



March 1, 2016

Submitted via <http://www.cftc.gov>

Re: Comments on Draft Technical Specifications for Certain Swap Data Elements

Ladies and Gentlemen:

This letter is submitted by Western Union Business Solutions (USA), LLC, and Custom House USA, LLC on behalf of themselves and their affiliates (collectively, “WUBS”), in response to the “Draft Technical Specifications for Certain Swap Data Elements” (the “Request for Comment”) published on December 22, 2015 by the staff of the Division of Swap Dealer and Intermediary Oversight and Office of Data and Technology of the Commodity Futures Trading Commission (the “Commission,” and the staff, the “Commission Staff”). We commend the Commission Staff for its continued efforts to implement Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)¹ in a manner that seeks to balance the Commission’s interest in ensuring the transparency of the U.S. swaps and FX forwards markets with the substantial costs to market participants of complying with the Commission’s regulations. We believe the Commission’s reporting regulations are a key component of the Commission’s overall Title VII regulatory regime, and we are grateful to have the opportunity to respond to the Request for Comment.

About Western Union and WUBS

The Western Union Company (“Western Union”) is a leading global provider of money transfer, currency exchange and international payment services, providing individuals and businesses with fast, reliable and convenient ways to send money and make payments around the world. Among other offerings, Western Union provides currency exchange and international payment services for business customers through the WUBS subsidiaries in the United States and elsewhere under the trade name “Western Union Business Solutions.” To help our customers manage the risk of fluctuations in foreign exchange rates attendant in making and receiving payments in foreign currencies, WUBS also offers foreign exchange products, including swaps and FX forwards, to eligible customers. Many of our customers are small and mid-size businesses for which the WUBS swaps and FX forwards represent a vital risk management tool. Many of these customers also transact in much smaller per-trade notional amounts than would be the case in the traditional swaps markets. WUBS is not a swap dealer, as it only deals in a *de minimis* amount of swaps. Additionally, WUBS transacts in much higher volumes of FX forwards than swaps. As the WUBS entities are “financial entities,” and most of WUBS customers are not financial entities, the obligation of reporting WUBS swaps and FX forwards with customers often falls on WUBS under the Commission’s reporting regulations. WUBS is therefore required to report a large number of FX forwards to a swap data repository (“SDR”). WUBS is unlike most other reporting parties in that, while certain of WUBS transactions may have high notional values, WUBS tends to enter into a large number of transactions with relatively low notional values. By contrast, we believe most swap dealers enter into a smaller number of trades with comparatively high notional values. As the cost of reporting a small trade is comparable to the cost of reporting a large trade, WUBS bears an unusually high reporting cost relative to the typical size of each reported

¹ Pub. L. 111-203 (2010).

12510 E. Belford Ave
Englewood, CO 80112
Business.westernunion.com

transaction. Therefore WUBS is particularly sensitive to any changes in the reporting regime that increase the cost of reporting.

Comments

Implementation Burden on Smaller Market Participants

The Request for Comment describes a number of modifications to existing data elements required to be reported to an SDR. The Request for Comment also describes a number of new data elements that could be required to be reported to an SDR in the future. The implementation of the changes described in the Request for Comment would be extremely costly and time-consuming for WUBS and similarly situated market participants, as it would require development and testing of entirely new algorithms to provide certain of the data elements. For example, while WUBS understands the Commission's desire to have more transparency into life cycle events, the proposal to require versioning of such events, while it appears simple on its face, will require a massive overhaul of the way in which WUBS and similar market participants currently collect and report their data. WUBS, like many other market participants, has already expended significant time and resources to put in place the systems necessary to comply with the existing reporting requirements. We recognize that changes in the reporting fields may improve the quality of data being collected and that this is a desirable end-result for both the Commission and market participants. However, in light of the difficulties of creating a data reporting system that perfectly incorporates the multiple nuanced facets of every type of contemplated transaction, the value of adding new or improved data elements should be weighed against the cost of obtaining those data elements.

