



MANAGED FUNDS  
ASSOCIATION



October 30, 2015

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

Mr. Christopher Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, DC 20581

**Re: Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps (RIN 3038–AE12)**

Dear Mr. Kirkpatrick:

Managed Funds Association (“MFA”)<sup>1</sup> and the Alternative Investment Management Association<sup>2</sup> (“AIMA”, and together with MFA, “we”) appreciate the opportunity to provide comments to the Commodity Futures Trading Commission (“Commission”) on its proposed rulemaking on “Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps” (the “Proposed Amendments”)<sup>3</sup>. We appreciate that the Commission’s proposals represent improvements to the *status quo* by clarifying and simplifying market participants’ reporting obligations to swap data repositories (“SDRs”) under Part 45 of the Commission’s regulations<sup>4</sup> with respect to cleared swaps. Our comments are intended to assist the Commission in further simplifying the cleared swaps reporting requirements, to enhance

---

<sup>1</sup> 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.

<sup>2</sup> As the global hedge fund association, the Alternative Investment Management Association (AIMA) has over 1,500 corporate members (with over 9,000 individual contacts) worldwide, based in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors.

<sup>3</sup> Amendments to Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps; Proposed Rule, 80 Fed. Reg. 52544 (Aug. 31, 2015) (“Proposing Release”).

<sup>4</sup> See Commission Final Rulemaking on “Swap Data Recordkeeping and Reporting Requirements”, 77 Fed. Reg. 2207 (Jan. 13, 2012), available at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-13/pdf/2011-33199.pdf>.

reported swap data quality for the Commission’s regulatory purposes and to improve compliance efficiencies for SDRs and reporting parties.

As we explain in our letter, we support the Proposed Amendments that establish the registered derivatives clearing organization (“**DCO**”) as the reporting party for clearing swaps, as defined in the Proposed Amendments.<sup>5</sup> In particular, we applaud the Commission for proposing to remove the existing requirement that a registered swap dealer (“**SD**”) or major swap participant (“**MSP**”) report daily valuation data for cleared swaps, which would be consistent with one of our prior recommendations to require only the DCO to provide these data.<sup>6</sup> However, we respectfully suggest that the Commission’s Proposed Amendments fall short in reducing reporting complexities and the risk of data fragmentation that would undermine the Commission’s ability to trace the life cycle of a cleared swap transaction. In particular, we urge the Commission to reconsider the multi-swap reporting approach and to leverage the capabilities of DCOs to reduce further the complexities of its cleared swaps reporting regime. For swaps that are executed on a swap execution facility (“**SEF**”) or designated contract market (“**DCM**”) with the intention to be cleared (“**SEF ITBC Swaps**”), we believe the Commission should reflect the practical market reality and relevant Commission requirements around SEF ITBC Swaps and clarify that no “alpha” swap exists. In addition, we similarly believe reporting obligations should not exist in respect of any alpha swap that is executed bilaterally off-SEF/DCM with the intention to be cleared (“**Non-SEF ITBC Swap**”, and together with SEF ITBC Swaps, “**ITBC Swaps**”). We explain our reasons below.

### **I. The Commission Should Eliminate Alpha Swap Reporting for ITBC Swaps to Reduce the Complexity of its Reporting Requirements**

Specific elements of the existing regulatory framework and current market practice favor eliminating alpha swap reporting requirements for both SEF ITBC Swaps and Non-SEF ITBC Swaps.

- **SEF ITBC Swaps**. As our previous comment letter explained, we believe that the alpha and beta/gamma swap<sup>7</sup> reporting approach assumes a legacy novation-based clearing

---

<sup>5</sup> See Proposing Release at 52572, § 45.1 (defining “clearing swap” to mean “a swap created pursuant to the rules of a derivatives clearing organization that has a derivatives clearing organization as a counterparty, including any swap that replaces an original swap that was extinguished upon acceptance of such original swap by the derivatives clearing organization for clearing”).

<sup>6</sup> See MFA’s joint comments with AIMA on the CFTC’s “Review of Swap Data Recordkeeping and Reporting Requirements”, 79 Fed. 16689 (Mar. 26, 2014), filed with the CFTC on May 27, 2014, available at: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=59872>.

