



November 23, 2011

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: Comments on Proposed Amendments regarding Effective Date for Swap Regulation (76 Fed. Reg. 65,999)

Dear Mr. Stawick:

The Securities Industry and Financial Markets Association (“**SIFMA**”)<sup>1</sup> appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (the “**CFTC**” or “**Commission**”) proposed amendments<sup>2</sup> to the July 14, 2011 final order (“**July 14 Order**”)<sup>3</sup> that granted temporary exemptive relief from certain provisions of the Commodity Exchange Act (“**CEA**”) that would have otherwise become effective on July 16, 2011 under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“**Title VII**” of the “**Dodd-Frank Act**”). Our members comprise many of the most active participants in the swaps market, who strongly support Dodd-Frank’s goals of increasing market transparency, reducing systemic risk, and promoting market integrity. We previously submitted comment with respect to the original proposal for the July 14 Order in a letter dated July 1, 2011, cosigned by several other financial trade associations,<sup>4</sup> from which we wish to reiterate key points as they relate to the Commission’s currently proposed amendments.

SIFMA supports the Commission’s decision to amend the July 14 Order in an effort to minimize market disruption and provide legal certainty to market participants during this transitional

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<sup>1</sup> The Securities Industry and Financial Markets Association (“**SIFMA**”) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit [www.sifma.org](http://www.sifma.org).

<sup>2</sup> Effective Date for Swap Regulation, 76 Fed. Reg. 65,999 (proposed October 25, 2011) (amending 17 CFR Chapter 1).

<sup>3</sup> Final Order for Effective Date for Swap Regulation, 76 Fed. Reg. 42,508 (July 14, 2011).

<sup>4</sup> See comments from SIFMA, American Bankers Association/ABA Securities Association (“**ABA/ABASA**”), Futures Industry Association (“**FIA**”), Institute of International Bankers (“**IIB**”), International Swaps and Derivatives Association (“**ISDA**”), and Investment Company Institute (“**ICI**”) on “Proposed Order for Effective Date of Swap Regulation” dated July 1, 2011 (“**July 1 Letter**”); also see a letter from SIFMA, FIA, ISDA, ICI, and the U.S. Chamber of Commerce, submitted prior to proposal for July 14 Order, discussing concerns regarding the effective date for swap regulation, dated June 10, 2011 (“**June 10 Letter**”).

period.<sup>5</sup> It is critical to ensure that market participants will not be subject to obligations which they would be unable to fulfill until additional rulemaking has been completed and an appropriate implementation period has occurred. However, while SIFMA supports the Commission's decision to amend the July 14 Order, we wish to restate some of the concerns not addressed in the current proposed amendments, but raised in our previous comments, which include the inadequacy of temporary exemptive relief and the need for a comprehensive implementation schedule.<sup>6</sup>

SIFMA recommends the Commission avoid setting another self-imposed sunset provision date for the expiration of the temporary exemptive relief (July 16, 2012 in the current proposal). In our July 1 Letter commenting on the proposal to the July 14 Order, we expressed concern that the December 31, 2011 sunset date would cause uncertainty for market participants later in the year. We argued that the Commission should instead provide exemptive relief that lasts on a provision-by-provision basis until related substantive requirements of the Dodd-Frank Act were implemented, as the SEC had provided for in its parallel relief under Subtitle B of Title VII.<sup>7</sup> Due to the arbitrary end date of December 31, 2011, the Commission has been forced to revisit the July 14 Order's sunset provision, since it has become clear that the previous timeframe was insufficient as it failed to provide market participants with relief from Title VII provisions that they would not yet be able to comply with (including provisions which rely upon terms which must be "further defined"). In addition to this extension, the Commission has also been forced to revisit the scope of the relief provided by the July 14 Order, due to the fact that as of December 31, 2011, exemptive rules contained in Part 35 will no longer be available (as Part 35 will be repealed and replaced with Section 35.1).<sup>8</sup> Thus, in order to maintain the status quo and ensure the current scope of relief provided to transactions under Part 35 is available past December 31, 2011, the Commission has been forced to amend the July 14 Order to incorporate Part 35 relief available as of December 31, 2011.<sup>9</sup>

