent or authorization (where doing so would remove the basis for believing that reporting such information may violate the relevant privacy laws) or (ii) there is a reasonable question as to whether such reporting would implicate the privacy laws of a non-U.S. jurisdiction, subject to the condition that the reporting party use reasonable efforts to obtain adequate information regarding whether it could report its counterparty's identity information

without incurring a risk of violating the jurisdiction's privacy laws and without the need for a separate consent for each instance of disclosure.

Supplemental Relief Requests: In addition to the above relief requests, and any other relief granted by DMO, we request that DMO confirm that it will not recommend that the Commission commence enforcement action against an SD or an MSP under Part 43, 45 or 46 in connection with the following:

(a) A failure by an SD or MSP to comply with a provision of Part 43, 45 or 46 due to an open interpretive question raised by the industry but that is still pending before DMO staff. FIA, IIB and SIFMA members, including those who may participate in the ISDA Data Working Group, have engaged in a series of weekly calls with DMO staff to discuss these issues, but many of the questions remain outstanding.

(b) A failure by an SD or MSP prior to December 31, 2013 to report a swap under Parts 43 and 45, or the reporting of a swap or continuation event under those parts that should not have been reported, provided that (i) system impediments make compliance with Parts 43 and 45 for the swap technologically impractical, (ii) such swaps comprise solely an immaterial percentage of the SD's or MSP's overall trading volume and (iii) the SD or MSP reports the swap under Part 46 as soon as reasonably practical, and in any event by December 31, 2013. We would welcome the opportunity to discuss with DMO staff what would be an appropriate percentage of swaps to be considered "immaterial" for this purpose.

(c) A failure by an SD or MSP prior to July 1, 2013 to report a swap under Rule 43.3 or 45.3 within the timeframes specified for reporting under those Rules, provided that (i) system impediments make compliance with Rules 43.3 and 45.3 for the swap technologically impractical, (ii) such swaps comprise solely an immaterial percentage of the SD's or MSP's overall trading volume and (iii) the SD or MSP reports the swap under Rules 43.3 and 45.3 by the close of business on the day in which the swap was executed. We would welcome the opportunity to discuss with DMO staff what would be an appropriate percentage of swaps to be considered "immaterial" for this purpose.

(d) For a swap not covered by (b) above, and after giving effect to the relief requested in (a) above and ISDA's November 19, 2012 request, a failure prior to July 1, 2013 by an SD or MSP to submit an accurate and complete set of data under Rule 43.3 or 45.3, provided that (i) system impediments make full compliance with Rules 43.3 and 45.3 for the swap technologically impractical and (ii) the data submitted by the SD or MSP is materially complete. Preliminarily, we believe that a report would be considered to be "materially complete" if it included data for at least 75% of the specified fields, which would include, at a minimum, data fields pertaining to the transaction's price, notional amount, start and end dates, contract type, underlying asset, and

whether the swap is cleared or uncleared, as well as any data fields pertaining to the status of the reporting party, although we request that DMO provide us with an opportunity to confirm the specific target percentage and minimum data fields with the technology and operations staffs of our members.

B. External Business Conduct

SDs will generally be required to begin compliance with the Commission's external business conduct rules by December 31, 2012 (for rules pertaining to disclosure of daily marks, the prohibition of fraud/manipulation, fair dealing and communications, diligence to understand risks and rewards in connection with recommendations, and political contributions) and January 1, 2013 (for other external business conduct rules).[2] There are, however, several significant practical impediments to full compliance by those dates:

- As explained in a letter submitted by ISDA to the Commission on November 27, 2012, adherence to the August 2012 Dodd-Frank Protocol is currently estimated to cover only 17.5% of the counterparties from whom SDs have sought responses, with less than 1% of counterparties having submitted completed versions of the questionnaire that is the centerpiece of the Protocol. Because compliance with the Commission's external business conduct rules depend greatly on the SD or MSP obtaining a wide range of information from its counterparty, whether through its own diligence or through the written representations of the counterparty, broader participation in the Protocol is essential. Widespread and simultaneous resort to the alternatives of amending bilateral documentation across all the counterparties in the market or satisfying the rules on a trade-by-trade basis would be highly disruptive to the market. Additionally, even if the number of adhering parties increases substantially over the next month, SDs and MSPs will not have sufficient time to modify their systems to account for which of their counterparties have provided which sets of representations under the Protocol.