<sup>7</sup> See Proposing Release at 52545 (“The original swap that is extinguished upon acceptance for clearing is commonly referred to as the ‘alpha’ swap and the equal and opposite swaps that replace the original swap are commonly referred to as ‘beta’ and ‘gamma’ swaps. The Commission has observed that certain provisions of part 45 could better accommodate the cleared swap framework set forth in § 39.12(b)(6).”).

model that no longer reflects the practical market reality for SEF ITBC Swaps.<sup>8</sup> By contrast, market practice more closely resembles an “open offer” system.<sup>9</sup> Adapting the reporting regime to reflect this market practice would offer legal consistency with the Commission’s clearing and straight-through-processing (“STP”) requirements, including void *ab initio* for SEF ITBC Swaps.

Based on the Commission’s guidance and SEF rules, if a SEF ITBC Swap is rejected from clearing by the DCO, the SEF ITBC Swap is void *ab initio*.<sup>10</sup> Thus, there is no actual alpha swap that exists when a SEF ITBC Swap is rejected from clearing. The Proposing Release acknowledges that there will be no need for a DCO to report continuation data in such a rejection scenario, because there is no “original swap” or “clearing swap” as defined in the Proposed Amendments.<sup>11</sup> On the other hand, if the DCO accepts the SEF ITBC Swap for clearing, there are only the resulting beta/gamma swaps, without any need to terminate/novate a pre-existing alpha swap. The Commission’s STP rules are intended to ensure that this process happens quickly, with a minimal time interval between execution on a SEF/DCM and acceptance for clearing by the DCO. Furthermore, the execution venue should be able to provide the DCO with all of the relevant information regarding the execution to ensure that all necessary data are included when the DCO reports the beta/gamma swaps, such as time of execution and market participants involved. As a result, eliminating alpha swap reporting for SEF ITBC Swaps would significantly reduce complexity and streamline the data actually reported without sacrificing the amount of information available to the Commission regarding the entire life cycle of the swap.

- **Non-SEF ITBC Swaps.** An ITBC Swap subject to the Commission’s clearing mandate but not executed on a SEF or DCM cannot exist as an uncleared swap. Thus, there is either a cleared swap (*i.e.*, beta and gamma) or no swap at all, a determination that is intended to occur quickly pursuant to the Commission’s STP rules. A similar situation exists even for Non-SEF ITBC Swaps that are cleared voluntarily, as the intention to clear is a material term of the swap. Therefore, a rejection from clearing for any Non-SEF ITBC Swap would likely require the counterparties to make significant adjustments to the original swap terms even if they wanted to exercise the theoretical ability to maintain an uncleared swap. As a result, it appears

---

<sup>8</sup> See *supra* n. 6 at p. 7.

<sup>9</sup> As the Commission explains in footnote 30 of the Proposing Release, “[u]nder an open offer system, there is no ‘original swap’ between executing parties that needs to be novated; the swap that is created upon execution is between the DCO and the clearing member, acting either as principal or agent.” Proposing Release at 52547, fn. 30 (quoting from the preamble to the adopting release for “Derivatives Clearing Organization General Provisions and Core Principles”, 76 Fed. Reg. 69334, 69361, Nov. 8, 2011).

<sup>10</sup> See Commission Staff Guidance on Swaps Straight-Through Processing dated September 26, 2013, at p. 5.

<sup>11</sup> See Proposing Release at 52552 (“If a swap is submitted to a DCO for clearing and is not accepted for clearing, the DCO will not have continuation data reporting obligations for the swap, because the swap is not an original swap or a clearing swap”). See also Proposing Release at 52572, § 45.1 for the Commission’s proposed definitions of “original swap” (“a swap that has been accepted for clearing by a derivatives clearing organization”) and “clearing swap” (*see supra* n. 5).

counterintuitive to report an alpha swap in these situations. While we support and appreciate the Commission's proposal to eliminate existing confirmation data reporting obligations for ITBC Swaps at the time of execution<sup>12</sup> as an improvement to the *status quo*, we believe it falls short on its own. As is the case for SEF ITBC Swaps, market participants executing Non-SEF ITBC Swaps should be able to provide the DCO with all of the relevant information regarding the execution to ensure that all necessary data fields are reported in the context of the beta/gamma swaps once accepted for clearing, including original time of execution and market participants involved. In addition, the DCOs should be able to maintain data regarding transactions rejected from clearing. Given the Commission's regulations and market practice around Non-SEF ITBC Swaps, we believe the Commission's policy grounds for retaining alpha swap reporting do not justify the associated reporting complexities.<sup>13</sup>

More generally, we are also concerned that the alpha swap reporting approach for both SEF ITBC Swaps and Non-SEF ITBC Swaps will fall short in reducing data fragmentation across SDRs. For example, the Proposed Amendments would authorize a SEF or DCM to report original alpha swap creation data to an SDR of its choice, while the DCO may report cleared swap creation and continuation data for the resulting beta and gamma swaps to its own SDR or another SDR of its choice.<sup>14</sup> We believe this risk of data fragmentation may undermine data quality for the Commission's supervisory purposes and increase the difficulty of tracking the life cycle of ITBC Swaps. We are concerned that this fragmentation risk would increase when individual market participants do not have the ability to direct their transactions to a particular SDR.

