December 16, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090

Re: Proposed Rule on the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants (File Number S7-40-11)

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to comment on the Securities and Exchange Commission's (the "**Commission's**") proposed registration requirements for security-based swap dealers ("**SBSDs**") and major security-based swap participants ("**MSBSPs**") pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Title VII**" of "**Dodd-Frank**").[2]

SIFMA generally supports the Proposal and:

- the Commission's plan to publish a comprehensive Title VII implementation proposal;
- the Commission's (i) attempts to align SBSD and MSBSP registration requirements with the Commodity Futures Trading Commission's ("**CFTC's**") proposed registration requirements and (ii) creation of a streamlined registration process for SBSDs and MSBSPs already registered with the Commission or the CFTC; and

[1] 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.

[2] Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, 76 Fed. Reg. 65,784 (proposed Oct. 24, 2011) (the "**Proposal**"), *available at* http://www.gpo.gov/fdsys/pkg/FR-2011-10-24/pdf/2011-26889.pdf.

- the Commission's plan to conduct a holistic review of Commission registration requirements.

However, SIFMA believes the Commission:

- should not require a "Senior Officer Certification," which is unnecessary, overly burdensome and unduly vague and indeterminate;
- should remove or, in the alternative, narrow the scope of and provide exceptions from the associated person investigation requirement;
- should not require non-U.S. entities to obtain an opinion of counsel certifying their ability to allow the Commission to inspect their books and records and to conduct on-site examinations; and
- should allow for limited designation and registration, including by trading unit, type of activity and type of counterparty.

SIFMA supports the Commission's plan to publish a comprehensive Title VII implementation proposal.

SIFMA strongly agrees with the Commission that implementing the new security-based swap regime in a "logical, progressive, and efficient manner, while minimizing unnecessary disruption and costs to the markets" requires that careful thought be given to when and in what order Title VII rules will be finalized and the publication of a comprehensive implementation schedule.[3] In a recent comment letter,[4] SIFMA, together with the Futures Industry Association ("**FIA**") and the International Swaps and Derivatives Association ("**ISDA**"), proposed a three-stage Title VII implementation process that would be generally applicable to the new security-based swap regime. The comment letter outlining this proposed process is attached as Appendix A. In the first stage, the Commission would be equipped with the information needed to further implement Title VII through functioning swap data repositories and effective regulatory reporting and related recordkeeping.[5] In the second stage, the Commission would reduce operational and counterparty risk through registration, core business conduct requirements,

[3] *Id*. at 65,787.

[4] Letter from the Futures Industry Association, International Swaps and Derivatives Association, and Securities Industry and Financial Markets Association to David A. Stawick, Secretary, Commodity Futures Trading Commission (Nov. 4, 2011), *available at* http://www.sifma.org/workarea/downloadasset.aspx?id=8589936345 and attached as Appendix A.

[5] This first stage would be sequenced as follows: (1) establish standardized entity and data identifiers; (2) implement rules governing SDRs; (3) require swap dealers and MSPs to report trades to SDRs and (4) require swap dealers and MSPs to keep core internal records, defined to include transaction and position records.

clearing and capital and margin rules.[6] Finally, in the third stage, the Commission would increase public transparency through security-based swap execution facility and exchange execution requirements, real-time public reporting and related recordkeeping.[7] Within each stage, requirements would be phased in by type of market participant.

The implementation proposal lists rules that SIFMA, ISDA and the FIA believe must be finalized before the three-stage implementation process can begin and before any particular requirement can be phased in. In the context of this Proposal, SIFMA believes that all Title VII rules should be finalized prior to requiring SBSD or MSBSP registration. However, if the Commission is not inclined to wait for finalization of all Title VII rules, SIFMA believes that it is critical that, before registration is required, the Commission finalize (i) the rules defining "security-based swap," "security-based swap dealer" and "major security-based swap participant"; (ii) the rules imposing capital and margin requirements on SBSDs and MSBSPs; (iii) its position on inter-affiliate security-based swaps; and (iv) its position on the extraterritorial application of Title VII. Until that time, market participants will not be able to fully analyze the critical entity structuring issues that allow them to determine which entities to register and prepare for Title VII compliance.

Even after all necessary rules are finalized, however, potential registrants will need time to understand them and prepare for registration in a new, previously untested regulatory regime in which potentially unforeseen technological and operational issues might arise. For example, the Commission proposes accepting SBSD and MSBSP registration applications through an expanded version of the EDGAR system.[8] SIFMA members analyzing the Proposal have concluded that this may prove to be a technological barrier to registration of entities whose computer systems cannot access the EDGAR system because of incompatible security protocols or technology. SIFMA believes it is critical that sufficient time—at a minimum, six months—be allocated between publication of the final registration rule and the effective date of the registration requirement for all issues, foreseen and unforeseen, to be resolved.

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[6] The second stage would be sequenced as follows: (1) registration of swap dealers and MSPs, (2) mandatory compliance with core business conduct requirements, defined to include know-your-customer requirements, standardized risk and conflict disclosure, clearing disclosure, political contribution requirements and anti-fraud and anti-manipulation requirements other than those connected to swap execution facility/exchange trading (3) phasing-in of mandatory clearing and (4) mandatory compliance with margin and capital rules.

[7] The third and final stage would be sequenced as follows: (1) SEF and DCM execution requirements, as well as trade reporting for lifecycle events, (2) non-core external business conduct standards, such as heightened special entity requirements, bespoke risk / conflicts disclosures, daily mid-market values, scenario analyses and requirements related to trade execution (3) real-time public reporting of transaction data, and (4) non-core recordkeeping requirements, including real-time access to records including pre- and post-trade communications.

[8] Proposal at 65,793.

SIFMA supports the Commission's (i) attempts to align SBSD and MSBSP registration requirements with the CFTC's proposed registration requirements and (ii) creation of a streamlined registration process for SBSDs and MSBSPs already registered with the Commission or the CFTC.

SIFMA appreciates the Commission's attempts to minimize registration burdens by aligning its proposed registration requirements for SBSDs and MSBSPs with those the CFTC is proposing for swap dealers and major swap participants as well as by creating a streamlined registration process for entities already registered with the Commission or the CFTC.[9] Many entities will likely be registering with both the Commission and the CFTC, and providing a streamlined registration process will ease the burden these new requirements impose on these potential dual-registrants. SIFMA requests, however, that the Commission explicitly state that an SBSD that ceases business as an SBSD but will register as an MSBSP will be able to rely on their previous SBSD registration application, rather than reapplying to the Commission as an MSBSP.[10]

Similarly, SIFMA is generally pleased that the Commission elected to make its existing broker-dealer registration forms the basis for its proposed registration requirements for SBSDs and MSBSPs. Market participants are familiar with these requirements and may, in some cases, be registering broker-dealers as SBSDs. However, several of the required disclosures on proposed Form SBSE appear to impose significant burdens on registrants. One example is the disclosure of disciplinary matters affecting control affiliates. SIFMA members are continuing to review the specific items in proposed Form SBSE to determine whether others are problematic or overly burdensome, and request that the Commission continue to accept comments on Form SBSE beyond the general comment deadline for the Proposal.

SIFMA supports the Commission's plan to conduct a holistic review of Commission registration requirements.