- Another area where compliance with the external business conduct standards depends significantly on third parties involves the application of disclosure obligations to swaps traded on electronic platforms. Because of the limited nature of the exception to disclosure obligations for swaps traded anonymously on a designated contract market or swap execution facility ("SEF"), SDs and MSPs must depend on the platforms over which they trade to deliver trade-specific disclosures, such as the pre-trade mid-market mark and the material economic terms of a swap. Currently, many platforms have not yet determined how they will facilitate such compliance.

- There are also a number of very significant open interpretive questions outstanding in connection with the external business conduct standards:

[2] MSPs will generally be required to begin compliance by February 28, 2013, which is the earliest that an MSP must register.

- For instance, the application of the pre-trade mid-market mark disclosure obligation to electronically executed swaps or swaps in highly liquid asset classes remains an open question.

- Even for other swaps, applying the rule's requirement that the mid-market mark exclude amounts for profit, credit reserve, hedging, funding, liquidity, or any other costs or adjustments lead to many open questions that are still under discussion within the industry and with Commission staff.

- Other areas where very significant open interpretive questions exist include derivatives prime brokerage arrangements and allocated trades,[3] both cases where the involvement of more than two parties in a single execution make the application of the rules unclear. These two transactional paradigms, however, make up a very significant portion of the swap markets. Even if the staff were to provide guidance in these areas in the very near-term, there would likely not be enough time to implement that guidance before the rules are scheduled to take effect.

Pending Relief Request: We strongly support, and urge the Commission to adopt, ISDA's request to delay the compliance date for Subpart H of Part 23 (other than Rule 23.410(a) and (b), Rule 23.433, Rule 23.434(a)(1) and Rule 23.451) and specified other Commission Rules that depend on the August 2012 Dodd-Frank Protocol[4] until May 1, 2013.

C. Internal Business Conduct

Subject to adoption of the Commission's proposed cross-border phase-in exemption,[5] SDs generally will be required to begin compliance with the Commission's recordkeeping, reporting and duties rules (including rules pertaining to conflicts of interest) by December 31, 2012 (although the Commission staff have provided limited no action relief with respect to certain recordkeeping requirements until March 31, 2013).[6] There are, however, a number of issues and ambiguities that we believe need to be resolved before compliance is practically feasible. For example:

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[3] Relatedly, requiring each third-party sub-account to execute documentation designed to comply with the external business conduct standards, in addition to the execution of such documentation by the sub-account's investment manager, has led to further delays in the time before which a critical mass of counterparties can be onboarded for Dodd-Frank compliance purposes.

[4] These rules are CFTC Rules 20.4-5, 23.201(b)(3)(ii), 23.204-205, 23.505, 32.3(a)(2)-(3), 43.3-4, 45.2-4, 45.6 and 46.3.

[5] We discuss this exemption in Part E below.

[6] MSPs will generally be required to begin compliance by February 28, 2013, which is the earliest that an MSP must register.

- Significant technological issues remain in making swap transaction and daily trading records identifiable and searchable by transaction and counterparty, meaning that compliance with this requirement (even by the extended March 31, 2013 deadline for voice records), is both impracticable, and, in some instances, technologically impossible. Market participants appreciate the Commission's ongoing engagement with SIFMA's recordkeeping working group to identify workable solutions to this issue. Challenges also exist in retaining records in a manner to allow for a comprehensive and accurate trade reconstructions for each swap (for which the Commission did not provide no-action relief), particularly with respect to maintaining records of pre-execution information from the early stages of a transaction.

- CFTC Rule 1.31 imposes significant requirements on SDs and MSPs to store and make accessible required swap records, which are further complicated by the need for records to be WORM-compliant and by the requirement to obtain and provide to the Commission certain certifications for various media by third party technical consultants. While certain market participants are in compliance with these requirements for some media, such as email, significant issues remain in connection with compliance for many other types of media, and especially oral media. There are also significant technological challenges in maintaining a comprehensive and consistent system to make, connect and retain records across multiple dealing jurisdictions since many large SDs use different recordkeeping systems in different geographical locations.

- Many jurisdictions in which SDs and MSPs operate have restrictions on recording and retaining customer data, particular for telephone conversations, and on providing such information to third parties, including regulators outside of the relevant jurisdiction. The rules in these jurisdictions may conflict with the Commission's recordkeeping requirements and the obligation to make records available to the Commission and the Department of Justice. A SIFMA working group is presently undertaking a 45-jurisdiction analysis of privacy laws to identify problematic jurisdictions, however the results of the survey and solutions deriving there from will take time to assess and implement.

- Many market participants do not have adequate systems to ensure that all quotations are recorded to the nearest minute, and ambiguity around the application of this requirement to quotations provided or received orally poses further challenges for implementation. Similar issues exist for recording the time of execution.