We acknowledge that to assist the Commission in tracing the life of a cleared swap transaction, the Commission has proposed for DCOs: (i) to generate and transmit a USI for an original swap and each clearing swap; and (ii) to include other new data fields when DCOs report continuation data for original swaps and creation data for cleared swaps.<sup>15</sup> However, we believe the need for additional data fields only highlights the unnecessary complexities of the alpha swap reporting approach for ITBC Swaps. We are also concerned with the potential complications and resulting limitations of DCOs assigning and transmitting USIs to establish

---

<sup>12</sup> See Proposing Release at 52550.

<sup>13</sup> In the Proposing Release, the Commission justifies retaining alpha swap reporting based on several policy grounds, including among them that: (1) consistent reporting of alpha swap unique swap identifiers ("USIs") is "crucial to the Commission's ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation"; and (2) determining when an alpha swap has been terminated "aids the Commission's ability to analyze cleared swap activity and to review swap activity for compliance with the clearing requirement". Proposing Release at 52549.

<sup>14</sup> Proposing Release at 52574, § 45.3(j).

<sup>15</sup> *Id.* at 52552-53 and 52559 (proposing that DCOs must report additional new data fields as continuation data for original swaps and as primary economic terms data for cleared swaps, namely: (1) the legal entity identifier ("LEI") of the SDR to which each clearing swap was reported by the DCO; (2) the USI of the original swap that was replaced by the clearing swaps; and (3) the USI for the clearing swaps that replace the original swap).

reliable linkages between original and clearing swaps without a standardized code and format. Similarly, the Commission's proposed amendment to require a DCO to report all required continuation data for original swaps – including original swap terminations – to the SDR to which the swap was originally reported and to require the SDR to accept and record such original swap terminations represents another example of the complexities caused by the alpha swap reporting approach.<sup>16</sup> We believe these complexities will further challenge the ability of SDRs to provide standardized and usable data to the Commission and other regulators.

For all of these reasons, we respectfully submit that the Commission may be asking too much of SDRs. In our view, alpha swap reporting of ITBC Swaps will continue to strain SDRs' respective capabilities to meet the Commission's needs for market surveillance of execution event history and the identities of original executing counterparties and clearing members of customers. These capabilities require SDRs to develop robust matching and confirmation systems to ensure the integrity and standardization of data they provide to the Commission. We are also concerned that retention by SDRs of unnecessary swap data on original swap executions for anonymously traded and cleared swaps raises confidentiality concerns that require the Commission's oversight and enforcement of SDRs' confidentiality obligations and systems safeguards to prevent the disclosure of original counterparty identities and their trading strategies.<sup>17</sup>

We respectfully suggest that the Commission reconsider its proposal to retain the alpha swap reporting approach for ITBC Swaps. We believe the Commission has alternative ways of tracing the history of a cleared swap transaction. These alternative approaches would leverage the existing capabilities of DCOs and the Commission's recordkeeping requirements to reduce reporting complexities for ITBC Swaps. More specifically, by virtue of the current capabilities of DCOs, a DCO will know the LEIs of the original counterparties upon submission of an original swap for clearing. Upon creating the two new clearing swaps, the DCO can record for each not only the LEI of the counterparty, but also the LEI of the original counterparty for which the DCO is substituted. Should the Commission require further verification, the Commission has access to retrievable records of both original and cleared swap transactions under its final swap recordkeeping requirements.<sup>18</sup>

While we acknowledge the Commission's justification for retaining alpha swap reporting to maintain the current industry practice of separately reporting alpha swaps and beta and gamma

---

<sup>16</sup> Proposing Release at 52574, § 45.4(c).

<sup>17</sup> We acknowledge that the Commission is proposing to remove certain SEF/DCM notification requirements in section 45.8 to provide the LEIs of the original counterparties to a swap when the SEF/DCM cannot determine which counterparty is the reporting party. While we support this proposal, it is insufficient in addressing our confidentiality concerns.