The Commission notes that the Dodd-Frank Act creates new registration requirements for several types of entities and that it intends "to issue a concept release designed to collect information and evaluate different aspects of [existing] registration standards and processes . . .

[9] Relatedly, SIFMA appreciates the proposed conditional registration regime that applies when an application is complete except for "Senior Officer Certification" and when a MSBSP must register on a look-back basis.

[10] SIFMA believes, based on the statutory definition of SBSD, that an SBSD that ceases active security-based swap dealing activity does not need to remain registered as an SBSD simply to service existing customer security-based swaps. If the Commission does not agree, SIFMA suggests that a registered SBSD that decides to cease active security-based swap activity be allowed to automatically convert its SBSD registration to registration as an MSBSP and, in this regulated capacity, continue to service existing customer security-based swaps. This will allow insured depository institutions to continue to service existing customer trades after the effectiveness of Section 716 of Dodd-Frank.

to consider the policy objectives of registration, how best to achieve those policy objectives through registration and other means, and the relative benefits and costs of the various means available" to aid it in drafting the new registration requirements.[11] SIFMA strongly supports this review and looks forward to commenting on the Commission's concept release. Moreover, as discussed below, SIFMA believes certain novel and significantly burdensome elements of the SBSD and MSBSP registration requirement, such as the "Senior Officer Certification," should not be adopted until after the completion of this holistic review of registration requirements and an analysis of whether such a requirement is necessary.[12]

SIFMA believes the Commission should not require a "Senior Officer Certification," which is unnecessary, overly burdensome and unduly vague and indeterminate.

The Proposal would require a "senior officer [of each registrant to] certify that, after due inquiry, he or she has reasonably determined that the [registrant] has the operational, financial, and compliance capabilities to act as [an SBSD or MSBSP]."[13] SIFMA believes this requirement is unnecessary, overly burdensome and, in the words of Commissioner Paredes, "unduly vague and indeterminate."[14]

SIFMA believes the "Senior Officer Certification" is unnecessary. The Commission acknowledges the novelty of the certification.[15] Entities seeking to register as broker-dealers need not make a similar certification on Form BD.[16] Moreover, the untested nature of the Dodd-Frank regulatory regime for security-based swaps makes it impossible for any senior officer to confidently or meaningfully certify that an SBSD or MSBSP will have the necessary capabilities.

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[11] Proposal at 65,786 n.13

[12] *See* Troy A. Paredes, Commissioner, Securities and Exchange Commission, Statement at Open Meeting to Propose Rules Regarding Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants (Oct. 12, 2011) ("**Statement of Commissioner Paredes**"), *available at* http://www.sec.gov/news/speech/2011/spch101211tap-sbs.htm

[13] Proposal at 65,789.

[14] Statement of Commissioner Paredes, *supra* note 12 ([T]he novel and untested approach of the "Senior Officer Certification" is premature. We should await what we learn from the concept release before forging ahead with this new approach to registration.").

[15] Proposal at 65,789. ("[A] requirement that an applicant or regulated entity certify as to its ability to engage in the business it would be registered to do is relatively new.").

[16] SIFMA acknowledges that, under FINRA Rule 3130(b), FINRA members must provide an annual CEO certification that "the member has in place *processes* to establish, maintain, review, test and modify written compliance policies and written supervisory procedures *reasonably designed to achieve compliance*" with applicable rules and statutes (emphases added). As discussed below, however, that certification requirement differs significantly from the "Senior Officer Certification" requirement in the Proposal, under which a senior officer must certify with respect to the actual "operational, financial, and compliance capabilities" of the registrant.

Finally, while SIFMA recognizes that differences between the Securities Exchange Act and the Commodity Exchange Act necessitate some differences in the registration requirements for SBSDs and MSBSPs, on the one hand, and swap dealers and major swap participants, on the other, SIFMA believes the lack of a similar "Senior Officer Certification" requirement in the CFTC's proposed registration rule[17] provides further evidence that such a requirement is not needed to promote financial stability or investor protection.

In addition, the requirement is unclear and vague. The Commission has not adequately defined "operational, financial, and compliance capabilities," nor what constitutes a "due inquiry" by a senior officer. SIFMA recognizes and welcomes the Commission's attempts to provide registrants with flexibility. Nevertheless, as noted by Commissioner Paredes, the indeterminate nature of what a senior officer must attest to risks shifting regulatory attention away from an *ex ante* analysis of what capabilities a prospective SBSD or MSBSP must possess to ensure financial stability and the protection of investors into an *ex post* examination of what a senior officer should—with the benefit of hindsight—have identified as a deficiency in the SBSD's or MSBSP's capabilities.[18]

SIFMA therefore urges the Commission not to include the "Senior Officer Certification" in its final registration rule for SBSDs and MSBSPs. If, however, the Commission elects to retain the "Senior Officer Certification," SIFMA advises the Commission to modify the proposed requirement in several ways. SIFMA recommends, as the Commission suggests in Question 21 of the Proposal,[19] that the senior officer be required only to certify to the best of his or her knowledge that the registering entity has developed written policies and procedures reasonably designed to prevent violations of federal securities laws, the rules thereunder, and applicable rules of self-regulatory organizations. This would be consistent with the annual CEO certification requirement required by the Financial Industry Regulatory Authority ("**FINRA**") of its members.[20] In addition, given the new security-based swaps regulatory regime, the

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[17] *See* Registration of Swap Dealers and Major Swap Participants, 75 Fed. Reg. 71,379 (proposed on Nov. 23, 2010) (the "**CFTC Proposal**"), *available at* http://www.gpo.gov/fdsys/pkg/FR-2010-11-23/pdf/2010-29024.pdf.

[18] As Commissioner Paredes stated:

> [B]ecause "capabilities" is not defined or even cabined as a concept, the Commission is afforded too much discretion to ascribe to "operational, financial, and compliance capabilities" any meaning the Commission chooses and too much room for after-the-fact second-guessing. One cannot overlook the risk that the Commission, biased by 20-20 hindsight, will too readily conclude from an unintended (and undesirable) outcome that the SBS entity was not "capable" and thus that the Senior Officer Certification was false.

Statement of Commissioner Paredes, *supra* note 12.

[19] Proposal at 65,791.

[20] Specifically, FINRA rules require that:

> Each member shall have its chief executive officer(s) (or equivalent officer(s)) certify annually . . . that the member has in place processes to establish, maintain, review, test and modify written compliance policies

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Commission should allow a transition period during which SBSDs and MSBSPs can register with the Commission, develop and evaluate compliance programs and cultivate best practices before a "Senior Officer Certification" is necessary. Without adequate time to familiarize themselves with the operational requirements of the new regulatory regime, few senior officers will be comfortable staking their professional reputations on the certification the Proposal requires, particularly given the significant penalties that can attach to a certification that the Commission later deems to be misleading or false.

SIFMA believes that the Commission should remove, or in the alternative, narrow the scope of and provide exceptions from the associated person investigation requirement.