- Systems lack the functionality to comprehensively capture quotes and other information from third-party platforms and vendors.

- Prohibitions on the relationship between SDs and futures commission merchants ("FCMs") are very broad, potentially restricting FCMs from sharing necessary

information with SDs in connection with managing risks or credit limits (especially if the FCM is an affiliate of the SD) or taking on certain responsibilities for customers to assist them in connection with the customer's Dodd-Frank requirements, such as providing trade or confirmation reporting services where the customer is the reporting party due to the status of its counterparty. Additionally, the prohibition in the rule on an SD's ability to involve itself in the FCM's decision "whether to offer clearing services….to a particular customer" or "whether to accept a particular customer for….clearing" should be clarified to emphasize the original statutory intent to prevent "the review, pressure or oversight" by SD personnel "whose involvement in trading or clearing activities might bias the judgment" of FCM clearing unit personnel. It is our understanding that this language was designed only to prevent interactions that might disrupt, limit or discourage clearing. Therefore, the Commission should clarify that interactions between SD personnel and FCM clearing unit personnel that are designed to facilitate clearing should not be restricted by the rule.

- The broad scope of the definitions of "research department" and "derivative" may cause SDs and MSPs to have to impose restrictions on affiliates who are unrelated to the swaps business but nonetheless produce research.

- There remain a number of interpretive questions related to these rules, including:

    - What it means to maintain records in "native" format, particularly in connection with oral records.

    - How to determine which cash or forward transactions relate to a swap or multiple swaps in connection with portfolio hedges or where there is a significant time gap between execution of the swap and the potentially related cash or forward positions(s).

    - The intended manner in which an SD or MSP is to create and maintain a daily calculation of its current and potential future exposure for each counterparty.

    - The extent to which requirements that SDs and MSPs monitor position limits of each trader and develop early warning systems to detect whether limits are about to be breached require SDs and MSPs to implement intraday risk management and limits monitoring. Depending on how these requirements are interpreted, they could be viewed as requiring monitoring that is currently not market practice throughout the industry and therefore would require additional time to implement.

    - Determining what level of communication between and utilization of the same resources by the business trading units and clearing units of an SD or MSP and its affiliated FCM are appropriate.

- The scope of affiliates covered by the clearing conflicts rule, including how restrictions would impact non-U.S. clearing units (for example, where the SD clears in the U.K.) or prime brokerage relationships (where the prime broker will be performing certain clearing-related obligations in connection with its services).

- Determining the reach of the restriction on a supervisor in the business trading unit supervising the clearing unit, particularly for smaller organizations.

Supplemental Relief Request: We request that the Division of Swap Dealer and Intermediary Oversight ("DSIO") confirm that it will not recommend that the Commission commence an enforcement action against an SD or MSP for a failure to comply with Rule 1.31, Rule 3.3, Subpart F of Part 23 or Subpart J of Part 23 prior to July 1, 2013 due to a practical or technical limitation or interpretive uncertainty identified by the SD or MSP in internal work plans available for inspection by the Commission, provided that the SD or MSP makes good faith efforts to come fully into compliance with those rules by July 1, 2013.[7]

D. Confirmation, Portfolio Reconciliation, Portfolio Compression and Swap Trading Relationship Documentation

SDs generally will be required to begin compliance with the Commission's trade confirmation, portfolio reconciliation, and portfolio compression rules by December 31, 2012 and with the trade relationship documentation rules by January 1, 2013 (with respect to certain counterparties).[8] There are, however, a number of issues that must be resolved before compliance is feasible. For example:

- Despite continuing industry efforts, the ISDA November 2012 Dodd-Frank Protocol, which seeks to address the requirements of these rules, has not yet been finalized. As a result, and based on the industry's experience with the ISDA August 2012 Dodd-Frank Protocol, it is likely that only a small number of swap market participants, if any, will adhere to the November Protocol by December 31.

- There is currently no market solution to enable portfolio reconciliation. In part, this is due to close connection between portfolio reconciliation and the processes for reporting to and maintaining swaps in SDRs, discussed in greater detail above.

[7] We note that this request would, in our view, be consistent with the principle underlying CFTC Rules 23.206 and 23.611, which delegate authority to the staff to establish alternative compliance schedules to comply with rules regarding daily trading records and clearing member acceptance for clearing, respectively, for an SD or MSP that seeks, in good faith, to come into compliance with those rules within a reasonable time period.

[8] MSPs will generally be required to begin compliance by February 28, 2013, which is the earliest that an MSP must register.

In addition, third-party technology does not yet provide for reconciliation across the full range of fields required by the Commission. The ability to reconcile currently is limited generally to collateral reconciliation.