In addition, WUBS recommends that the Commission and Commission Staff work with SDRs to refine the existing data already being collected before requiring the reporting of new data elements altogether. Indeed, at the February 23, 2016 meeting of the Commission's Technology Advisory Committee, representatives from the four existing SDRs (BSDLR LLC, Chicago Mercantile Exchange Inc., DTCC Data Repository and ICE Trade Vault) each expressed similar sentiments. The SDRs indicated that the laudable goals of obtaining more accurate and comprehensive information regarding the swaps markets would be better served by improving the quality of the existing data being provided by reporting parties to the SDRs and by the SDRs to the CFTC rather than requiring reporting parties to report additional or different data elements. We agree with the SDRs in this regard.

WUBS Comments on Specific Data Elements

Counterparty Dealing Activity Exclusion Type

The Commission Staff indicated in the Request for Comment that a data element indicating whether the swap constitutes "dealing" activity or is excluded from "dealing" activity may assist Commission Staff in determining whether a swap counterparty is acting as a swap dealer and whether a swap counterparty exceeds the swap dealer *de minimis* threshold. We believe this would not be a helpful addition. Whether a particular swap constitutes "dealing" activity is based on a number of different facts and circumstances, as the Commission itself has indicated in its joint release, with

the Securities and Exchange Commission, further defining the term “swap dealer.”² This analysis can be quite complex and require difficult legal judgments that require the advice of counsel. Furthermore, swaps are bilateral instruments, and a swap that constitutes dealing from the perspective of one party may not constitute dealing for the other party. A reporting party may be able to determine to some level of comfort that its own side of a swap either is or is not a “dealing” swap, but the reporting party likely would have no ability to make that determination with respect to the other side of the swap. Even with respect to a reporting party’s determination of whether its own side of the swap constitutes dealing, we do not believe this legal conclusion should be an element of the reporting regime. The determination of whether a swap is “dealing” may come with a number of qualifications due to the inherently subjective nature of the Commission’s “facts and circumstances” approach to the swap dealer definition. A reporting party may be able to make a determination that its entry into a particular swap is likely to be, is substantially likely to be, is unlikely to be, or is almost certain to be, etc., swap dealing activity. However, reducing that complexity down to a single yes/no check box requires the market participant to discard all of this careful analysis (which is called for by the Commission itself) in favor of a binary determination. We do not see the value in a data field that will be inherently inaccurate and potentially misrepresent the actual legal conclusion reached by the reporting party. The reporting regulations should focus on objective facts, not nuanced legal conclusions. We urge the Commission to seek out other means of mining the data provided by the SDRs to look for activity that appears to be dealing activity and to seek additional information from any parties that appear to be engaged in more than *de minimis* swap dealing without being registered as swap dealers.

If the Commission does adopt a “dealing” field, we believe the Commission should first confirm that whether a market participant selects yes or no for that field will not be given any evidentiary value in determining whether the market participant is acting as a swap dealer with respect to the swap in question.

Counterparty-Related Data Elements

The Commission Staff indicates that data elements related to the “Ultimate Parent” and “Ultimate Guarantor” of swap counterparties is critical to providing the Commission with sufficient data to evaluate the overall risks undertaken by a corporate group. While WUBS understands that there would be some benefit to having such information reported to SDRs, the implementation of such data elements would necessitate the development of significant technological infrastructure on the part of WUBS and similarly situated market participants, as well as procedural changes to collect this information from counterparties. Consequently, WUBS respectfully requests that consideration be given to whether the added benefit of these fields would justify these substantial new costs. Additionally, to the extent the Commission is interested in this data in order to examine swap dealing activity among affiliates, WUBS reiterates the difficulty in accurately reporting on a market participant’s swap dealing activity when participants are relying heavily on nuanced legal analysis to determine their level of activity in the first place.