> As amended by the Dodd-Frank Act, the Securities Exchange Act provides that:
>
> > Except to the extent otherwise specifically provided by rule, regulation, or order of the Commission, it shall be unlawful for [an SBSD or MSBSP] to permit any person associated with [the SBSD or MSBSP] who is subject to a statutory disqualification to effect or be involved in effecting security-based swaps on behalf of the [SBSD or MSBSP].[21]

To implement this provision, the Proposal would require prospective SBSDs and MSBSPs to collect questionnaires from and conduct background checks of their employees and other associated persons engaged in effecting security-based swap activities. The Commission estimates that security-based swap entities "have, on average, twenty-five associated persons that effect or are involved in effecting security-based swaps."[22]

While SIFMA recognizes the need to ensure that associated persons are not subject to statutory disqualifications, we believe the Commission significantly underestimates the burden the Proposal's associated person investigation requirement will impose on prospective SBSDs and MSBSPs. As an initial matter, SIFMA questions the Commission's estimate of how many associated persons will be subject to the required investigation. Under the Proposal, the definition of persons considered to be involved in "effecting security-based swaps" extends beyond those persons directly involved in swap transactions to include "persons involved in

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and written supervisory procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations, and that the chief executive officer(s) has conducted one or more meetings with the chief compliance officer(s) in the preceding 12 months to discuss such processes.

FINRA Rule 3130(b).

[21] Securities Exchange Act § 15F(b)(6) (as amended by Dodd-Frank).

[22] Proposal at 65,810.

drafting and negotiating master agreements and confirmations . . . persons pricing security-based swap positions and managing collateral" and compliance personnel.[23] Under this proposed definition, some SIFMA members believe that the entities they intend to register as SBSDs or MSBSPs could have hundreds, if not thousands, of associated natural persons that will effect or will be involved in effecting security-based swaps. Moreover, as the Commission acknowledges, the definition of "associated person" could be read to extend not just to natural persons but also to entire entities that are affiliates of the SBSD or MSBSP.[24] SIFMA believes the business disruptions and other ramifications stemming from an entire entity being statutorily disqualified from effecting or being involved in effecting security-based swaps could be considerable.

As such, SIFMA urges the Commission to narrow the class of associated persons that are considered to effect or be involved in effecting security-based swaps to more closely align with similar requirements in comparable contexts. For example, under FINRA rules for registered broker-dealers, "associated persons of a member" includes a narrower class of only natural persons than the Exchange Act definition.[25] The Commission should use this narrower definition as a base from which to determine which associated persons of an SBSD or MSBSP are "involved in effecting security-based swaps." Similarly, under the CFTC's proposed rule for the registration of swap dealers and major swap participants, only persons involved in the solicitation or acceptance of swaps or the supervision of any person or persons so engaged are considered associated persons. [26] SIFMA believes the Commission could limit the scope of who is considered to be an associated person effecting or involved in effecting security-based swaps either by narrowly defining the relevant terms or by exercising its statutory authority to grant exceptions to the general ban on an SBSD or MSBSP from associating with a person subject to statutory disqualifications.[27]

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[23] *Id*. at 65,795 n.56.

[24] *See id*. at 65,797 Question 90.

[25] Specifically, under FINRA rules:

> [P]erson associated with a member" or "associated person of a member" means: (1) a natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Corporation under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member.
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> FINRA By-Laws art. I, (rr).

[26] *See* CFTC Proposal, *supra* note 17, at 71,380; *see also* Commodity Exchange Act § 1a(4) (as amended by Dodd-Frank) (including as "associated persons" only those persons "associated with a swap dealer or major swap participant . . . in any capacity that involves the solicitation or acceptance of swaps or the supervision of any person or persons so engaged").

[27] *See* Securities Exchange Act §15F(b)(6) (as amended by Dodd-Frank).

Furthermore, the Commission should, as much as possible, leverage existing background checks by prospective SBSDs or MSPSBs. The Commission notes in the Proposal that financial institutions typically require prospective employees to complete questionnaires and undergo background checks similar to those the Proposal requires.[28] SIFMA welcomes the fact that the Proposal appears not to require broker-dealers registering as SBSDs or MSBSPs to collect any additional information regarding their associated persons.[29] Nevertheless, implementing the Proposal's associated person investigation requirement will be more burdensome than the Commission estimates. Specifically, even though many currently registered broker-dealers will register as SBSDs or MSBSPs, many SIFMA members are considering registering an entity other than the broker-dealer as an SBSD or MSBSP. These entities screen employees pursuant to the requirements of their prudential regulators, which may differ from the requirements for broker-dealers and those in the Proposal. As a result, the Commission should[30] (i) confirm that SBSDs and MSBSPs that are also registered as broker-dealers or which have affiliated broker-dealers may rely on the questionnaires and background checks they conduct of associated persons under Commission and FINRA rules to satisfy their obligations as SBSDs or MSBSPs; and (ii) allow SBSDs and MSBSPs that are not broker-dealers but are overseen by a prudential regulator to rely on the questionnaires and background checks they conduct pursuant to the requirements of their prudential regulator to satisfy their obligations as SBSDs or MSBSPs.

In light of the issues raised above, SIFMA believes it is particularly important that the Commission allow sufficient time between the adoption of the rules and their effectiveness to allow potential registrants to conduct this extensive review of associated persons.

SIFMA believes the Commission should not require non-U.S. entities to obtain an opinion of counsel certifying their ability to allow the Commission to inspect their books and records and to conduct on-site examinations.

The Proposal requires that non-U.S. entities seeking to register as SBSDs or MSBSPs certify their ability to allow the Commission to inspect their books and records and to conduct on-site examinations. The non-U.S. SBSDs and MSBSPs must also provide an opinion of counsel attesting to that ability. Neither Form BD nor FINRA applications require broker-dealers that are non-U.S. entities to make similar certifications or to provide an opinion of counsel. It is unclear why the Commission would require this in the SBSD and MSBSP context. In addition, it is unclear from the Proposal what the Commission intends to do with these opinions of counsel.

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[28] Proposal at 65,796.

[29] *See id*. ("Form U-4 . . . would fulfill the requirement to obtain a questionnaire or application specified in [proposed] Rule 15Fb6-1(b).").

[30] These actions fall within the authority granted to the Commission by Exchange Act Section 15F(b)(6) to provide exceptions from 15F(b)(6)'s general prohibition on SBSDs and MSBSPs permitting any associated person subject to a statutory disqualification to effect or be involved in effecting security-based swaps.

SIFMA members with non-U.S. affiliates believe this requirement could conflict with home jurisdiction data protection and information-sharing laws. As a result, there is a significant risk that many non-U.S. entities currently engaged in the security-based swaps business in the United States will be legally prevented from registering as SBSDs or MSBSPs, decreasing liquidity in these crucial markets. SIFMA appreciates the Commission's intention to issue a separate release that addresses the application of Title VII to non-U.S. entities more broadly and hopes this issue will be considered by the Commission in that context.[31]

Moreover, SIFMA believes that the Proposal's requirements regarding non-U.S. entities are unnecessary. The experience of the Federal Reserve Board with international regulators suggests that supervisory institutions are able to cooperate across jurisdictions to share information. The Commission, therefore, could ensure its ability to obtain information more efficiently by coordinating with its foreign counterparts rather than by requiring individual registrants to obtain opinions of counsel.

SIFMA believes the Commission should allow for limited designation and registration, including by trading unit, type of activity and type of counterparty.

