



MANAGED FUNDS
ASSOCIATION



May 27, 2014

Via Electronic Submission: <http://comments.cftc.gov>

Melissa D. Jurgens
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Re: Review of Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AE12)

Dear Ms. Jurgens:

Managed Funds Association (“**MFA**”)¹ and the Alternative Investment Management Association² (“**AIMA**”, and together with MFA, “**we**”) appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (“**Commission**”) on its “Review of Swap Data Recordkeeping and Reporting Requirements” (the “**Swap Data Comment Release**”)³. Our comments are intended to assist the Commission and its interdivisional staff working group in resolving the reporting challenges faced by our members, as well as enhancing reported swap data quality, harmonization and accessibility to meet the Commission’s various regulatory purposes.

¹ Managed Funds Association represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent and fair capital markets. MFA, based in Washington, DC, is an advocacy, education and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, the Americas, Australia and many other regions where MFA members are market participants.

² AIMA is the trade body for the hedge fund industry globally; our membership represents all constituencies within the sector – including hedge fund managers, funds of hedge fund managers, prime brokers, fund administrators, accountants and lawyers. Our membership comprises over 1,300 corporate bodies in over 50 countries.

³ Review of Swap Data Recordkeeping and Reporting Requirements; Request for Comment, 79 Fed. Reg. 16689 (March 26, 2014).

We are fully committed to implementing swap data reporting as required by the Commission's final rules on real-time public reporting⁴ and swap data repository ("SDR") reporting⁵ (together, the "**Reporting Rules**"). We acknowledge that the Commission needs access to a comprehensive and standardized data set with respect to swap transactions to monitor risk in these markets, facilitate compliance with Commission regulations, and surveil the markets for potential fraud or abuse. However, we respectfully urge the Commission to amend or clarify, as warranted, certain aspects of its Reporting Rules to improve the reporting process and the quality of the collected data, to reduce reporting compliance complexities, and to enhance further the confidentiality of reported swap transaction data.

I. **Executive Summary**

In this letter, we respond to particular questions in the Swap Data Comment Release to assist the Commission in improving and refining the swap data reporting regime. Following is a bullet list of our main responses and recommendations:

- **Confirmation Data:** We believe that confirmation data reported to SDRs should include standardized data fields that represent the customary economic data elements of swaps in each asset class. We do not believe that reported confirmation data should incorporate terms by reference.
- **Valuation Data:** We believe that derivatives clearing organizations ("**DCOs**") should be the only entities required to report valuation data for cleared swaps to an SDR.
- **Reporting Party Status Change:** We believe that the Commission should provide a reasonable phase-in period for compliance with the reporting counterparty obligations after the date of the applicable status change for any buy-side firm to assume reporting counterparty obligations. To avoid potential interruptions and inaccuracies in reporting to an SDR, we suggest that the Commission should require a Commission-registered swap dealer affiliate of a de-registered swap dealer to assume the reporting counterparty obligations, when applicable.
- **Bespoke Swaps:** We encourage the Commission to monitor the development of standard industry trade representations for bespoke, exotic or complex swaps, and to work with relevant industry bodies to ensure that data fields for such products are amenable to standardization, relevant for regulatory purposes and workable for reporting counterparties to comply with the Reporting Rules.

⁴ See Commission's final rulemaking on "Real-Time Public Reporting of Swap Transaction Data", 77 Fed. Reg. 1182 (January 9, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-09/pdf/2011-33173.pdf>.

⁵ See Commission final rulemaking on "Swap Data Recordkeeping and Reporting Requirements", 77 Fed. Reg. 2207 (January 13, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-13/pdf/2011-33199.pdf>. See also Commission final rulemaking on "Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps", 77 Fed. Reg. 35200 (June 12, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-06-12/pdf/2012-12531.pdf>.

