



Americans for Financial Reform
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February 22nd, 2011

Mr. David A. Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington DC 20581

Re: CFTC RIN 3038–AC20; Swap Data Repositories

Dear Mr. Stawick:

On behalf of Americans for Financial Reform, thank you for the opportunity to comment on the proposed rule setting out the registration requirements, duties, and core governance principles for swap data repositories. Americans for Financial Reform is an unprecedented coalition of over 250 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, religious and business groups as well as renowned economists.

Swap data repositories (SDRs) are a key component of the market infrastructure envisioned in the Dodd-Frank Act. Central goals of the legislation, such as greater transparency in the derivatives market and improved regulatory oversight of the systemic implications of derivatives exposures, cannot be attained without the derivatives transaction records gathered by SDRs. For this reason, the legislation mandates that market participants submit their trade information to SDRs for storage and analysis, that regulators have access to this data, and that elements of the data be made publicly accessible in real time to improve market transparency.

AFR believes that SDRs have important characteristics of a public utility. For both SDRs and public utilities, government mandates universal participation in order to create benefits that could not otherwise be attained, and guarantees general access to these benefits. Public utilities are frequently publicly owned. But SDRs will be privately owned and managed. This makes them vulnerable to significant conflicts of interest that could interfere with their public utility mission. This could have serious consequences. If swaps data is not effectively processed, stored, and analyzed then proper regulatory oversight will be hampered and serious risks to the stability of the financial system could escape notice. The owners of SDRs could use preferential access to the information gathered to favor some market participants at the expense of others, or to deny

transparent pricing information to customers.

Regulation of SDRs must reflect their public utility mission and ensure that conflicts of interest do not hamper or distort their operations. There are several ways the Commission can ensure this. One is through the governance and conflict of interest requirements for SDRs. Another is through the affirmative duties imposed on SDRs.

An additional issue is the potential dependence of the overall regulatory system on complex analysis of SDR data to generate aggregate position-level data on risk exposures. So long as SDRs are structured as a number of competing for-profit entities it will be difficult for them to cooperate well enough to perform this kind of analysis. The Commission should ensure this analysis can be done smoothly and mandate uniform data standards so swaps information can be easily analyzed on a common platform even when generated by different SDRs. Where possible, aggregate data analysis should be performed by the regulators themselves, using raw trade data from SDRs as an input.

Additionally, as rapid access to SDR data is necessary for proper regulatory oversight, AFR believes that regulators should be provided with real-time streaming access to the necessary trade data from repositories, as opposed to periodic retrospective reports.

Governance and Conflict of Interest Requirements

The Proposed Rule clearly recognizes the potential for conflict of interest in SDR management, which is not surprising as this issue is addressed directly in the statute. However, AFR strongly favors more aggressive and more specific actions to prevent such conflicts than are laid out in this proposed regulation.

At a minimum, SDR governance rules should incorporate the same restrictions on board membership and ownership that have been proposed for other derivatives infrastructure organizations such as Derivatives Clearing Organizations (DCOs), Designated Clearing Facilities (DCFs), and Swaps Execution Facilities (SEFs). For example, these rules include requirements that at least 35 percent of board directors and at least 51 percent of members of the nominating committee must be independent public directors. They also include ownership limitations, e.g. no single member may directly or indirectly vote more than 20 percent of shares, and no enumerated entities with an interest in the regulated market may directly or indirectly own more than 40 percent of shares. Since the information controlled by SDRs can create conflicts of interest that are potentially as great as many of the conflicts that could exist for other derivatives infrastructure organizations, it is hard to see why their governance rules should be less stringent.

In some cases, AFR would favor stricter governance controls than those already proposed for DCOs and DCFs. In our comments on the governance rules for DCOs and DCFs we proposed an

aggregate ownership limit of 25 percent for these organizations, and a requirement that a majority of members of the board be independent. We favor these restrictions for SDRs as well.

Affirmative Duties

In addition to setting rules for implementing the statutory core principles, the Dodd-Frank legislation allows the Commission to impose additional affirmative duties on SDRs. AFR is concerned that the additional duties laid out in the proposed rule would not go far enough in requiring SDRs to serve all market participants equally.

In particular, the access and pricing requirements laid out in proposed 49.27 of the rule should be more stringent and more detailed. The current proposal simply requires fees to be uniform, equitable, and non-discriminatory. However, these requirements are vague and non-specific. They also do not establish any relationship between SDR pricing and actual costs of SDR operations. As entities with a public utility mission, SDRs should be required to serve the broadest possible range of market participants compatible with earning a reasonable profit. This may not occur if SDRs set the highest possible fees the market will bear. There are natural economies of scale in the operation of SDRs, which may lead to some SDRs having significant market and therefore pricing power. SDRs should be required to set fees that are reasonable in relation to their costs of operation and to justify such fees to their regulator.