As amended by the Dodd-Frank Act, the Securities Exchange Act provides that "[a] person may be designated as [an SBSD] *for a single type or single class or category of security-based swap or activities* and considered not to be [an SBSD] for other types, classes, or categories of security-based swaps or activities"[32] and that "a person may be designated as [an MSBSP] for 1 or more categories of security-based swaps without being classified as [an MSBSP] for all classes of security-based swaps."[33] The Commission asks in the Proposal whether "the registration process [should] be expanded in any way to allow firms to choose whether they register in a 'full' or 'limited' capacity."[34]

SIFMA strongly believes that the Commission should allow for limited SBSD or MSBSP registration along a number of dimensions. First, the Commission should allow entities to register individual trading desks or other units engaged in dealing activity rather than registering the entire legal entity of which that desk or unit is a part. As part of this type of registration, the Commission should allow a branch of a bank engaged in security-based swap dealing activity to register as an SBSD but not require the bank itself or its other branches to register or become subject to SBSD requirements.[35] Consistent with long-standing Commission practices in the

[31] *See* Proposal at 65,799 n.65.

[32] Securities Exchange Act § 3(a)(71)(B) (as amended by Dodd-Frank) (emphasis added).

[33] *Id*. § 3(a)(67)(C).

[34] Proposal at 65,795 Question 62.

[35] For a related discussion, *see* Letter from Twelve Foreign-Headquartered Financial Institutions to David A. Stawick, Secretary, Commodity Futures Trading Commission, Ms. Elizabeth M. Murphy, Secretary, Securities (…continued)

broker-dealer context, a U.S. firm, subsidiary or branch that is registered as an SBSD should be permitted to deal in security-based swaps as agent for a foreign entity or branch of a U.S. bank without the latter being required to register as an SBSD.[36] Second, the Commission should allow entities to register as an SBSD or MSBSP in one class or type of security-based swap but not another. For example, an entity that acts as a dealer in single-name credit default swaps but not total return swaps on single securities should be able to register as an SBSD in the former but not the latter. Third, the Commission should allow entities to register as an SBSD or MSBSP for their activities with U.S. persons, keeping activities with non-U.S. persons outside the scope of registration and related regulation. This list of types of limited registration is not meant to be exhaustive; the Commission should consider any reasonable type of limited registration proposed to it by potential registrants.

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SIFMA appreciates the opportunity to comment on the Commission's proposed registration requirements for SBSDs and MSBSPs and welcomes any questions the Commission may have regarding these comments.

Respectfully submitted,

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

cc: Honorable Mary L. Schapiro, Chairman
Honorable Luis A. Aguilar, Commissioner
Honorable Daniel M. Gallagher, Commissioner
Honorable Troy A. Paredes, Commissioner
Honorable Elisse B. Walter, Commissioner

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and Exchange Commission, and Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (Feb. 17, 2011), *available at* http://www.sec.gov/comments/s7-39-10/s73910-25.pdf. As proposed in that letter, SIFMA supports the possibility of dividing the dealer activities between multiple entities and subjecting each entity to the requirements relevant to the type of activity in which they engage, such as execution requirements vs. ongoing requirements.

[36] Rule 15a-6 under the Securities Exchange Act of 1934 permits foreign broker-dealers to interface with U.S. customers under arrangements with registered broker-dealers without themselves registering as broker-dealers with the Commission. *See* Letter from Twelve Foreign-Headquartered Financial Institutions, *supra* note 35.

Appendix A

November 4, 2011

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

Re: CFTC Proposed Compliance and Implementation Schedules for Clearing, Trade Execution, Documentation and Margin (RIN 3038-AD60; RIN 3038-AC96; RIN 3038-AC97)

Dear Mr. Stawick:

The Futures Industry Association (the "**FIA**"), International Swaps and Derivatives Association ("**ISDA**") and Securities Industry and Financial Markets Association ("**SIFMA**," and together, the "**Associations**")[1] appreciate the opportunity to comment on the Commodity Futures Trading Commission's (the "**CFTC's**") proposed compliance and implementation schedules for swap clearing and trade execution[2] and for swap documentation and margin[3] (together, the "**Proposals**") under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Title VII**" of the "**Dodd-Frank Act**").

Executive Summary

The Associations support an orderly and efficient transition of the swap markets to the new market structure and regulatory regime required by Title VII. We believe that a successful transition requires a plan that is comprehensive, transparent and minimally disruptive to the continued operation of the swap markets. By articulating a "phase-in approach" to implementation for different categories of market participants, the Proposals lay a cornerstone for such a plan. However, the Associations believe that this phase-in

[1] Further information about the Associations is available in Appendix A.

[2] Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 Fed. Reg. 58,186 (Sept. 20, 2011) (the "**Clearing and Trade Execution Implementation Proposal**").

[3] Swap Transaction Compliance and Implementation Schedule: Trading Documentation and Margining Requirements under Section 4s of the CEA, 76 Fed. Reg. 58,176 (Sept. 20, 2011) (the "**Documentation and Margin Implementation Proposal**").

approach must be incorporated into a comprehensive plan that recognizes and accounts for the significant serial dependencies and interdependencies which lay at the core of the Title VII transition process. Thus, we propose a plan that sequences Title VII requirements in three stages: first, establishing and implementing swap data repositories ("**SDRs**") and requiring regulatory reporting and related recordkeeping to equip regulators with the market information needed to better regulate the market; second, implementing registration, certain business conduct requirements, clearing and capital and margin rules to reduce operational and systemic risk; and third, implementing the swap execution facility ("**SEF**") and designated contract market ("**DCM**") execution requirements and real-time public reporting and recordkeeping to achieve pre-trade price transparency. Swaps entered into before the mandatory compliance date for a given Title VII requirement would be grandfathered from compliance with that requirement.

Within each of the three stages we identify, compliance would be phased-in by type of market participant, as in the Proposals. However, we believe that slight changes to the Proposals are necessary. Compliance would first be required of the largest and most sophisticated market participants—swap dealers, major swap participants ("**MSPs**") and "active funds," those private funds that exceed a threshold of swap activity. The threshold for "active funds" should be increased from 20 or more swaps per month, as in the Proposals, to 200 or more swaps per month to avoid including funds that are unlikely to be able to comply on an accelerated time frame.[4] Next, compliance would be required of private funds (other than "active funds" described above), commodity pools, ERISA benefit plans and other financial entities, in each case that are not third-party funds or third-party subaccounts (each as defined below). A private fund would be required to represent to its counterparties that it is not an "active fund" and counterparties would be able to rely on this representation in assuring they are in compliance with phase-in requirements. Finally, nonfinancial end users, third-party funds and third-party subaccounts would be required to comply in the third phase. A "third-party fund" would be defined as any fund that is not a private fund and is sub-advised by a subadvisor that is independent of and unaffiliated with the fund sponsor. A "third-party subaccount" would be defined as any account that is not a fund and is managed by an asset manager, irrespective of the level of delegation granted by the account owner to the asset manager.[5] All accounts managed for third parties should be in the third phase as managers may want to consult with the third-party owners, regardless of the amount of discretion contained in the management agreement. Managers should be able to institute the same procedures for all third-party accounts.

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[4] The CFTC has recently proposed that a DCM may not list any futures contract unless at least 85% of the total volume of the contract is traded on the DCM's centralized market. See Core Principles and Other Requirements for Designated Contract Markets, 75 Fed. Reg. 80,572, 80,616 (Dec. 22, 2010). Futures contracts that do not meet this threshold would be converted to swaps, subject to transitional rules proposed by the CFTC. If the CFTC adopts this proposal, the number of swaps many market participants enter into will increase rapidly, and a higher threshold for "active funds" would be needed to take account of this extraordinary trading activity.