² See CFTC and SEC, Notice of Proposed Joint Rulemaking: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant” and “Eligible Contract Participant,” Securities Exchange Act Release No. 63452, 75 FR 80177-78 (Dec. 21, 2010).

Reporting of Collateral / Margin

The Commission Staff indicates that data related to the posting of collateral and margin may assist in evaluating the amount of risk undertaken by swap counterparties. WUBS believes that reporting collateral/margin data will be challenging, as relevant amounts often vary daily and even intraday. Further, as the Commission Staff itself notes, margin requirements are, in many cases, determined on the basis of an aggregate portfolio. WUBS believes that the Commission Staff's proposal that the same portfolio margin amount be reported for each transaction that is part of the same portfolio netting set will present a significant burden to market participants because market participants will need to generate and maintain unique netting set identifiers. In addition, a collateral valuation reporting field will require market participants to constantly update their reported valuation data elements due to the inherent fluctuations in value associated with many common forms of eligible collateral (e.g., currency, U.S. Treasury securities or publicly traded equities). Taken together, the proposed changes to the collateral/margin data elements appear to present major implementation costs and burdens, especially for smaller market participants such as WUBS.

Business Day Convention / Holiday Calendar / Additional Date Fields

WUBS requests that consideration be given as to whether the "Business Day Convention" and "Holiday Calendar" data elements, along with the requests for additional date-oriented fields such as "Date of Settlement" and "Scheduled Termination Date" would benefit the CFTC in a manner that justifies the cost and time required of market participants to appropriately code these fields into their reporting systems. The Request for Comment did not indicate what benefit the Commission Staff expected to obtain from having access to this additional data.

Global Harmonization and Iterative Implementation

As part of a multi-national organization operating in numerous financial markets across the globe, WUBS is sensitive to the global harmonization of data reporting regimes. To that end, WUBS appreciates the Commission Staff's recognition that the reporting rules should be carefully considered in light of similar efforts to mandate the reporting of transactions being implemented by regulators in Europe, Asia and elsewhere. WUBS appreciates the Commission Staff's efforts to review, to the extent possible, its own development of the reporting rules alongside those of foreign regulators. The operational burdens and financial costs associated with the implementation of a reporting system across various jurisdictions are substantial, especially for relatively small market participants.

WUBS appreciates the Commission Staff's recognition that the development of technical specifications for reportable swap data elements should be an iterative process. WUBS also recognizes the CFTC's need for complete and accurate data relating to the swaps and FX forwards markets. However, WUBS would also like to note that a certain degree of cost will be incurred by market participants each time the Commission makes changes to the reporting regime. Indeed, whether it is in the form of implementation burdens or financial expenditures to adapt current systems, infrastructure, policies and procedures to a changing reporting regime, market participants will be forced to incur real costs whether the Commission makes revisions to a single required data element or numerous data elements at once. As such, WUBS respectfully requests that to the extent the Commission considers multiple modifications to the required data elements within the reporting regime that it proposes such modifications all at once or in reasonable batches, instead of through a larger number of iterative changes, so that market participants may more easily absorb the significant fixed

costs associated with each change to the re-opening of the technical reporting requirements, whether it includes a single change or many changes. There are a number of attendant tasks involved in each edit to our systems, such as appropriately allocating the proper resources, overhauling information technology systems, training information technology employees, recoding existing systems and other operational requirements. It would be more cost effective for market participants to, for example, change twelve data fields in January of a given year than to change one data field each month over the course of that year. Similarly, WUBS respectfully requests that any changes to the reporting rules are implemented pursuant to a reasonable phase-in plan that provides adequate time for both SDRs, and subsequently market participants, to develop, operate and test the related information technology systems and corporate operations required to comply with the revised reporting requirements.

WUBS appreciates the opportunity to respond to the Request for Comment. We would be pleased to provide the Commission Staff with any additional information that might be useful in determining the final form of the Technical Specifications for Certain Swap Data Elements.

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Very truly yours,



Cynthia G. Cross
VP & Associate General Counsel