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May 27, 2014

Ms. Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

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

Dear Ms. Jurgens:

The Commodity Markets Council ("CMC") appreciates the opportunity to submit the following comments to the Commodity Futures Trading Commission (the "CFTC" or "Commission") on the swap data reporting rules and related provisions set forth in part 45 of the Commission's regulations. CMC's comments include both broader policy-level recommendations as well as specific responses to the questions posed by the Commission in the release.

CMC is a trade association that brings together exchanges and their industry counterparts. Our members include commercial end-users in futures and swaps markets for agriculture, energy, metal and soft commodities. Our industry member firms include regular users and members of such designated contract markets (each, a "DCM") as the Chicago Board of Trade, Chicago Mercantile Exchange, ICE Futures US, Kansas City Board of Trade, Minneapolis Grain Exchange and the New York Mercantile Exchange. They also include users of swap execution facilities (each, a "SEF"). The businesses of all CMC members depend upon the efficient and competitive functioning of the risk management products traded on DCM, SEFs or over-the-counter ("OTC") markets. As a result, CMC is well positioned to provide consensus views of commercial end-users of derivatives on the impact of the Commission's regulations on their commercial operations. Our comments, however, represent the collective view of CMC's members, including users, intermediaries and exchanges.

## **1. Policy-Level Recommendations**

### *End-User Reporting*

In practice, end-users are at times required to act as the reporting party for a transaction and report the transaction data to swap data repositories (each, an "SDR"). However, as compared to swap dealers, end-users have limited expertise and systems for this type of reporting, making complex reporting particularly burdensome. Additionally, when the Part 45 rules were written, no cost/benefit analysis was conducted on the impact of this reporting burden on end-users. Thus, CMC believes that the Commission should take steps to simplify reporting requirements to reduce the burden on end-users in the marketplace.

### *Cleared Swap Reporting*

Fundamentally, CMC believes that cleared swaps reporting should be handled exclusively by DCOs. Cleared swaps are already subject to the clearing regulations and the Commission already has full transparency and oversight of all cleared transactions through the clearinghouse. The further reporting

of cleared swaps to SDRs only adds costs for market participants, especially end-users, and limits the incentive to transact in these more transparent, liquid, and deep markets.

#### *Data Provided to Swap Data Repositories*

CMC believes the data currently provided to SDRs is sufficient to meet the objectives of the Dodd-Frank Act to provide transparency to markets and a mechanism for the Commission, as primary regulator, to monitor markets and mitigate risk. Instead of focusing on obtaining new or additional data, the Commission should focus on better utilizing the existing data it is already collecting through SDRs. Requiring additional data to be provided to SDRs will have, at best, little impact on improving the transparency and safety of markets. Furthermore, when the CFTC is unable to consistently interpret and actively monitor the data submitted, its value is limited.

Additionally, data sent to an SDR should solely be used for the purpose of providing transparency for the CFTC to monitor and manage risk, not for the SDR to utilize for commercial purposes. Transaction data shared with SDRs are commercially-sensitive, and allowing an SDR to utilize the data within their repository for commercial gain not only creates an unfair commercial playing field, but also could lead to a loss of confidence and trust in the regulated markets - exactly the opposite of the broader Commission goals to improve the security and stability of the derivatives markets.

#### *Format of SDR Reporting*

Market participants are currently required to report to an SDR in the format provided by that SDR. However, that format may not always be compatible with the CFTC reporting rules. For example, under CFTC regulations end-users have thirty (30) days to report their quarter-end valuations to their SDR; however the ICE SDR does not permit retrospective reporting of valuations. CMC believes there should be explicit obligations for SDRs around data quality to ensure the information required to be submitted and the time horizon under which it must be submitted to any SDR can be done without creating significant workarounds.

This consistency between SDR format and CFTC requirements will not only ensure that all market participants, including end-users, are able to utilize derivatives markets and provide the required reports to the SDR and Commission in a more timely fashion, but also will allow the Commission to have greater accuracy and timeliness in the data which it is monitoring and reviewing. Additionally, this consistency could also help with "portability" between the various available SDRs.