<sup>18</sup> See Commission Final Rule, "Swap Data Recordkeeping and Reporting Requirements," 77 Fed. Reg. 2136 (Jan. 13, 2012), at 2198, § 45.2.

swaps,<sup>19</sup> we respectfully disagree with that approach based on the collective experience of our respective members. Given that swap reporting regulations are relatively recent, which the Commission continues to develop and fine-tune, and the capabilities of SDRs continue to evolve, we respectfully disagree with the characterization that there is a consistent and technologically reliable “industry practice” for reporting alpha swaps across buy-side and sell-side market participants and market infrastructure providers. Market practice continues to evolve in a number of areas, including SEF execution. We believe the Commission should seek to reflect those developments in this proposal.

If the Commission ultimately decides to retain alpha swap reporting, we suggest that the Commission should designate the DCO as the reporting party for the alpha swap and the resulting beta/gamma swaps to improve data quality for the Commission’s regulatory purposes. In our view, designating the DCO as the reporting party for all components of a cleared swap transaction would remove both: (i) the reporting burdens for sell-side firms and buy-side firms, and (ii) the resulting risk of data fragmentation across SDRs, as the DCO would report all components of a cleared swap transaction to one SDR.<sup>20</sup> In addition, we urge the Commission to address amendments to Part 39 of its regulations to ensure that the DCO receives all of the Part 45 data fields in order to have all requisite data, such as initial SDR and USI, to fulfill its expanded reporting responsibilities.

## **II. The Proposed Amendments to Establish the DCO as the Reporting Party for Cleared Swaps and to Assign Related Obligations to the DCO Provide Needed Clarity and Efficiency**

While we continue to oppose reporting of original swaps as discussed above, we support the Commission’s proposal to provide an explicit designation of the DCO as the reporting party for clearing swaps in the reporting hierarchy.<sup>21</sup> We believe this clarification will improve reporting efficiencies for clearing swaps under Part 45. In addition, we strongly support the proposal to require only the DCO, as the reporting party, to report daily valuation data for clearing swaps,<sup>22</sup> which would be consistent with our prior comment letter.<sup>23</sup> We also support several other Proposed Amendments whereby the Commission assigns various obligations to DCOs, as we believe DCOs are best suited to fulfill them for the reasons cited in the Proposing Release. More specifically, we support the following Proposed Amendments:

---

<sup>19</sup> Proposing Release at 52570.

<sup>20</sup> Designating the DCO as the reporting party for all components of a cleared swap transaction would also resolve the buy-side’s concerns with DTCC’s fee policy to charge buy-side swap counterparties for the buy-side legs of certain cleared and SEF-executed swap transactions, even though the buy-side counterparty is not the reporting party.

<sup>21</sup> Proposing Release at 52577, § 45.8(i).

<sup>22</sup> *Id.* at 52574, § 45.4(b)(2).

<sup>23</sup> *See supra* n. 6.

- New § 45.10(d) to clarify the DCO's obligations to report all data (creation and continuation) for a particular clearing swap to a single SDR, and to report all creation data for each clearing swap that replaces a particular original swap to a single SDR.
- New § 45.5(d)(1) to require a DCO to generate and assign a USI for each clearing swap upon, or as soon as reasonably practicable after, acceptance of an original swap by the DCO for clearing and prior to reporting the required swap creation data for each clearing swap.
- New § 45.5(d)(2) to require a DCO to transmit the USI for a clearing swap electronically to the SDR to which the DCO reports required swap creation data for such clearing swap as part of that report, as well as to the DCO's counterparty with respect to that clearing swap, as soon as technologically practicable after either: (i) acceptance of the original swap by the DCO for clearing; or (ii) execution of a clearing swap that does not replace an original swap.

\*\*\*\*\*

We thank the Commission for the opportunity to provide comments on the Proposed Amendments. 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 Harper Powell of MFA at (202) 730-2600 and Jiří Król, Adam Jacobs or Oliver Robinson 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/ Jiří Król

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

Jiří Król  
Deputy CEO  
Global Head of Government Affairs  
Alternative Investment Management Association

cc: The Hon. Timothy G. Massad, Chairman  
The Hon. Sharon Y. Bowen, Commissioner  
The Hon. J. Christopher Giancarlo, Commissioner

Vincent McGonagle, Director, Division of Market Oversight