[5] For example, many subaccounts provide general grants of authority, but it may not be clear whether the manager needs to obtain specific approval of the beneficial owner to execute documentation necessary for clearing.

The length of time for each phase by market participant should be extended beyond the 90-, 180- and 270-day thresholds in the Proposals to allow for the significant documentation and operational efforts described below. Notwithstanding mandatory compliance dates, any market participant would be permitted to voluntarily comply early with respect to any asset class, which would allow a wide variety of market participants, particularly buy-side participants, to take part in the development of Title VII-compliant infrastructure. Compliance within each of the three stages would also be phased-in by asset class, with asset classes most prepared to meet any particular requirement becoming subject to that requirement first. As with phase-in by type of market participant, compliance would be permitted on a voluntary basis with respect to asset classes for which a requirement is not yet mandatory.

This three-stage phase-in approach should be implemented in lockstep with the Securities and Exchange Commission (the "**SEC**"), self-regulatory organizations such as the National Futures Association ("**NFA**") and market infrastructure providers.[6] Such synchronization is essential to ensure that market participants whose swap activities are subject to multiple regulators and self-regulatory bodies can coordinate their own internal work streams to avoid duplication of work or conflicting compliance dates.

The Associations believe that a number of rules must be finalized before the three-stage implementation process can begin.[7] For example, the definitions of "swap," "swap dealer" and "major swap participant" must be finalized so that market participants know which rules apply to them. A list of rules that the Associations believe must be finalized before Title VII requirements are implemented can be found in Appendix D.[8] In addition, the Associations strongly believe that the CFTC and SEC must clearly articulate final positions on the extraterritorial application of Title VII before implementation can begin in earnest. Until that time, market participants will not be able to fully analyze the critical entity structuring issues that allow them to determine which entities to register and prepare for Title VII compliance.

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[6] SEC Chairman Schapiro recently stated that the SEC intends to propose a detailed implementation plan that "will permit a roll-out of the new securities-based swap requirements in a logical, progressive and efficient manner, while minimizing unnecessary disruption and costs to the market." Speech by Chairman Schapiro at Oct. 12, 2011 Open Meeting, *available at* http://sec.gov/news/speech/2011/spch101211mls-sbs.htm.

[7] For a further description of the difficulty of implementing Title VII requirements before all Title VII rules are finalized, please see Letter from Robert Pickel, Executive Vice Chairman, ISDA to David A. Stawick, Secretary, CFTC, June 9, 2011, available at http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=45701.

[8] The list in Appendix D includes CFTC rules that the Associations believe are prerequisites to the phase-in of a particular requirement. In most cases, the parallel SEC rule is also necessary before the CFTC requirement can be phased-in so that market participants can make informed entity selection, business, operational, legal and compliance decisions based on the entire Title VII landscape and how it applies to their swap and security-based swap transactions.

Stage 1: Equip regulators with the information needed to further implement Title VII through functioning SDRs and effective regulatory reporting and related recordkeeping.

Functioning SDRs and effective regulatory reporting of swap transactions is a prerequisite to an orderly transition to the Title VII regime. Once it begins to compile data across markets, entities and transactions, the CFTC will be well-positioned to determine which types or classes of transactions should become subject to mandatory clearing and in what order and how to implement and monitor compliance with business conduct and other swap dealer rules. As stated by the Financial Stability Board's OTC Derivatives Working Group in a recent report, "authorities need better data on liquidity to facilitate the evaluation of suitability of products for central clearing."[9]

Thus, we propose implementing the first stage in the following sequence: (1) establish standardized entity and data identifiers, (2) implement rules governing SDRs, (3) require swap dealers and MSPs to report trades to SDRs[10] and (4) require swap dealers and MSPs to keep core internal records. It would be more efficient and effective to finalize industry standards, including Legal Entity Identifiers ("**LEIs**") and Unique Swap Identifiers ("**USIs**"), before reporting begins. Otherwise, matching trades between counterparties will be more difficult, increasing the risk of duplicative data within an SDR and making data aggregation across SDRs impossible. Reversing this order would also lead to inefficiencies and delays, requiring market participants to modify systems built before the data standards are finalized. While these industry standards are being developed, SDRs can begin developing systems and processes for data collection.

Once SDRs are registered and swap dealers and MSPs have connected to them, data reporting can begin. Swap dealers and MSPs will not be able to provide, and SDRs will not be able to accept, all data on Dodd-Frank Act-compliant timelines on the first day of operation. Instead, there will need to be an iterative process to develop the procedures and connections needed to ultimately report all Dodd-Frank Act-required data in the appropriate time frame. In Appendix C, the Associations suggest a model five-step

[9] Financial Stability Board, "OTC Derivatives Market Reforms Progress Report on Implementation" (Oct. 11, 2011), *available at* http://www.financialstabilityboard.org/publications/r_111011b.pdf.

[10] If there is no swap dealer counterparty to the swap, an MSP counterparty to the swap would be required to report. If there is no swap dealer or MSP counterparty to the swap, the counterparties would choose who reports. The Associations understand this to be the hierarchy set out in the CFTC's reporting proposals, other than the fact that, for non-real-time reporting, the U.S. counterparty will be the reporting party for any swap in which there is one U.S. and one foreign counterparty. *See, e.g.*, Reporting, Recordkeeping, and Daily Trading Records Requirements for Swap Dealers and Major Swap Participants, 75 Fed. Reg. 76,666 (Dec. 9, 2010); Real-Time Public Reporting of Swap Transaction Data, 75 Fed. Reg. 76,140 (Dec. 7, 2010). The Associations believe that the swap dealer-MSP-end user reporting hierarchy should govern even if the end user is a U.S. entity and the swap dealer is a foreign entity, as end users will not have the infrastructure to report swap trades and will rely on their swap dealers to do so. Any end users that are required to report should not be required to do so until Stage 3. Though registration is not required until Stage 2, market participants could gauge whether they are likely to become a swap dealer or MSP based on the final CFTC rules and report accordingly.

approach to data reporting that begins with regulatory reporting of basic trade information such as trade and product type, counterparties and key economic trade terms on a position basis. Subsequent phases would include reporting of valuation data (other than collateral valuation), swap confirmation reporting and modifications or changes in economic terms. The final phases would incorporate the remaining requirements for reporting under the Dodd-Frank Act.[11] The Associations believe that reporting for amendments, novations or terminations of swaps would require significant development to implement. As a result, such lifecycle reporting would not be required until Stage 3.

Reporting would also be phased-in by asset class, based on whether reporting infrastructure and data exist. In the case of credit derivatives, a great deal of information is already reported to the Depository Trust and Clearing Corporation's Trade Information Warehouse ("**TIW**"). By leveraging this existing facility and cache of information, the CFTC can provide time for SDRs to develop for other asset classes, learning from the experiences of TIW. In the case of foreign exchange ("**FX**"), while no data repository exists for FX, this market has been actively working and partnering with the DTCC and SWIFT in the development of an SDR that, to the greatest extent practicable, leverages existing FX infrastructure and well-established market practices surrounding confirmations to populate an SDR in a safe and timely manner.