#### *Auditing of Swaps Data*

CMC believes that the onus should be on the reporting counterparty to maintain the accuracy of the swap data, and that the SDR should not be involved in maintaining the accuracy of the data. Rather, the SDR should be responsible for accepting reports that are complete, meaning that the report does not omit Part 45 data, and ensure that the data reported has integrity, meaning that data submitted at the field level is appropriate for the specific field. As its name suggests, the SDR should serve as a repository for swaps data. Therefore, CMC believes that periodic audits and reconciliation between the datasets held by SDRs and those held by reporting entities should not be required as it is excessively burdensome for the reporting entity and is of extremely limited value to the Commission. Unless the Commission can identify a specific problem, any alleged benefit cannot outweigh the substantial burden and costs that SDR audits would impose on the markets and sufficient accuracy can already be achieved solely through reporting party.

#### *Confirmation Data*

Overall, CMC believes that confirmation data reported to an SDR should be limited to only the primary economic terms of the transaction as detailed in Part 45. Further, CMC believes using the existing transmitted deal messages, as opposed to sending all contract wording, would be most efficient for

market participants while providing the same quality of data to the Commission. Additionally, CMC supports removing the requirement to attach a paper contract for all paper-confirmed deals.

## 2. Specific Responses to Questions

CMC wishes to offer specific responses to certain questions the Commission posed in its release for public comment. The questions to which CMC is providing feedback are the most relevant to our members - the end-users of commodity derivatives markets.

*B. Continuation Data (§ 45.4): How can the Commission ensure that timely, complete and accurate continuation data is reported to SDRs, and that such data tracks all relevant events in the life of a swap?*

CMC believes that the Commission's objectives for timely, complete and accurate continuation data reporting, and even creation data reporting, can be accomplished if the Commission simplifies reporting and holds parties to their responsibilities. CMC recommends that the Commission should 1) reduce the number and complexity of fields required, 2) clarify for market participants that in order for continuation event to be a relevant and thus reportable it must modify primary economic terms (PET) reported, 3) hold SDRs responsible for ensuring reporting counterparties submit complete reports and that data has integrity.

CMC would also like to bring to the Commission's attention a particular issue related to continuation data reporting rules that complicate timely, complete and accurate continuation data reporting. Swap data reporting rules for creation data require a SEF to report the original PET message but the reporting counterparty is required to report the continuation data. The reporting counterparty should be able to request what SDR the data is sent to, not the SEF or DCM. By allowing a SEF or DCM to choose the SDR, the reporting counterparty must have a relationship with that SDR, so they can report continuation data. This can be very costly for a reporting counterparty to maintain a reporting process for every possible SDR.

In addition, as argued above, CMC believes that cleared swap reporting should be handled exclusively by DCOs. If the Commission amended its rules to take this approach, only DCOs would have continuation obligations for cleared swaps initially transacted on a SEF.

*5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?*

The Commission should not require any specific processes or tools. With the wide variety of products traded by a wide variety of market participants in the commodity derivatives markets, the Commission cannot reasonably require specific processes or tools market-wide.

*6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).*

CMC believes swaps should only be linked for assignment and novation. Linking swaps is technologically and administratively difficult. Swaps resulting from events other than assignment and novation are not always part of the same business process and may not be in the same trade management system. There are one to many, many to one, and many to many swap relationship issues.

*6a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?*

As mentioned above, CMC believes that linking should only be required for assignment and novation. This linkage should be up to the SDR and should be implemented in the simplest manner possible as it would be cost prohibitive for most end-users to set up systems for this purpose.

*6d. How should related swaps reported to different SDRs be linked?*

As mentioned above, CMC believes that swaps should only be linked for assignment and novation. However, a simple cross-reference to the other USI in an "Any other term(s)" field should be sufficient to create the linkage.

*10c. Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void ab initio, continue to be reported to and identified in SDR data? Why or why not? If so, how?*

SEFs and DCMs should not be required to report a voided transaction as this creates additional confusion in the market. Fundamentally, if the swap is void then there is no swap and should be nothing to report - and no further rules should be necessary.

*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?*

The most efficient methodology of electronically representing any transaction, be it a plain vanilla swap or a bespoke, exotic or complex swap, would be to require SDRs to support a simple file upload process that contains nothing more complex than the enumerated fields in Appendix 1 of Part 45. Such an approach will benefit the Commission because more bespoke, exotic or complex swap could be electronically reported even if standard industry representations cannot electronically represent the swap. Such an approach would also benefit market participants, in particular end-users, who lack sophisticated systems to integrate with SDRs using FpML, FIXML, or other financial industry standards.

