



THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



February 2, 2012

The Honorable Gary Gensler
The Honorable Jill E. Sommers
The Honorable Bart H. Chilton
The Honorable Scott D. O'Malia
The Honorable Mark P. Wetjen

Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, NW
Washington, DC 20581

Re: Registration of Swap Dealers and Major Swap Participants; RIN 3038-AC95

Chairman Gensler and Commissioners Sommers, Chilton, O'Malia and Wetjen:

We write in response to the Commission's adoption of final swap dealer and major swap participant registration rules on January 11. We appreciate the Commission's solicitation of comments on extraterritorial issues in connection with those rules and its continued recognition of the importance of providing clarity on that topic and related issues, such as the treatment of inter-affiliate transactions, guarantees and branches.

We note, however, that numerous commenters have expressed to the Commission the need to clarify these issues and provide an appropriate implementation period before swap dealers and major swap participants must register. It is therefore deeply concerning that the Commission acted to require applications for registration as soon as its definitional rules under the Dodd-Frank Act go into effect, based on the availability of a provisional registration procedure. We believe the Commission has failed to appreciate the very serious problems created by relying on even this limited provisional registration requirement in circumstances where the Commission's intended extraterritorial application of the Commodity Exchange Act's swap provisions and related issues have not yet been clarified.

The new registration rules will require companies—whether headquartered in the U.S. or abroad—to make very significant decisions before they have the information necessary to evaluate the application of the CEA to their extraterritorial swap activities and determine the appropriate organizational structure for those activities. Knowing the scope of activities that will be subject to regulation under the CEA, and the impact on related arrangements involving guarantees and inter-affiliate hedging transactions, is a necessary precondition to determining the legal entities that will conduct the specific activities that will require registration and be subject to regulation under the CEA. Provisional registration will require companies to select now the legal entities through which they will conduct their U.S. swap business, and to incur substantial expense based on incomplete information. Legal entity restructuring is a costly, disruptive and time-consuming process, involving extensive re-documentation of client agreements, re-allocation of scarce capital, re-assignment or re-location of personnel as well as potentially extensive systems development and compliance infrastructure. By sequencing provisional registration before it provides clarity on extraterritoriality and related open issues, the Commission has forced companies to undertake this restructuring process based on guesses as to how those issues will be resolved, with the potential for future restructurings and disruption in swap activities for those companies that guess incorrectly, all at considerable expense and opportunity cost.

These costs and disruptions go beyond the costs of the registration process estimated by the Commission, but are nevertheless a direct consequence of the sequencing adopted by the Commission as part of the registration rules. The Commission clearly did not take these costs and disruptions into account when finalizing the registration rules. We believe these costs significantly outweigh the Commission's stated benefits of better identifying the universe of swap dealers and major swap participants at an earlier stage.

We do not believe the Commission intended this result. Indeed, it seems clear from the Commission's rulemaking that it believed its phased implementation of substantive requirements addresses concerns of this type.¹ Nor do we believe this result to be a necessary condition for the timely implementation of the Dodd-Frank Act. We ask that the Commission move expeditiously to propose and subsequently finalize its rules or guidance on the extraterritorial application of the Act, and the treatment of guarantees, inter-affiliate transactions and branches. The Commission should also clarify that routine maintenance of legacy portfolios (including amendments, novations, terminations and the like) will not affect the grandfathering of those portfolios. Finally, we strongly urge the Commission to afford potential registrants an appropriate period after finalization of the Commission's extraterritoriality guidance within which to come into compliance with the Commission's provisional registration requirements.

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¹ We note that the Commission's determination to require registration before its substantive requirements are finalized requires that those substantive requirements which affect organizational structure (such as capital requirements) have an implementation period after finalization sufficient to allow for legal entity restructuring and potentially de-registration.

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As trade associations whose members account for most of the activity in the U.S. and global swap markets, we are committed to supporting a logical, efficient and orderly implementation of the Dodd-Frank Act. The Commission's current regulations would thwart those goals. Accordingly, we stand ready to meet with you to explain and work through the issues raised by the new registration rules cooperatively so as to achieve that objective.

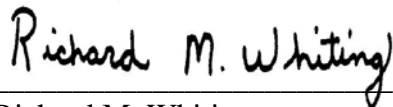
Respectfully submitted,



Diana L. Preston
Deputy General Counsel
ABA Securities Association



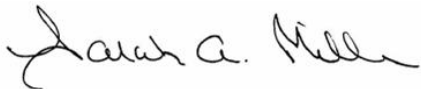
Alex Radetsky
Vice President and Assistant General Counsel
The Clearing House



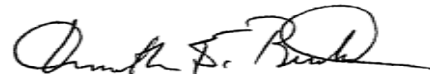
Richard M. Whiting
Executive Director and General Counsel
Financial Services Roundtable
202-589-2413
Rich@fsround.org



John Damgard
President
Futures Industry Association



Sarah A. Miller
Chief Executive Officer
Institute of International Bankers



Kenneth E. Bentsen, Jr.
Executive Vice President
Public Policy and Advocacy
SIFMA

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