- Reporting Package Transactions: With respect to SDR reporting under Part 45, we suggest reporting package transactions at the individual component level. However, we believe real-time public dissemination of swap market data under Part 43 should reflect the actual economic transactions that took place and the pricing of those transactions at the package (vs. component) level.
- Reporting Collateral Information for Consistency with EU Rules: We welcome the Commission's attempts to coordinate with EU regulators and achieve sensible harmonization. However, we respectfully urge the Commission to proceed with caution in considering whether to import the EU's collateral information reporting requirement into the Reporting Rules.
- Alpha Swap Reporting of Swaps Intended to be Cleared: We believe that there is no need for the reporting of an original "alpha" swap for any swap that is executed with the intention to be cleared.

II. Responses to Particular Questions

Q1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.

Q1a. For confirmations that incorporate terms by reference (e.g., ISDA Master Agreement; terms of an Emerging Markets Association ("EMTA")), which of these terms should be reported to an SDR as confirmation data?

We believe that the confirmation data reported to SDRs should include standardized data fields that represent the customary economic data elements of swaps in each asset class. To facilitate consistent confirmation data across asset classes, we recommend that the Commission leverage the collaborative work of the Commission's Office of Data and Technology, SDRs and other industry participants to develop standardized data fields by asset class.

We do not believe that reported confirmation data should incorporate terms by reference, such as ISDA Master Agreement provisions and ISDA definitions, which contain privately negotiated modifications in the related Schedules and Credit Support Annexes, with further modifications in the final agreed terms for particular swaps. Reporting of such negotiated terms to SDRs as confirmation data would introduce unnecessary complexities and operational challenges for achieving the requisite data consistency, harmonization and accessibility for regulatory purposes. Most of these terms are legal and non-economic and thus, are not amenable to standardization. In our view, these challenges far outweigh the relatively marginal transparency benefits from the required reporting of such terms.

Q8a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?

We do not believe that the Reporting Rules should require SDs, MSPs or any other reporting counterparty to provide valuation data for cleared swaps to SDRs. The DCO is already required to report valuation data to the SDR on a daily basis. We believe it is neither necessary nor desirable for an SDR to receive this information from two separate sources. It is unclear how the SDR would maintain multiple valuations for a given reported swap in its database, or what benefit this would provide. The valuation data provided by the DCO for a given reported swap will generally be more accurate and robust than that from a given reporting counterparty, since DCOs have procedures in place for valuing open swap positions that source and validate pricing information from a variety of sources. Finally, given that the DCO uses its daily marks to value market participants' portfolios and to calculate daily variation margin payment obligations, it would be misleading or confusing for regulators to review or try to interpret SDR data that included alternate or inconsistent valuation data, particular in the event of a market disruption.

Q12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3)[footnote omitted], what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?

Any change in status that results in a non-reporting counterparty, such as a fund or other customer, becoming a reporting counterparty presents operational challenges for any buy-side firm. For example, if a fund's swap dealer counterparty ceased being a registered swap dealer, the fund could become the reporting counterparty for their swaps. Compliance with the Commission's reporting counterparty obligations requires sufficient time and resources for a new reporting counterparty to build the necessary reporting infrastructure. In addition to operational infrastructure, the new reporting counterparty would need to enter into legal agreements with SDRs, develop connectivity with the relevant SDR(s), develop reporting templates and workflows, and test its new reporting systems. In such circumstances, we believe that the Commission should provide a reasonable phase-in period for compliance with the reporting counterparty obligations after the date of the applicable status change for any buy-side firm to assume reporting counterparty obligations. However, to avoid potential interruptions and inaccuracies in reporting to an SDR, we suggest that the Commission should require a Commission-registered swap dealer affiliate of a de-registered swap dealer to assume the reporting counterparty obligations, when applicable.

To implement these suggestions, we recommend that the Reporting Rules should provide a reasonable transitional period during which a fund's de-registered swap dealer counterparty would continue to perform the reporting counterparty obligations until its Commission-registered swap dealer affiliate has assumed the reporting counterparty obligations, or the fund itself has made the necessary arrangements to assume those obligations.

Q.16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (e.g., FpML, FIXML). In

particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?