Further, CMC believes that the Commission should permit reporting aggregate, generalized or approximate data for some types of bespoke and exotic swaps, many which simply do not fit a standardized reporting methodology. An example of where the Commission should permit reporting aggregate data is energy swaps have shaped volumes. Shaped swaps have volumes that vary at specific increments of time, sometimes hourly. For these types of swaps, the Commission should permit reporting only total volumes rather than the details of the shaped volumes. For an hourly shaped swap with a one-year term, there are 8760 volumes. An example of where the Commission should accept reporting of approximate data is a load following swap where the volume will depend upon actual commodity usage or production. Reporting an expected or approximate total volume should be sufficient; it is not clear how reporting the details of such a transaction after the fact is relevant to the Commission's regulatory objectives. These examples are representative of issues with bespoke and exotic swaps and should not be considered the only situations where reporting aggregate, approximate or generalized data is appropriate.

*28c. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to: Execution timestamp;*

Capturing OTC execution timestamps to the nearest hour, minute and second is difficult when swap execution is not electronic. Even when swap execution is electronic, different market participants (e.g., traders, brokers, SEFs, and clearinghouses) are interpreting execution timestamps at different times. For example, some clearing venues consider the date and time when the swap is entered into

the clearing systems as the execution timestamp which is different than the actual execution timestamp when the counterparties agreed to the swap. The Commission should accept: 1) reports of approximate execution timestamps, as determined by the reporting counterparty, and 2) reports of execution timestamps as agreed by counterparties, both as valid execution timestamps.

*29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.*

Additional data elements should not be broadly required until the Commission can first understand the data it is already receiving and, only then, if can it justify any need for additional information. In the Part 45 rulemaking and this request for comment, the Commission has neither fully explained the need for all PET data it currently requires nor justified the substantial costs that have been imposed on end-users and the swaps markets as a whole. CMC does not believe that any of the additional data suggested in the question (and some of the data already required) is necessary for regulatory supervision and will simply create more confusion and cost in the marketplace. It is important to note that the CFTC can always request additional data for specific transactions as needed.

*29d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?*

Whether a swap has a guaranty is not useful for regulatory oversight and often is not included in electronic trade capture systems that can be matched with corresponding swaps for reporting. Additionally, guaranty status changes based upon portfolio exposure. Whether a particular swap under a master agreement is guaranteed (*i.e.*, a party's exposure exceeds its unsecured credit threshold for the portfolio) is typically not possible to determine and is of questionable relevance for the Commission's regulatory oversight.

*36. What steps should reporting entities and/or SDRs undertake to verify the absence of duplicate records across multiple SDRs for a single cleared swap transaction?*

As mentioned above, cleared swaps should only be reported to an SDR chosen by the clearinghouse.

*37. How should cleared swap data be represented in the SDR to facilitate the Commission's oversight of compliance with clearing-related rules, including the clearing requirement (Commission regulations 50.2 and 50.4) and straight-through processing requirements (Commission regulations 1.74, 23.506, 37.702(b), 38.601, and 39.12(b)(7))?*

Because DCOs already maintain full records of cleared transactions, there is no need for the Commission to rely on SDRs to monitor compliance with clearing-related rules. The CFTC directly oversees the DCOs, and has done so for decades; relying on SDRs simply duplicates data sources, complicates reporting requirements and adds unnecessary costs to cleared transactions.

*41. As described above, DCOs provide position data to the Commission pursuant to part 39 and report transactions to SDRs pursuant to part 45. The Commission is aware of potential overlap in these data sets. With respect to such overlap, how can reporting of swaps data be made more efficient, while ensuring that the Commission continues to receive all data necessary to fulfill its regulatory responsibilities?*

The Commission ought to choose from which source it wants the data and eliminate any redundancy. The statute permits a DCO to be an SDR; the two largest DCOs currently operate SDRs and have processes to automatically handle all reporting. Fundamentally, CMC believes reporting of cleared swaps to an SDR should be exclusively handled by DCOs. Any other approach imposes needless costs on swap market participants, creates redundant data sources (both of which the Commission has full access to) and further complicates the ability of the Commission to understand swaps data maintained by SDRs.