Swap dealers and MSPs would also need to maintain transaction records in Stage 1, including documentation that codifies an order or transaction and position records (the "**core recordkeeping requirements**"). As currently proposed, the CFTC's recordkeeping requirements would also require swap dealers and MSPs to maintain extensive records beyond core recordkeeping requirements to include all pre- and post-trade communications, including oral communications and quotes provided or received. These non-core records would need to be maintained electronically, be retrievable in a short time period and be searchable by counterparty and transaction. These requirements far exceed existing recordkeeping requirements currently applicable to futures commission merchants or other regulated entities. Given this fact, no technology currently exists that would allow swap dealers to comply with all of the non-core recordkeeping requirements. As a result, significant time, as well as technological and operational resources, will be needed to implement these non-core requirements, if they can be implemented at all. Due to the complexity of the systems involved and interdependencies between parts of the system, changes must be sequenced and cannot all be implemented at once, regardless of the resources devoted to the task. As a result, it would be very hard, if not impossible, to comply with both the core and non-core recordkeeping requirements in a short- or medium-term time frame. Therefore, the Associations would recommend that, if the CFTC requires this type of searchable file, it and the other non-core recordkeeping requirements be implemented late in Stage 3.

[11] The Associations remain concerned that the Dodd-Frank Act's trade reporting requirements may conflict with financial institutions' duties under privacy and data protection laws in Europe. Letter from James Kemp, Global Foreign Exchange Division, to David A. Stawick, Secretary, CFTC (Feb. 7, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=31872.

Stage 2: Reduce operational and counterparty risk through registration, core business conduct requirements, clearing and capital and margin rules.

The second stage in the transition to compliance with the Title VII regime would be sequenced as follows: (1) registration of swap dealers and MSPs, (2) mandatory compliance with core business conduct requirements, (3) phasing-in of mandatory clearing and (4) mandatory compliance with margin and capital rules. Market participants would comply with the documentation rules relevant to each of these requirements as they are phased in.

The first step in this stage would be registration of swap dealers and MSPs. Data collected in Stage 1 will help the CFTC further calibrate the definitions of swap dealer and MSP before registration is required. The market will then separate out by type of participant: swap dealers, MSPs, financial end users and commercial end users. Market participants will then know their categorization and can comply with the rules required of them.

As with recordkeeping requirements, the Associations believe that the external business conduct standards proposed by the CFTC should be implemented in different stages. In Stage 2, registered swap dealers and MSPs would be required to comply with know-your-counterparty requirements, standardized risk and conflicts disclosure, clearing disclosure, requirements applicable to political contributions and anti-fraud and anti-manipulation requirements other than those connected to DCM or SEF trading ("**core business conduct requirements**"). Non-core business conduct requirements, however, would be deferred until Stage 3. These include business conduct requirements related to special entities, bespoke risk and conflicts disclosure, the requirement to provide daily marks to counterparties, disclosure of daily mid-market values, scenario analyses and requirements related to trade execution. These non-core business conduct requirements will require significant legal, compliance, operational and technological work by the swap dealers and MSPs required to implement them and, in the case of trade execution-related business conduct requirements, would be premature to introduce before mandatory trade execution is implemented.

Mandatory clearing would then begin. Data collected in Stage 1 will help the CFTC assess whether a particular swap or category of swaps should be required to be cleared. In addition, during Stage 1, clearinghouses will have had sufficient time to finalize their swap offerings, clearing members will have had time to develop and test connectivity to clearinghouses and financial entities are more likely to have had sufficient time to negotiate necessary and appropriate documentation. Again, clearing would be phased-in by type of market participant (along the lines outlined in the Proposals) and by product category, most likely beginning with interest rate and credit default swap products for which clearing options currently exist. Commodity swaps and equity swaps would be

required later, as they are generally transacted bilaterally in markets that have not been characterized by central clearing.[12]

The Associations preliminarily believe that the first mandatory clearing requirements for buy-side participants should come into effect in the second quarter of 2013, which is 18 months from now. However, further delays in Stage 1 may postpone this date. In addition, the CFTC's final decision on protection of cleared customer collateral, including whether the CFTC chooses a full segregation or "legally segregated / operationally commingled" ("**LSOC**") model, may affect the amount of time derivatives clearing organizations ("**DCOs**"), swap dealers, MSPs, futures commission merchants and customers need to prepare for clearing.

After mandatory clearing has been implemented, capital and margin for uncleared swaps can be phased-in. If these requirements, particularly uncleared swap margin, are implemented before clearing, compliance would become mandatory for certain market participants as a practical matter prior to becoming mandatory for them as a regulatory matter. Accordingly, rules relating to uncleared swap margin should not apply to a market participant for swaps that are required to be cleared until that market participant is required to clear the particular swap. For example, consider a third-party subaccount that wishes to enter into a specific interest rate swap that is required to be cleared if two swap dealers enter into a trade but is not yet required to be cleared by the third-party subaccount. If the third-party subaccount is subject to uncleared margin posting requirements for that interest rate swap, and uncleared margin requirements are higher than those a clearinghouse would require, the third-party subaccount will be forced to either clear the swap, which it may not be prepared for, or to pay high margin amounts.

The Associations believe that it is particularly important that the 90-, 180- and 270-day time frames for compliance in the Proposals be significantly lengthened for this Stage. The Dodd-Frank Act requires unprecedented new market infrastructure, technology, compliance, legal and operational changes. The Associations believe that the necessary operational and technological changes alone may take more than 1 year from the time the rules are finalized to implement. Unless sufficient time is provided for <u>each</u> of these components to adequately develop, all market participants (and particularly end users) will face interruptions in their ability to enter into swaps to hedge their business risks or manage investments to meet client objectives. Even a prepared swap dealer cannot meet the Dodd-Frank Act's clearing mandate until clearinghouses are up and running, buy-side firms enter into clearing and execution documentation arrangements, swap data

[12] Additional time will be required to address clearing of FX options, since trades are settled on a physical, not cash, basis. These clearing solutions will need to satisfy the principles proposed by the Bank for International Settlements Committee on Payment and Settlement Systems ("**CPSS**") and International Organization of Securities Commissions ("**IOSCO**") in March 2011, including measures to guarantee full and timely physical settlement and ensure that the guaranties are credible and address extreme but plausible market conditions. If FX swaps and forwards are not ultimately exempted from Title VII clearing requirements by the Treasury Secretary, as proposed, additional time will be needed to develop clearing solutions for these products as well.

repositories begin accepting transaction reports and collateral and risk management systems are operational and have been adequately tested.