- The portfolio compression rules require significant technological and operational build-outs for asset classes not typically part of portfolio compression exercises, and, moreover, the economic attributes of swaps in some asset classes, such as equities and commodities, do not lend themselves to compression in the first place.

- Fund counterparties have not yet been able to determine whether they are "active funds," which is necessary in order for SDs to determine their compliance dates for swaps with such funds.

- The confirmation reporting rule, despite containing a phased-in compliance schedule, represents a paradigm shift from the approach taken by the industry to-date of systematically increasing the adoption of standardized documentation and automated confirmation processes to facilitate decreasing the time between execution and confirmation, while still recognizing that there will be exceptions for certain product and counterparties.

- There remain a number of interpretative questions related to these rules, including:

    - the extent to which the current matching and affirmation platforms meet the requirements for "acknowledgements" and "confirmations" under the these rules;[9]

    - how to calculate which swaps comprise a "portfolio" for the purposes of determining the frequency with which swap dealers and MSPs must engage in portfolio reconciliation; and

    - how the portfolio reconciliation rules apply to transactions between one swap dealer that is prudentially-regulated or subject to SEC regulation, and one swap dealer is not, during the period from December 31, 2012 to March 10, 2013 since, during the time, compliance with the portfolio reconciliation rules is required only for swap dealers that are prudentially-regulated or subject to SEC regulation.

Pending Relief Requests: We strongly support, and urge DSIO to grant, the following no-action requests, which would address many of the key issues described above:

[9] For example, it is not clear whether reconciliation of trades in the books of affiliated companies meets the requirement for "acknowledgements" and "confirmations."

- The request dated November 20, 2012, by ISDA, to provide relief until July 1, 2013 from compliance with Rules 23.502 (portfolio reconciliation) and 23.504 (swap trading relationship documentation), so as to facilitate additional progress in connection with the November 2012 Dodd-Frank Protocol; and

- The request dated November 28, 2012, by ISDA, to provide relief in connection with the confirmation requirements of Rule 23.501 for paper confirmed trades to facilitate the extensive work needed to comply with that Rule for those trades, including an estimated additional 9-12 months standardizing documents, 3-6 months to build middleware infrastructure and 3-6 months for counterparty onboarding.

E. Pending Commission Rulemakings

There are a number of very significant provisions that have not yet been addressed by final Commission rulemaking, but which will have serious effects on SDs, MSPs and their counterparties starting on December 31, 2012:

- The most notable of these provisions is Section 2(i) of the CEA and the cross-border application of Dodd-Frank generally. Expeditious finalization of the Commission's proposed cross-border phase-in exemptive order,[10] including addressing the comments received by the Commission, is essential.[11] Indeed, to facilitate the design and implementation of the systems and procedures central to Dodd-Frank, market participants have already had to make assumptions about these topics based on the Commission's proposal and the comments thereon, for which there is not sufficient time before the end of the year to reverse course.

- The Commission's proposed cross-border guidance suggested that the Commission might re-visit the component of the *de minimis* exception from the SD definition that requires aggregation of swap dealing activity across commonly controlled affiliates. As commenters indicated to the Commission, the aggregation rule greatly expands the possible range of affiliates that might be subject to registration obligations, and firms are experiencing significant difficulty in gathering the relevant information and reconfiguring their registration plans before the end of the year.

- Certain self-effective provisions of Dodd-Frank, such as the segregation provisions in Section 4s(l) of Dodd-Frank, are scheduled to take effect starting December 31, 2012 but lack Commission implementing rules.

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[10] 77 Fed. Reg. 41110 (July 12, 2012).

[11] *See* Letter from Sarah A. Miller, the Institute of International Bankers, to the Commission, dated August 9, 2012; and Letter from Kenneth Bentsen, the Securities Industry and Financial Markets Association, to the Commission, dated August 12, 2012.

Supplemental Relief Requests: To address the foregoing issues, we request the following:

- Cross-Border Relief. We request that the Commission issue an exemption providing for the following, to expire upon the effectiveness of final Commission guidance regarding the cross-border application of Title VII:

    - Interim adoption of the distinction between transaction-level and entity-level rules contained in the Commission's proposed cross-border guidance,[12] subject to specified technical changes.[13]

    - Interim adoption of a "U.S. person" definition consistent with Staff Letter 12-22 (including its treatment of the foreign branches of U.S. swap dealers)[14] for purposes of (i) registration as an SD or MSP by a non-U.S. person and (ii) compliance by a non-U.S. person with new Title VII rules. Firms should be permitted to rely reasonably on counterparty representations, where available, and otherwise be held to a standard of reasonable, good faith attempts to ascertain whether their counterparties are U.S. persons. Permitting good faith attempts is critical because, as indicated in many of the comments on the Commission's proposed phase-in exemption, market participants do not presently obtain representations or data pertaining whether their swap counterparties fall within any given "U.S. person" definition, and so therefore market participants need time to develop, disseminate and obtain representations conforming to any definition ultimately adopted by the Commission.