*46. Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR.*

CMC believes that only the reporting counterparty should have the responsibility to ensure the accuracy of data reported. Requiring active participation by non-reporting counterparties in a data reconciliation process conducted by SDRs, which is arguably what is required currently under Part 45, would impose significant costs on non-reporting counterparties. In addition, SDRs are not in a position to know whether or not data reported is accurate. Rather, SDRs should only be required to ensure data reported is complete, meaning that the report does not omit Part 45 data, and ensure data reported has integrity, meaning that data submitted at the field level is appropriate for the specific field. Given that the vast majority of data submissions will occur via automated submissions which CMC believes to be highly accurate, the Commission has not provided any justification for imposing such significant costs on SDRs and market participants by requiring SDR data accuracy verification. Further, the Commission must keep in mind that costs imposed on SDRs are ultimately passed through and borne by market participants.

*49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?*

The reporting counterparty should simply notify the SDR of the error and the SDR should make the change. Similar to the response to Question 46, above, CMC does not believe the Commission should impose any affirmative participation on non-reporting parties.

There should not be time limits on reporting errors because any such time limits do nothing to help ensure the accuracy of the data. Further, the presumption of correctness after some period of time for regulatory purposes creates legal ambiguity between the counterparties and serves no regulatory purpose. The Commission should always assume that the data reported is correct and should accept corrections any time an error is detected. Further, to incentivize market participants to proactively check for errors, the Commission should expressly provide a safe harbor for any data errors that are detected and corrected at any time.

*52. Are there additional existing swaps data standards (other than the legal entity identifier ("LEI"), unique product identifier ("UPI") and USI) that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?*

There are no additional identifiers recommend.

*53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.*

There is no reason to require an affirmative annual update of an LEI and the Commission should not permit LEI issuers to charge annual maintenance fees. Once an LEI is issued, nothing needs to happen,

and certainly no fee should be imposed, unless an entity's demographic information changes. Market participants already have the responsibility to update demographic information. The LEI issuer should not be permitted to delist or remove LEIs from the public database based upon a failure to affirm the information annually and/or to pay an annual maintenance fee.

*53a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?*

No additional steps should be required of market participants or SDRs to ensure counterparties have LEIs.

*56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (e.g., for purposes of monitoring the SD de minimis calculation)?*

The SDR should not have any role in swap dealer de minimis calculations because total activity does not provide any indication of whether a party is engaging in swap dealing activity. SDRs are not the appropriate place for the Commission to attempt to monitor rules that are activity-based and are facts and circumstances types of rules.

*64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?*

The parties that "own" transactional data are defined by intellectual property law statutes and case law, not by regulatory reporting rules.

*65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?*

Absolutely not.

*65a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?*

None. Commercialization benefiting SDRs is not the objective of the Dodd-Frank Act. Commercialization of SDR data would give SDRs distinct commercial advantages through regulation and could undermine confidence in the transparent derivatives markets. However, if any commercialization of data is permitted, it should only be on an aggregate basis.

*65c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?*

No, all such entities already charge fees based upon usage.

*66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide "consent" to further distribution or use of swap transaction data for commercial purpose by the SDR?*

No.

*68. An ancillary issue relating to commercialization of data and legal property rights relates to the "portability" of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not,*

*however, directly address whether the data in one SDR may be moved, transferred or "ported" to another SDR. The Commission seeks comment on whether § 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported?*

Yes, the reporting counterparty should be able to port the data to the SDR of its choice. A reporting counterparty should not need to obtain an agreement from the non-reporting counterparty to transfer data to another SDR. Not being able to do so is creating significant issues in novating transactions and interfering with the markets, especially in light of the trend of banks selling existing swap portfolios. It is important that the reporting party be able to choose to which SDR the data will be reported.

*69c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?*

Substantial and costly system modifications are required by end-users to facilitate reporting to even one SDR. Thus, CMC believes that reporting rules should be simplified and require less data while still requiring relevant and usable data for regulatory oversight which promotes safety and soundness of the derivatives markets.

The end-users and customers who compose CMC's members are also concerned that firms cannot access data in some SDRs. SDRs should be required to provide access to a counterparty's swap data at no charge.

### 3. Conclusion

CMC appreciates the Commission's consideration of this letter on this most important subject. Should you have questions regarding this topic or wish to discuss further, please contact me at [Gregg.Doud@commoditymkt.org](mailto:Gregg.Doud@commoditymkt.org) or by phone at (202) 842-0400 x 101.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Doud". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Gregg Doud  
President, Commodity Markets Council