The Associations believe that overly short time frames are particularly problematic with respect to changes in documentation that will be required not only by the documentation proposals,[13] but also by the clearing, exchange trading and margin mandates. The number of documentation changes that need to be negotiated is overwhelming. No Dodd-Frank Act-compliant industry standard exists for these documents and current agreements do not address a number of key business issues related to clearing and exchange trading of swaps. Even when industry-wide templates are developed, customers will need to be educated and informed about their contents. Importantly, even standard documentation will need to be individually negotiated to account for counterparty-specific issues. If the CFTC's documentation rules remain as proposed, market participants may need time beyond Stage 2 to complete compliant documentation. In addition, if the CFTC adopts its proposed rule prohibiting DCMs from listing a futures contract if fewer than 85% of trades occur on the DCM's centralized market, many contracts currently traded as futures will be converted to swaps and additional documentation will be required.[14]

Large swap dealers and futures commission merchants estimate they will need to negotiate, sign or amend a total of about 100,000 documents each with over 10,000 counterparties[15] over the course of one to two years, an undertaking that will cost millions of dollars.[16] These documents include ISDA master agreements, credit support annexes, custody agreements, client representation letters, execution agreements, futures agreements, clearing agreements and SEF and DCO agreements, among others. Swap dealers will need to devote significant resources to this effort; one member has indicated that they will need to hire 15 new document negotiators for a period of 6 months just to handle document negotiations with their 200 largest clients, and that up to 75 would be required to negotiate documentation with all clients if documentation was required to be completed in a 6-month period. The burden on buy-side participants is also overwhelming. In one example, one asset manager may have 2,000 accounts, each of which might need 10 execution

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[13] *See* Customer Clearing Documentation and Timing of Acceptance for Clearing, 76 Fed. Reg. 45,730 (Aug. 2, 2011); Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 6715 (Feb. 8, 2011); Orderly Liquidation Termination Provision in Swap Trading Relationship Documentation for Swap Dealers and Major Swap Participants, 76 Fed. Reg. 6708 (Feb. 8, 2011); Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties, 75 Fed. Reg. 80,638 (Dec. 22, 2010) and other Title VII proposals requiring changes to swap documentation.

[14] *See supra* note 4.

[15] Some of these counterparties may not engage in new swap trades and, as a result, documentation will not need to be amended. However, members of the Associations find it difficult to gauge at this point how many counterparties will wish to enter into swap transactions with them on an ongoing basis.

[16] Depending on the content of final CFTC rules relating to documentation, the period may be longer.

agreements, 3 clearing documents, 10 tri-party segregation documents for initial margin and 10 new or revised ISDA master agreements with counterparties—a total of up to 66,000 documents that need to be agreed to, drafted, signed and, in some cases, approved by board action.

Allowing insufficient time to complete this documentation exercise will force asset managers to choose a small number of dealers with which to enter into arrangements in the short term. These are likely to be the largest dealers with standard documentation whose advantages over smaller dealers will be exacerbated. This will negatively affect the competitive positions of small swap dealers, at least for a transitional period. Furthermore, market disruptions are likely to occur as these large dealers will be unable to negotiate with all parties, leaving a substantial number of market participants without access to the swap markets.

Stage 3: Increase public transparency through SEF and DCM execution requirements and real-time public reporting and related recordkeeping.

The third and final stage of transition would be sequenced as follows: (1) SEF and DCM execution requirements, as well as trade reporting for lifecycle events, (2) non-core external business conduct standards, (3) real-time public reporting of transaction data, and (4) non-core recordkeeping requirements.

Within Stage 3, the CFTC would first implement mandatory trading on SEFs and DCMs. Title VII is clear that the execution requirement will automatically apply to transactions that are subject to mandatory clearing so long as a DCM or SEF has made it available for trading. By defining "made available for trading" appropriately, beginning with the liquid products most conducive to robust SEF trading, the CFTC has the authority to sequence this step in a way that ensures an orderly transition to exchange/SEF trading. The Associations believe that the CFTC, rather than the SEFs, should determine when enough liquidity has developed that a swap qualifies as "made available for trading," and that this determination should be subject to public notice, comment and opportunity for a hearing. The Associations preliminarily believe that the first mandatory trading requirements for buy-side participants should come into effect in the fourth quarter of 2013, which is 24 months from now. However, further delays in Stages 1 and 2 may postpone this date. Lifecycle reporting requirements, including for amendments, novations or terminations of swaps, would be phased-in at the same time.

Next, non-core business conduct requirements would be implemented. The introduction of trade execution requirements, including execution standards and protections against front-running and trading ahead, make most sense in an environment where trading on SEFs or DCMs is required. Deferring non-core requirements to Stage 3 will also allow swap dealers and MSPs sufficient time to develop the bespoke risk and conflicts disclosure, disclosure of daily mid-market values and scenario analyses required by the CFTC.

Real-time reporting requirements would follow mandatory trade execution and non-core business conduct requirements. As the Associations have previously stated, it is critical that the definition of a "block trade" and real-time reporting delays for blocks be carefully set to avoid front-running in the cash markets where block trades are hedged, which would likely lead swap dealers and MSPs to increase the price of block trades for end users. Until a liquid swap trading market develops on SEFs and DCMs, the CFTC will not be able to make informed decisions on the definition of a block or an appropriate public reporting time frame. For the same reason, real-time reporting would be implemented gradually. Block trade thresholds would be set at a low level at first, such that many trades are treated as blocks, and raised slowly by the CFTC when doing so is supported by market data. In addition, market participants would be provided 24 hours before block trade information is publicly disseminated, with the time to public dissemination decreasing as the CFTC learns more about the costs and benefits of various reporting time frames. Finally, non-core recordkeeping requirements, including retention of all pre- and post-trade communications in an electronic format retrievable in a short time period and searchable by counterparty and transaction, would be implemented after real-time reporting.

* * *

The Associations are grateful for the opportunity to comment on the Proposals. Please feel free to contact the Associations should you wish to discuss this letter.

Sincerely,

Futures Industry Association
International Swaps and Derivatives Association
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
Commodity Futures Trading Commission
Honorable Mary L. Schapiro, Chairman
Honorable Luis A. Aguilar, Commissioner
Honorable Daniel M. Gallagher, Jr., Commissioner
Honorable Troy A. Paredes, Commissioner
Honorable Elisse B. Walter, Commissioner
Securities and Exchange Commission

