



FINANCIAL
SERVICES
ROUNDTABLE

By Electronic Mail

March 7, 2016

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

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

Dear Mr. Kirkpatrick:

The Financial Services Roundtable¹ (“FSR”) respectfully submits these comments in response to the Draft Technical Specifications for Certain Swap Data Elements (the “Draft Technical Specifications”) published by the staff (the “Staff”) of the U.S. Commodity Futures Trading Commission (“CFTC”) on December 22, 2015.² We acknowledge the Staff’s efforts in preparing the Draft Technical Specifications and respectfully submit the following comments in response to question number 7 in the Draft Technical Specifications.³ In addition to our comments below, we would also like to endorse the comments and recommendations of the International Swaps and Derivatives Association which were submitted in response to CFTC’s request for comment in this area.

¹ As advocates for a strong financial future™, FSR represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. FSR member companies provide fuel for America’s economic engine, accounting directly for \$ 78.3 trillion in managed assets, \$ 980 billion in revenue, and 2.1 million jobs.

² Draft Technical Specifications for Certain Swap Data Elements: A Request for Comment by the Staff of the CFTC (Dec. 22, 2015), *available at* <http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/specificationsswapdata122215.pdf>

³ Question number 7 in the Draft Technical Specifications requests feedback on any aspect of the Draft Technical Specifications for certain data elements.

As noted in our recent comment letter in response to the Swap Dealer *De Minimis* Exception Preliminary Report,⁴ we believe that identifying additional reporting fields may aid the CFTC in formulating more accurate data regarding the size and scope of the swaps market as well as more accurately identifying those institutions that are, in fact, engaged in swap dealing. Specifically, the FSR is in favor of including a data field to indicate reliance on the exclusion afforded to insured depository institutions (“IDI”) for swaps entered into in connection with originating loans to customers (the “IDI exclusion”) for purposes of the swap dealer *de minimis* calculation. We believe this information would allow the CFTC to better assess the types and the number of institutions utilizing the IDI exclusion and provide valuable information in its assessment of the *de minimis* threshold. However, we also believe that adding this additional reporting field must be carefully considered, as it may implicate certain operational issues around the reporting process. Specifically, we believe that any requirement to report information regarding the IDI exclusion should focus on the entity claiming the exclusion and also exclude swaps involving swap dealers.

The Draft Technical Specifications propose an additional reporting field to identify whether a counterparty is relying on the IDI exclusion. For any transaction in which the IDI exclusion is elected, however, generally only the entity undertaking the reporting will be the entity relying on the exclusion.⁵ Indeed, the limited situation where the non-reporting party may be the entity relying on the IDI exclusion would be foreign insured depository institutions (not registered as swap dealers) that are transacting with a US person, in which case under the CFTC’s Part 45 reporting rules, the US person would be required to report the trade.⁶ However, most foreign financial institutions (that are not registered swap dealers) entering into swaps with US persons are offering to report such trades given the competitive disadvantage if they do not. Accordingly, we believe the only data which should be required to be reported under Part 45 and collected by the swap data repository (“SDR”) with respect to the IDI exclusion is where the entity claiming the exclusion and reporting the data under Part 45 is relying upon or intends to rely upon the IDI exclusion for the transaction. Requiring other reporting counterparties to confirm and report to the SDR whether the non-reporting party is relying upon or intends to rely upon the IDI exclusion would place an unnecessary burden on the reporting counterparty to obtain this information from its counterparty. Moreover, unlike

⁴ FSR Comment Letter re: Comments on Swap Dealer *De Minimis* Exception Preliminary Report (Jan. 19, 2016), *available at*: <http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=60606&SearchText=>

⁵ In accordance with the reporting hierarchy set forth in CFTC Rule 45.8, where both counterparties are neither swap dealers nor major swap participants, and only one counterparty is a “financial entity,” the counterparty that is the financial entity is required to act as the reporting counterparty. 17 C.F.R. 45.8(c). In situations where both parties to the swap are “financial entities” and neither party is a swap dealer or major swap participant, the parties have to agree who is the reporting counterparty. 17 CFTC 45.8(d).

⁶ CFTC Rule 45.8(e) provides that if both counterparties to a swap are neither swaps dealers nor major swap participants and only one counterparty is a US person, the US person counterparty is required to act as the reporting counterparty. 17 C.F.R. 45.8(e).

other more static counterparty information that a reporting counterparty could obtain as a standing representation through an onboarding process, industry protocol or otherwise publicly available information, such as, for instance, whether the counterparty is a US person or CFTC registered swap dealer or major swap participant, whether or not a counterparty is relying upon the IDI exclusion is information that would need to be obtained on a transaction-by-transaction basis. As a result, we do not believe that requiring reporting entities which themselves do not rely on the IDI exclusion to report whether their counterparty is relying upon or intends to rely upon the IDI exclusion would further the stated goal of monitoring the swaps market without adding undue burdens to market participants.