As was our concern with the July 14 Order, however, we believe that by again imposing an arbitrary sunset date, the Commission runs the risk of perpetuating uncertainty for market participants, thus requiring further re-examination of the scope and of extent of necessary relief. The possibility remains that certain categories of rules will still not yet be in effect by July 16, 2012, or that other unforeseen circumstances will arise which impede or delay the progress of the Commission in implementing Title VII. We agree with Commissioner O'Malia who, in his concurring statement on the proposed amendments, argued that an arbitrary sunset provision "will cut the transition period short and so will likely not provide necessary 'relief' to market participants."<sup>10</sup> SIFMA believes avoiding the imposition of an arbitrary sunset date would allow the Commission to adopt its final

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<sup>5</sup> SIFMA expects, as does the Commission, that the Commission's Division staff will extend and conform their related no-action relief to any final amendment to the July 14 Order that may result from this proposal (see 76 Fed. Reg. 66,000 at n.11).

<sup>6</sup> See July 1 Letter and also see the FIA, ISDA and SIFMA joint letter regarding CFTC proposed rules on compliance and implementation schedules for swap clearing, trade execution, documentation and margin (RIN 3038-AD60, RIN 3038-AC96 and RIN 3038-AC97), dated November 4, 2011 ("**November 4 Letter**").

<sup>7</sup> "SEC Effective Date Order", Release No. 34-6678 (June 15, 2011).

<sup>8</sup> CFTC Final Rule on Agricultural Swaps, 76 FR 49,291 (August 10, 2011).

<sup>9</sup> Effective Date for Swap Regulation, 76 Fed. Reg. 66,002.

<sup>10</sup> 76 Fed. Reg. 66,003, Appendix 2 – Statement of Commissioner Scott O'Malia.

rules in a logical order that provides market participants with necessary legal certainty. We reiterate our recommendation that exemptive relief last for each specific provision until the relevant final rules become effective, enabling market participants to fully prepare for compliance in an orderly and efficient manner.

In addition, we reiterate our request that the Commission provide a comprehensive rulemaking schedule and implementation plan, as well as clear positions on the extraterritorial scope of Title VII and treatment of inter-affiliate transactions, as set forth in our November 4 Letter on the Commission's proposed compliance and implementation schedules for clearing, trade execution, documentation and margin. Given the complex interdependencies of Title VII rulemaking, we believe the Commission should propose a comprehensive implementation phase-in schedule that provides market participants with much needed clarity on the sequencing and timing of rulemaking. SIFMA supports an orderly and efficient transition of swap markets to the new regulatory structure required by Title VII. In our November 4 Letter, we provided a comprehensive implementation and compliance schedule for different types of market participants that accounts for the significant and serial dependencies and interdependencies of Title VII.<sup>11</sup> We believe that this approach would best provide market participants with the clarity and certainty needed to transition into the new market structure and regulatory regime required by Title VII.

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We appreciate this opportunity to comment on proposed amendments to the July 14 Order. We believe these recommendations best provide market participants with the information needed to prepare for Title VII compliance in an orderly and efficient manner, while still increasing market transparency and promoting market integrity. Please feel free to contact the undersigned or Kyle Brandon at 212-313-1280 should you wish to discuss the letter.

Respectfully submitted,



Kenneth E. Bentsen, Jr.  
Executive Vice President  
Public Policy and Advocacy  
Securities Industry and Financial Markets Association

cc: Honorable Gary Gensler, Chairman  
Honorable Bart Chilton, Commissioner  
Honorable Scott O'Malia, Commissioner  
Honorable Jill E. Sommers, Commissioner  
Honorable Mark P. Wetjen, Commissioner

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<sup>11</sup> See November 4 Letter.