Appendix A: About the Associations

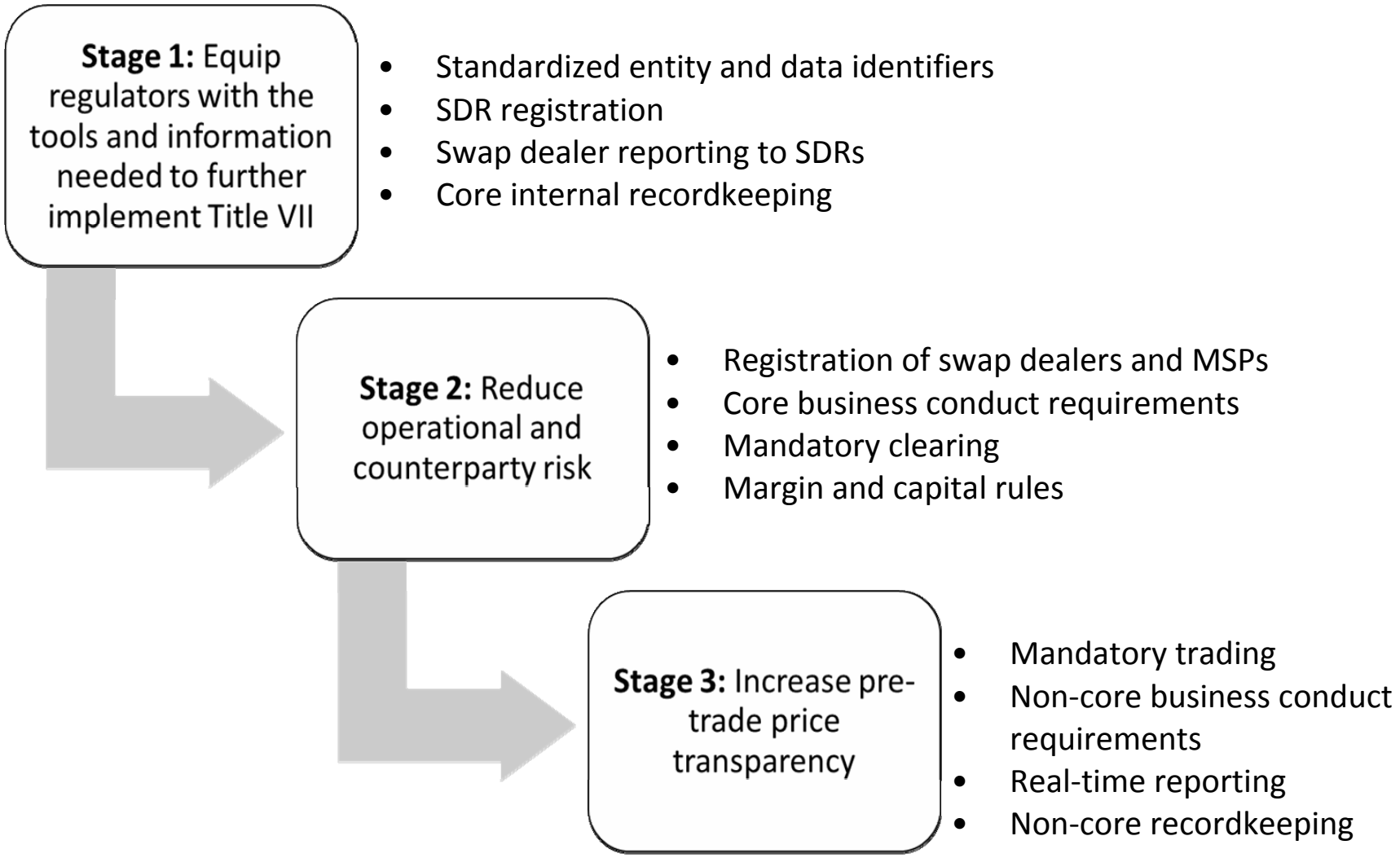
The Futures Industry Association is the leading trade organization for the futures, options and OTC cleared derivatives markets. It is the only association representative of all organizations that have an interest in the listed derivatives markets. Its membership includes the world's largest derivatives clearing firms as well as leading derivatives exchanges from more than 20 countries. As the principal members of the derivatives clearinghouses, our member firms play a critical role in the reduction of systemic risk in the financial markets. They provide the majority of the funds that support these clearinghouses and commit a substantial amount of their own capital to guarantee customer transactions.

FIA's core constituency consists of futures commission merchants, and the primary focus of the association is the global use of exchanges, trading systems and clearinghouses for derivatives transactions. FIA's regular members, who act as the majority clearing members of the U.S. exchanges, handle more than 90% of the customer funds held for trading on U.S. futures exchanges.

ISDA's mission is to foster safe and efficient derivatives markets to facilitate effective risk management for all users of derivative products. ISDA has more than 800 members from 56 countries on six continents. These members include a broad range of OTC derivatives market participants: global, international and regional banks, asset managers, energy and commodities firms, government and supranational entities, insurers and diversified financial institutions, corporations, law firms, exchanges, clearinghouses and other service providers.

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.

Appendix B: Three-Stage Implementation Process



Appendix C: Five Model Phases of SDR Reporting[17]

Phase 1:

- Swap Continuation Data: End of day snapshot for all asset classes. Confirmation and lifecycle data will be provided for credit in line with existing DTCC TIW for 97% of market that is currently electronically processed.

Phase 2:

- Swap Continuation Data: Valuation data other than collateral will be reported on valuation date + 1. Collateral is not managed at trade level and cannot be incorporated per trade.

Phase 3:

- Swap Creation Data; Primary economic terms ("**PET**") and confirmation data will be reported for electronically processed trades.
- Swap Continuation Data: Lifecycle and contract intrinsic data will be reported for electronically processed trades.

Phase 4:

- Swap Creation Data; PET and confirmation data will be reported for paper processed trades.
- Swap Continuation Data: Lifecycle and contract intrinsic data will be reported for paper processed trades.

Phase 5:

- All reporting will be compliant with SEC and CFTC rules.

[17] The Associations note that these phases are meant only to be a model for SDR reporting. Operational builds will be different for reporting of different asset classes, and, as a result, this model may need to be altered for any particular asset class. In addition, the phases may change based on finalized CFTC rules.

Appendix D: CFTC Rules Required Before Title VII Requirements Are Phased In

Phase 1

Before SDRs registration becomes mandatory:

- Final Rules on Registration of SDRs
- Final Rules on SDR Core Principles
- Final Rules on the Definition of "Swap"

Before reporting to SDRs becomes mandatory:

- Final Rules on Swap Data Recordkeeping and Reporting
- Final Rules on the Definition of "Swap"
- Final Rules on Real-Time Public Reporting of Swap Transaction Data

Phase 2

Before registration of swap dealers and MSPs becomes mandatory:

- Final Rules Further Defining "Swap Dealer" and "Major Swap Participant"
- Final Rules on Registration Requirements for Swap Dealers and MSPs
- Final Rules on the Definition of "Swap"

Before clearing becomes mandatory:

- Final Rules on DCO Core Principles *(already completed)*
- Final Rules on End-User Exception to Mandatory Clearing of Swaps
- Final Rules on Review of Swaps for Mandatory Clearing *(already completed)*
- Final Rules on DCOs, DCMs and SEFs Regarding the Mitigation of Conflicts of Interest
- Final Rules on the Definition of "Swap"
- Final Rules on Protection of Cleared Swaps Customer Contracts and Collateral
- Final Rules on Customer Clearing Documentation and Timing of Acceptance for Clearing

Before margin and capital requirements become mandatory:

- Final Rules on Capital for Swap Dealers and MSPs
- Final Rules on Margin for Uncleared Swaps (from both the CFTC and Prudential Regulators)
- Final Rules on Protection of Collateral of Counterparties to Uncleared Swaps and Treatment of Securities in a Portfolio Margining Account in a Commodity Broker Bankruptcy
- Final Rules Further Defining "Swap Dealer" and "Major Swap Participant"
- Final Rules on Registration of Swap Dealers and MSPs
- Final Rules on the Definition of "Swap"

Before business conduct standards becomes mandatory:

- Final Rules on Business Conduct Standards for Swap Dealers and MSPs with Counterparties
- Final Rules Further Defining "Swap Dealer" and "Major Swap Participant" and "Eligible Contract Participant"
- Final Rules on Registration of Swap Dealers and MSPs
- Final Rules on the Definition of "Swap"

Phase 3

Before SEF execution becomes mandatory:

- Final Rules on Registration and Regulation of Swap Execution Facilities
- Final Rules on Core Principles and Other Requirements for Swap Execution Facilities
- Final Rules on Core Principles for DCMs
- Final Rules on DCOs, DCMs and SEFs Regarding the Mitigation of Conflicts of Interest
- Final Rules on the Definition of "Swap"

Before real-time public reporting becomes mandatory:

- Final Rules on Real-Time Public Reporting of Swap Transaction Data
- Final Rules on Registration and Regulation of Swap Execution Facilities
- Final Rules on the Definition of "Swap"