The proposal also allows volume discounts under certain circumstances, so long as they are not limited to a “select number” of market participants. But such discounts by their nature are limited to a select number of large customers. AFR believes volume discounts are discriminatory and urges the Commission to prohibit them in the final rule.

Data Access and Analysis

Section 49.17 of the proposed rule requires that SDRs provide the Commission with direct access to swaps trading data. The Commission asks for comment as to whether such direct access should be streaming or in the form of periodic reports. AFR believes that SDRs should provide regulators with a direct stream of trading data so that swaps markets can be tracked in real time. Periodic and retrospective data reporting is insufficient to analyze all the actions of market participants, some of whom may move in and out of positions very quickly.

Section 49.13 of the proposed rule requires SDRs to perform as yet unspecified data analysis tasks to assist the Commission and other regulators with market oversight. This data analysis are is likely to be crucial in allowing regulators to monitor aggregate exposures to risk at the company and asset class level, as well as aggregate ownership positions. Yet it will be difficult to perform such aggregation across many different and potentially competing SDRs. The

Commission should require uniform data reporting to insure that these analyses can be performed. In addition, the Commission should develop the capacity to perform key data analysis in-house, using raw data from the SDRs, instead of becoming dependent on privately owned SDRs to measure aggregate exposures.

In sum, AFR believes that SDRs have a significant public utility mission and face potentially major conflicts of interest in executing this mission. To address this, the Commission should incorporate restrictions on the governance, ownership, and practices of SDRs that are more specific and more stringent than those described in this rule. The governance requirements for SDRs should be at least as strict as those already proposed for other derivatives infrastructure organizations such as DCOs and DCFs. SDRs should also be required to set fee levels that are reasonably related to their costs of operation and to justify such fees.

We appreciate the opportunity to comment on the proposed rule. If you have any questions, please contact Heather Slavkin at Hslavkin@afcio.org or (202) 637-5318.

Sincerely,

Americans for Financial Reform

Dr. Michael Greenberger, University of Maryland Law Center

Following are the partners of Americans for Financial Reform.

All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.

- A New Way Forward
- AARP
- ACORN
- AFL-CIO
- AFSCME
- Alliance For Justice
- Americans for Democratic Action, Inc
- American Income Life Insurance
- Americans for Fairness in Lending
- Americans United for Change
- Calvert Asset Management Company, Inc.
- Campaign for America's Future
- Campaign Money
- Center for Digital Democracy
- Center for Economic and Policy Research
- Center for Economic Progress
- Center for Media and Democracy
- Center for Responsible Lending
- Center for Justice and Democracy
- Center of Concern
- Change to Win
- Clean Yield Asset Management
- Coastal Enterprises Inc.
- Color of Change
- Common Cause
- Communications Workers of America
- Community Development Transportation Lending Services
- Consumer Action
- Consumer Association Council
- Consumers for Auto Safety and Reliability
- Consumer Federation of America
- Consumer Watchdog
- Consumers Union
- Corporation for Enterprise Development
- CREDO Mobile
- CTW Investment Group
- Demos
- Economic Policy Institute
- Essential Action

- Greenlining Institute
- Good Business International
- HNMA Funding Company
- Home Actions
- Housing Counseling Services
- Information Press
- Institute for Global Communications
- Institute for Policy Studies: Global Economy Project
- International Brotherhood of Teamsters
- Institute of Women's Policy Research
- Krull & Company
- Laborers' International Union of North America
- Lake Research Partners
- Lawyers' Committee for Civil Rights Under Law
- Move On
- NASCAT
- National Association of Consumer Advocates
- National Association of Neighborhoods
- National Community Reinvestment Coalition
- National Consumer Law Center (on behalf of its low-income clients)
- National Consumers League
- National Council of La Raza
- National Fair Housing Alliance
- National Federation of Community Development Credit Unions
- National Housing Trust
- National Housing Trust Community Development Fund
- National NeighborWorks Association
- National People's Action
- National Training and Information Center/National People's Action
- National Council of Women's Organizations
- Next Step
- OMB Watch
- Opportunity Finance Network
- Partners for the Common Good
- PICO
- Progress Now Action
- Progressive States Network
- Poverty and Race Research Action Council
- Public Citizen
- Sargent Shriver Center on Poverty Law
- SEIU
- State Voices
- Taxpayer's for Common Sense
- The Association for Housing and Neighborhood Development
- The Fuel Savers Club
- The Leadership Conference on Civil and Human Rights
- The Seminal
- TICAS