    - Exemptions for non-U.S. SDs, non-U.S. MSPs, and the foreign branches of U.S. SDs from transaction-level and entity-level rules

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[12] 77 Fed. Reg. 41213 (July 12, 2012).

[13] These changes would be (i) like Rule 23.202, classifying Rule 1.31 as an entity-level rule and (ii) like Rule 23.202, classifying Rules 23.201(a)(1)-(3) (transaction and position records), 23.201(b)(3) (complaints) and 23.201(b)(4) (marketing and sales materials) as transaction-level rules.

[14] As described in more detail in a letter submitted to Commissioner Sommers by the Futures Industry Association, dated November 2012, we suggest the following technical revisions to items (iii) and (iv) of that definition:

> (iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is ~~exclusively~~ **primarily** for foreign employees of such entity; and
>
> (iv) An estate or trust **organized under the laws of the United States**, the income of which is subject to U.S. income tax regardless of source.

consistent with those proposed as part of the Commission's proposed phase-in exemption, subject to:

- Permitting all non-U.S. SDs and non-U.S. MSPs to delay compliance with SDR and large trader reporting for swaps with non-U.S. counterparties; and

- Permitting the foreign branches of U.S. SDs to report swaps with non-U.S. counterparties pursuant to Rule 45.3 by the close of business on the next business day following the day the swap was executed.

- Aggregation Relief. We request that DSIO confirm that it will not recommend that the Commission commence enforcement action against a person for a failure to register as an SD prior to July 1, 2013, provided that the person would qualify for the *de minimis* exception in Rule 1.3(ggg)(4) but for the requirement to include swap positions connected with swap dealing activity by other entities controlling, controlled by or under common control with the person for purposes of determining whether the person qualifies for the exception. This request is intended to give the Commission additional time to consider its approach to aggregation.

- Segregation Relief. We request that DSIO confirm that it will not recommend that the Commission commence enforcement action against an SD or MSP for a failure to comply with Section 4s(l) of the CEA prior to the compliance date associated with final Commission rules implementing Section 4s(l).

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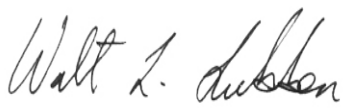
Based on the foregoing, we respectfully request that the Commission and its staff grant the relief described in this letter. In addition, as noted above, we request that the Commission and its staff confirm that, if they decide not to grant this request or another industry request pending before them as of December 3, 2012, or to grant narrower relief or a different interpretation than what was requested, they will grant-time limited transition relief to permit the requesting party(ies) to engage in discussions with the staff about an appropriate remediation plan, provided that such party(ies) are acting in good faith.

Please do not hesitate to contact the undersigned for any further information the Commission or its staff may require in connection with this request.

Very truly yours,



Walt Lukken
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The Futures Industry Association

Sarah A. Miller
Chief Executive Officer
Institute of International Bankers
Chief Executive Officer
Institute of International Bankers

Kenneth E. Bentsen, Jr.
Executive Vice President
Public Policy and Advocacy
SIFMA

Trade Association Signatories

The **Futures Industry Association** ("FIA") is the leading trade organization for the futures, options and OTC cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearinghouses, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions. FIA's core constituency consists of futures commission merchants, and the primary focus of the association is the global use of exchanges, trading systems and clearinghouses for derivatives transactions. FIA's regular members, who act as the majority clearing members of the U.S. exchanges, handle more than 90% of the customer funds held for trading on U.S. futures exchanges.

The **Institute of International Bankers** ("IIB") is the only national association devoted exclusively to representing and advancing the interests of the international banking community in the United States. Its membership is comprised of internationally headquartered banking and financial institutions from over 35 countries around the world doing business in the United States. The IIB's mission is to help resolve the many special legislative, regulatory, tax and compliance issues confronting internationally headquartered institutions that engage in banking, securities and other financial activities in the United States. Through its advocacy efforts the IIB seeks results that are consistent with the U.S. policy of national treatment and appropriately limit the extraterritorial application of U.S. laws to the global operations of its member institutions.

The **Securities Industry and Financial Markets Association** ("SIFMA") brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.