We believe that standard industry representations, such as FpML and FIXML, still represent the best methodology to standardize the data elements of a bespoke, exotic or complex swap, specifically given the need for such data to be reported electronically. We welcome the continued development of such standard industry representations in this regard.⁶ Further, we believe that many of the difficulties several other jurisdictions face when reporting bespoke and complex products on a dual counterparty reporting basis, such as the lack of consistency across reports due to the different ways in which individual firms' systems record bespoke, exotic or complex swaps, are alleviated by the Commission's rules mandating single-sided reporting.

Notwithstanding these positive developments, bespoke, exotic or complex swaps do not currently have a fully standardized trade representation. Thus, we respectfully urge the Commission to provide more time to relevant industry bodies to ensure that full product coverage is achieved, particularly with respect to bespoke, exotic or complex equity swap products. We also believe that in addition to getting the data fields correct from the outset, the standardization of data elements for bespoke, exotic or complex swaps is an ongoing process. Therefore, we suggest that the Commission and other regulators should continue to work with relevant industry bodies to ensure that data fields for such products are relevant from a data quality perspective and broad enough to be workable. This point is particularly important in respect of bespoke, exotic or complex swaps as such swaps are traded on a limited basis and are subject to terms which are, by definition, not amenable to standardization.

Q.27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?

Our suggested enhancements to the Commission's reporting regime relevant to package transactions are with respect to real-time public reporting (Part 43), rather than SDR reporting (Part 45). Given that the pricing of package transactions occurs at the package level, it is worthwhile for the real-time public dissemination of swap market data to reflect the actual economic transactions that took place and the pricing of those transactions at the package (vs. individual component) level. With respect to SDR reporting, however, we suggest reporting package transactions at the individual component level. This reporting recommendation is consistent with how the individual swap legs are cleared and maintained at the DCO, as well as with how continuation data, including ongoing valuation data, will be reported. In addition, at any time after the execution of a package transaction, individual components could be

⁶ We note that FpML, for instance, now provides for the specification of an "Exotic" classification in the taxonomy.

independently closed out, while others could remain open, which would pose further challenges if SDRs held data at the package level.

Q.32 Taking into account the European Union's reporting rules [footnote omitted] and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral reported for cleared and uncleared swaps?

We commend the Commission's efforts to take into account the regulatory regimes of other jurisdictions, particularly the regime implemented in the European Union (the "EU"). However, international coordination not only involves ensuring that regulatory regimes are harmonized, where appropriate and sensible, but also learning from the experiences of the Commission's regulatory counterparts in the EU or elsewhere. The EU's obligation to report collateral information will become effective on August 12, 2014. Since the obligation is not yet effective in the EU, we expect that many practical issues and reporting challenges may manifest themselves during the implementation process. Therefore, we encourage the Commission to proceed with caution.

Many of our members who will be subject to the EU's collateral information reporting obligation have expressed significant uncertainty about how to report their collateral in accordance with EU reporting rules. The infrastructure of many market participants, particularly buy-side firms, is not yet ready to support complex collateral reporting requirements required by EU reporting rules, such as the reporting of collateral on a portfolio basis, despite the impending August 12 compliance date. Although it is likely that such buy-side firms would not be required to report this information to an SDR (due to the Commission's reporting hierarchy), their swap dealer counterparties will still need to reconcile their own collateral data with their buy-side counterparty's collateral data. We welcome the opportunity to discuss our concerns with the Commission and its staff to facilitate the Commission's careful consideration of whether to import the EU's collateral information reporting obligation into the Reporting Rules.

Q.33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. [Note: The specific circumstances under clauses a., b. and c. with respect to the reporting of original (alpha) swaps and the two resulting swaps in the clearing process (beta and gamma) have been omitted.]

Q.33d. Please discuss whether in each of the circumstances described above [in clauses a., b. and c.] there actually is an alpha swap.

