

April 11, 2013

Ms. Melissa Jurgens, Secretary  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1,214 (January 7, 2011) RIN 3038-AD18; Regulation 37.404 (“Ability to Obtain Information”)

Dear Ms. Jurgens:

The Wholesale Market Brokers’ Association, Americas (“WMBAA” or “Association”)<sup>1</sup> submits the following comments to the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) regarding concerns related to § 37.404 of the proposed Core Principles and Other Requirements for Swap Execution Facilities (“proposed SEF rules”)<sup>2</sup> under the Commodity Exchange Act (“CEA”). The WMBAA addressed this provision in its March 8, 2011 comment letter<sup>3</sup> and seeks to expand on those remarks in this letter.

Proposed § 37.404 would require a swap execution facility (“SEF”) to have rules that require traders in its swaps to keep records of their trading, including records of their activity in the underlying commodity and related derivatives markets, and make such records available, upon request, to the SEF and the Commission. In addition, a SEF with customers trading through intermediaries would be required to either use a comprehensive large-trader reporting system (“LTRS”) or be able to demonstrate that it can obtain position data from other sources in order to conduct an effective surveillance program.

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<sup>1</sup> The WMBAA is an independent industry body representing the largest inter-dealer brokers operating in the North American wholesale markets across a broad range of financial products. The five founding members of the group are: BGC Partners; GFI Group; ICAP; Tradition; and Tullett Prebon. For more information, please see [www.wmbaa.org](http://www.wmbaa.org).

<sup>2</sup> Core Principles and Other Requirements for Swap Execution Facilities, 76 Fed. Reg. 1,214 (January 7, 2011).

<sup>3</sup> See letter from the WMBAA to David Stawick, Secretary, CFTC, dated March 8, 2011, *available at* <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31296> (“The WMBAA does not believe that the CEA provides sufficient authority for this requirement. The legislation is clear as to the SEF’s core principles, but does not provide the basis for such a prescriptive rule. Further, the WMBAA believes this provision may be more appropriate under Core Principle 5 – Ability to Obtain Information. The WMBAA seeks additional detail on this requirement in the final rules. For example, the WMBAA would appreciate specific direction from the Commission enumerating the duration that records must be retained and the format for record retention that would satisfy the Proposed Rules. The WMBAA also seeks additional information on the LTRS, including the scope of the data and detail on how the data will be maintained. Finally, consistent with other comments in this letter, the WMBAA asks the Commission to carefully consider its use of the phrases “traders” and “customers” and either define them or use more accurate terms that are in line with the current competitive OTC trade execution marketplace.”).

The WMBAA is supportive of a regulatory regime that includes electronic trade reporting. As the WMBAA's members have historically demonstrated through successful Trade Reporting and Compliance Engine ("TRACE") reporting, these firms have the capabilities to comply with any requirement for reporting swap transaction data as soon as technologically practicable. Further, WMBAA members are willing to report this information to any entity designated by the Commission, including a swap data repository or the Commission itself.

However, requiring a SEF to report certain information that it does not possess and cannot access would be an unprecedented development. For the reasons enumerated below, compliance with proposed §37.404 will be factually impossible. While SEFs will monitor for manipulative and abusive behavior, given the competitive relationship among trading systems and platforms, SEFs will be unable to obtain position data from other SEFs. Further, SEFs traditionally do not receive this data from other sources, including derivatives clearing organizations ("DCOs"), clearing members, and market participants.

The Commission should not adopt or revise any provision in the final SEF rules that requires a SEF to use a comprehensive LTRS or obtain position data from other sources. Alternatively, Commission should clarify in the final rules that, with respect to conducting a surveillance program, a SEF is responsible for obtaining data as a result of trading activity solely on its trading system or platform.

SEFs will provide significant improvements to regulatory oversight capabilities. For example, SEFs will capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. The WMBAA member firms, upon registration, will also assist the CFTC in monitoring and evaluating market activity on an ongoing basis, including conducting real-time monitoring of trading and comprehensive and accurate trade reconstruction capabilities.

### **SEFs Will Not Receive Position Data from Other Sources**

In the OTC swaps market, because of the fungibility of products, a market participant may trade the same swap on multiple SEFs. For example, a market participant may establish a position on two SEFs and subsequently close a portion of such position on a third SEF. Neither a DCO nor a clearing member would be able to attribute a particular position to an individual execution platform.<sup>4</sup> Therefore, SEFs will not be able to obtain meaningful position data regarding large traders from DCOs and clearing members.

Further, unlike the vertically-siloed futures market model, clearing takes place after and separately from execution, frequently on different platforms offered by distinct, competitive service providers in the OTC swaps market. As a result, DCOs are not likely to disaggregate a participant's trading activity by execution platform and report that information back to the SEFs.

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<sup>4</sup> In addition to the complications related to attributing positions to particular execution platforms, providers of back-office software, such as SunGard and Ion, currently provide position data to the applicable DCO and the Commission. Such back-office systems would likely require adaptation in order to transmit position data to SEFs.

Lastly, market participants would resist a requirement to provide position data to SEFs for several reasons. Market participants that are not clearing members do not maintain technology for the purpose of transmitting position data to their execution platforms. Further, even if manual reporting was acceptable to a SEF, it would be time-consuming and error-prone, at least with respect to active traders. A market participant that trades on multiple SEFs is likely to be reluctant to provide information related to activity on other SEFs.

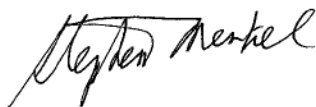
The WMBAA has described the impossibility of obtaining position data from market participants in the context of the Commission's proposed position limit requirements.<sup>5</sup> § 37.600 of the proposed SEF rules would require a SEF that is a trading facility to adopt, for each of the contracts of the facility, as necessary and appropriate, position limitations or position accountability for speculators. As the WMBAA has previously explained, the enforcement of position limits by individual SEFs would be virtually impossible as SEFs are singular execution facilities that do not possess the legal or commercial control over the positions of market participants. In other words, a SEF can and should be required to enforce rules for trading activity on their respective platforms alone, but not for other market activity away from its trading system or platform.

Similarly, SEFs will not be able to realistically access position data related to trading activity beyond their respective platforms. Accordingly, we respectfully request that the Commission either withdraw the requirement in § 37.404(b) or clarify in the final rules the limited responsibility of SEFs with respect to obtaining data.

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The WMBAA urges the Commission to adopt final SEF rules consistent with the statute. Thank you for the opportunity to express our concerns.

Sincerely,



Stephen Merkel  
Chairman, WMBAA

cc: The Honorable Gary Gensler, Chairman  
The Honorable Jill Sommers, Commissioner  
The Honorable Bart Chilton, Commissioner  
The Honorable Scott O'Malia, Commissioner  
The Honorable Mark Wetjen, Commissioner

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<sup>5</sup> See letter from the WMBAA to the CFTC, dated March 8, 2011, at 27.