- U.S. Public Interest Research Group
- United Food and Commercial Workers
- United States Student Association
- USAction
- Veris Wealth Partners
- Western States Center
- We the People Now
- Woodstock Institute
- World Privacy Forum
- UNET
- Union Plus
- Unitarian Universalist for a Just Economic Community

Partial list of State and Local Signers

- Alaska PIRG
- Arizona PIRG
- Arizona Advocacy Network
- Arizonans For Responsible Lending
- Association for Neighborhood and Housing Development NY
- Audubon Partnership for Economic Development LDC, New York NY
- BAC Funding Consortium Inc., Miami FL
- Beech Capital Venture Corporation, Philadelphia PA
- California PIRG
- California Reinvestment Coalition
- Century Housing Corporation, Culver City CA
- CHANGER NY
- Chautauqua Home Rehabilitation and Improvement Corporation (NY)
- Chicago Community Loan Fund, Chicago IL
- Chicago Community Ventures, Chicago IL
- Chicago Consumer Coalition
- Citizen Potawatomi CDC, Shawnee OK
- Colorado PIRG
- Coalition on Homeless Housing in Ohio
- Community Capital Fund, Bridgeport CT
- Community Capital of Maryland, Baltimore MD
- Community Development Financial Institution of the Tohono O'odham Nation, Sells AZ
- Community Redevelopment Loan and Investment Fund, Atlanta GA
- Community Reinvestment Association of North Carolina
- Community Resource Group, Fayetteville A
- Connecticut PIRG
- Consumer Assistance Council
- Cooper Square Committee (NYC)

- Cooperative Fund of New England, Wilmington NC
- Corporacion de Desarrollo Economico de Ceiba, Ceiba PR
- Delta Foundation, Inc., Greenville MS
- Economic Opportunity Fund (EOF), Philadelphia PA
- Empire Justice Center NY
- Enterprises, Inc., Berea KY
- Fair Housing Contact Service OH
- Federation of Appalachian Housing
- Fitness and Praise Youth Development, Inc., Baton Rouge LA
- Florida Consumer Action Network
- Florida PIRG
- Funding Partners for Housing Solutions, Ft. Collins CO
- Georgia PIRG
- Grow Iowa Foundation, Greenfield IA
- Homewise, Inc., Santa Fe NM
- Idaho Nevada CDFI, Pocatello ID
- Idaho Chapter, National Association of Social Workers
- Illinois PIRG
- Impact Capital, Seattle WA
- Indiana PIRG
- Iowa PIRG
- Iowa Citizens for Community Improvement
- JobStart Chautauqua, Inc., Mayville NY
- La Casa Federal Credit Union, Newark NJ
- Low Income Investment Fund, San Francisco CA
- Long Island Housing Services NY
- MaineStream Finance, Bangor ME
- Maryland PIRG
- Massachusetts Consumers' Coalition
- MASSPIRG
- Massachusetts Fair Housing Center
- Michigan PIRG
- Midland Community Development Corporation, Midland TX
- Midwest Minnesota Community Development Corporation, Detroit Lakes MN
- Mile High Community Loan Fund, Denver CO
- Missouri PIRG
- Mortgage Recovery Service Center of L.A.
- Montana Community Development Corporation, Missoula MT
- Montana PIRG
- Neighborhood Economic Development Advocacy Project
- New Hampshire PIRG
- New Jersey Community Capital, Trenton NJ
- New Jersey Citizen Action
- New Jersey PIRG
- New Mexico PIRG
- New York PIRG
- New York City Aids Housing Network
- NOAH Community Development Fund, Inc., Boston MA

- Nonprofit Finance Fund, New York NY
- Nonprofits Assistance Fund, Minneapolis M
- North Carolina PIRG
- Northside Community Development Fund, Pittsburgh PA
- Ohio Capital Corporation for Housing, Columbus OH
- Ohio PIRG
- OligarchyUSA
- Oregon State PIRG
- Our Oregon
- PennPIRG
- Piedmont Housing Alliance, Charlottesville VA
- Michigan PIRG
- Rocky Mountain Peace and Justice Center, CO
- Rhode Island PIRG
- Rural Community Assistance Corporation, West Sacramento CA
- Rural Organizing Project OR
- San Francisco Municipal Transportation Authority
- Seattle Economic Development Fund
- Community Capital Development
- TexPIRG
- The Fair Housing Council of Central New York
- The Loan Fund, Albuquerque NM
- Third Reconstruction Institute NC
- Vermont PIRG
- Village Capital Corporation, Cleveland OH
- Virginia Citizens Consumer Council
- Virginia Poverty Law Center
- War on Poverty - Florida
- WashPIRG
- Westchester Residential Opportunities Inc.
- Wigamig Owners Loan Fund, Inc., Lac du Flambeau WI
- WISPIRG