We believe that there is no need for the reporting of an alpha swap for any swap that is executed with the intention to be cleared (an "ITBC Swap"). Our position is based on the fact that under the Commission's straight-through processing rules⁷ and existing market practices,

⁷ See Commission Final Rules on "Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management", 77 Fed. Reg. 21307 (April 9, 2012), available at: <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2012-7477a.pdf>.

ITBC Swaps are submitted and accepted for clearing immediately. The alpha and beta/gamma swap reporting paradigm was based on a legacy novation-based clearing model that no longer exists for ITBC Swaps.

Further, with respect to ITBC Swaps executed on registered swap execution facilities (“SEFs”) or designated contract markets, based on the Commission staff’s guidance and SEF rules, if a SEF-executed ITBC Swap is rejected from clearing by the DCO, the ITBC Swap is *void ab initio*.⁸ Thus, there is no actual alpha swap that arises when a SEF-executed ITBC Swap is rejected from clearing. For ITBC Swaps subject to the Commission’s clearing mandate but not executed on SEFs, given the clearing requirement, the swap cannot exist as an uncleared swap. Thus, there is either a cleared swap (*i.e.*, beta and gamma) or no swap at all. Again, no alpha swap arises. For any ITBC Swap that clears as intended, we respectfully submit that there is no “open” alpha swap for Part 45 reporting purposes.⁹

For these reasons, we believe the alpha swap reporting paradigm is being misapplied to ITBC Swaps. This misapplication is causing unnecessary reporting complications and duplicative reporting to SDRs, as the original swap remains “open” in SDR data, thus disregarding the legal operation of Commission and DCO rules.¹⁰ The alpha swap reporting paradigm for ITBC Swaps also raises confidentiality concerns among swap market participants with respect to anonymously traded and cleared swaps, as the SDR is maintaining unnecessary swap data on original swap executions.¹¹

⁸ See Commission Staff Guidance on Swaps Straight-Through Processing dated September 26, 2013, at p. 5.

⁹ Commission regulation 39.12(b)(6) requires derivatives clearing organizations (“DCOs”) to have rules providing that once a swap is accepted for clearing by a DCO such swap is extinguished and is replaced by to equal and opposite swaps. 17 CFR 39.12(b)(6). Thus, by operation of Commission and DCO rules, the alpha swap ceases to exist.

¹⁰ See Commission TAC Meeting Slide Deck, “Update on Swap Data Reporting Data Priorities and Next Steps”, February 10, 2014, at p. 11 (“Alpha swaps remain open in SDR data, appear to be bilateral, but subject to the clearing requirement. Data in SDR must be current and accurate (17 CFR 45.4, 49.11)”).

¹¹ We acknowledge that the Commission recently issued an interim final rule on “Swap Data Repositories – Access to SDR Data by Market Participants”. On April 24, 2014, MFA submitted a comment letter to the Commission to express strong support for the Commission’s formal revision to Section 49.17(f)(2) of its final SDR rules, available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59840>. Without this interim final rule to effect a formal revision, a counterparty to an anonymously traded and cleared swap could have secured private information from an SDR regarding the identity of the other counterparty to that swap, or that counterparty’s clearing member.

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We thank the Commission for the opportunity to provide comments on the Swap Data Comment Release. We would welcome the opportunity to discuss our responses and views in greater detail. Please do not hesitate to contact Stuart J. Kaswell or Laura S. Harper of MFA at (202) 730-2600 and Jiří Król, Adam Jacobs or Wesley Lund of AIMA at +44 (0) 20 7822 8380 with any questions the Commission or its staff might have regarding this letter.

Respectfully submitted,

/s/ Stuart J. Kaswell

/s/ Adam Jacobs

Stuart J. Kaswell
Executive Vice President & Managing
Director, General Counsel
Managed Funds Association

Adam Jacobs
Director, Head of Markets Regulation
Alternative Investment Management
Association

cc: The Hon. Mark P. Wetjen, Acting Chairman
The Hon. Scott D. O'Malia, Commissioner

Vincent McGonagle, Director, Division of Market Oversight