We also believe that limiting the IDI field to the reporting entity is consistent with how the IDI exclusion is used by non-swap dealers in practice. In a typical transaction in which the IDI exclusion is elected, a non-swap dealer bank enters into a customer facing trade in connection with a loan and claims the IDI exclusion for that transaction. With respect to this transaction, the non-swap dealer bank will likely act as the reporting entity and can, thus, easily report to the SDR that it has relied upon the IDI exclusion for the transaction that is being reported. Thereafter, the non-swap dealer bank may enter into an offsetting trade with another bank that is a swap dealer, to hedge its exposure on its customer-facing trade. In the offsetting trade, the swap dealer is the reporting party.⁷ Such offsetting trade is not a dealing swap with respect to the IDI and as a result the IDI exclusion would not be applicable to the non-swap dealer.⁸ However, if the IDI identifier is a field applicable to each counterparty, the swap dealer reporting counterparty would nonetheless be required to obtain confirmation regarding the IDI exclusion from its counterparty for each transaction even if the result will be that such exclusion does not apply to the trade with the swap dealer entity. This would place an additional burden on the swap dealer reporting counterparty to obtain a further verification from its counterparty, but would not facilitate the CFTC's goal of tracking whether an entity exceeds the swap dealer *de minimis* threshold because for this offsetting transaction (a) the reporting counterparty is likely already registered as a swap dealer and (b) the non-swap dealer counterparty would not be accommodating customer demand in that transaction, merely hedging its own exposure.⁹

⁷ Pursuant to CFTC Rule 45.8, where only one counterparty to a swap is a swap dealer, the swap dealer is required to act as the reporting counterparty. 17 C.F.R. 45.8(a).

⁸ In the adopting release for the definition of "swap dealer," the CFTC noted that an IDI seeking out counterparties to enter into swaps in order to hedge or lay off the risk of a swap that is subject to the IDI exclusion would generally not be accommodating demand for swaps or facilitating interest in swaps and may not be considered in the *de minimis* determination, or otherwise in evaluating whether the IDI is covered by the swap dealer definition. See Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant," Joint Final Rule, 77 Fed. Reg. 30596, 30623 (May 3, 2012).

⁹ In our previous comment letter to the Swap Dealer *De Minimis* Exception Preliminary Report, we also identified a possible alternative for the CFTC to consider that would require a non-swap dealer reporting counterparty relying on the IDI exclusion to include in its report to the SDR the unique swap identifier ("USI") of the offsetting trade where it faces a swap dealer, with the idea that this would provide the CFTC with complete data regarding a non-swap dealer's swaps activity and overall exposure. As noted

In our comment letter regarding the Swap Dealer *De Minimis* Exception Preliminary Report, we also noted that the CFTC should expand the inquiry from requiring the reporting entity to identify whether it is relying on the IDI exclusion, to whether the reporting entity is relying upon or ***intends to rely upon*** the IDI exclusion. As explained in our previous comment letter, this change would allow reporting entities to include transactions executed prior to the financing for which they intend to rely upon the IDI exclusion and/or to allow reporting parties to account for such trade as one eligible for the IDI exclusion notwithstanding internal approvals not otherwise in place at the time of reporting but expected to be obtained.

For the reasons set forth above, while the FSR generally supports the inclusion of the IDI exclusion as an additional reporting field to monitor and assess those entities that may be engaged in swap dealing, we believe that it should be limited in a way such that it only be reportable by the entity claiming the IDI exclusion or intending to rely upon the IDI exclusion, to avoid any undue burdens and operational issues during the reporting process.

* * *

FSR appreciates the opportunity to comment on the Report. Please feel free to contact myself or my colleague Robert Hatch at Robert.Hatch@FSRoundtable.org or (202) 589-2429 if you have any questions.

Sincerely yours,



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in the letter, however, this may not be possible and may create additional burdens in cases where the non-swap dealer hedges its positions on an aggregate basis. For this reason, and because the offsetting swap would not, with respect to the financial institution relying on the IDI exclusion, be a dealing swap as it would not be accommodating customer demand, we no longer believe that identification of the USI for the offsetting trade in the customer-facing trade report is either feasible or necessary.