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August 27, 2019

Via Electronic Submission and Email

Christopher Kirkpatrick
Secretary of the Commission
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: Certain Swap Data Repository and Data Reporting Requirements
(RIN 3038-AE32)**

Dear Mr. Kirkpatrick:

The Futures Industry Association (“**FIA**”)¹ supports the Commodity Futures Trading Commission’s (“**CFTC**” or “**Commission**”) efforts to improve its swap data repository (“**SDR**”) reporting rules and appreciates the importance of the Commission and public having access to accurate and reliable data. FIA’s membership includes financial institutions, brokerage firms, and trading firms that are active in physical commodities markets, as well as commercial end users that rely on physical commodities, futures and over-the-counter derivatives, including swaps, to support their business activities (collectively, “**FIA’s commodities members**”).

FIA’s commodities members appreciate the opportunity to comment on the Proposed Amendments to the Commission’s Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements.² The Commission recently extended the comment period in response to industry concerns regarding the Commission’s intention to undertake two additional related rulemakings in furtherance of the Division of Market Oversight’s (“**DMO**”) “Roadmap to Achieve High Quality Swaps Data” (“**DMO Roadmap**”).³ FIA supports the Commission’s

¹ The Futures Industry Association is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA’s clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

² Proposed Amendments to the Commodity Futures Trading Commission’s Regulations Relating to Certain Swap Data Repository and Data Reporting Requirements, 84 Fed. Reg. 21044 (May 13, 2019) (hereinafter the “**Proposal**”).

³ Press Release Number 7981-19, CFTC Extends Public Comment Period for Proposal to Improve Data Quality and Streamline Regulations for Swap Data Repositories, July 22, 2019.

decision to extend the comment period because it agrees with commenters that the various rulemakings need to be considered holistically as they are interrelated.⁴ As detailed further below, FIA believes that the Commission should not consider imposing further verification requirements until it has finalized and implemented amendments to streamline data fields and leverage existing SDR validation processes. Only after it has fully assessed the impact of these important measures will the Commission be in a position to evaluate whether any additional verification requirements are necessary beyond the existing requirements related to the correction of errors and omissions.

Although it is difficult for market participants to provide meaningful comments on the Proposal without seeing the full scope of contemplated changes to the reporting rules in their entirety, FIA's commodities members submit these initial comments to provide early feedback to the Commission as it works to complete the remaining proposals. FIA reserves the right to supplement these comments in the future.

I. The CFTC Should Focus First on Streamlining Data Reported to an SDR and Leveraging Existing SDR Validation Processes

In order to improve the accuracy of swap data, the Proposal includes a new regulatory framework for reporting parties to verify data reported to an SDR. Although FIA supports the goal of improving the accuracy of swap data, FIA's commodities members believe the Commission's first step should be to streamline the required data fields and leverage existing SDR validation processes.⁵ These foundational measures are likely to resolve a large proportion of any existing data irregularities.

As part of streamlining swap data, the Commission should continue to work with market participants to identify a more tailored set of critical data elements and provide clear guidance on how to report such elements.⁶ Streamlining swap data will allow the CFTC to focus on data that is necessary for surveillance and oversight as opposed to every data point potentially associated with a swap. It also will improve the accuracy of data reported to an SDR by enabling reporting entities to focus reporting resources on key data elements rather than addressing the overly broad scope of swap data currently required to be reported.⁷ The Commission also should rely on existing and future enhancements to SDR validation processes designed to reject swap data reports that have missing or invalid data. Among the series of steps outlined in the DMO

⁴ See comments submitted by the International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association (June 19, 2019).

⁵ See Proposal at Appendix 4, Statement of Concurrence of Dawn Stump, at 21119.

⁶ As Commissioner Stump explained, "removing uncertainty as to what must be reported and how, harmonizing with other regulators and implementing [unique identifiers] and critical data elements from CPMI-IOSCO work streams, minimizing the number of fields required to be reported, and affording [reporting counterparties] more time to report would organically resolve a large proportion of any inaccurate data reporting problem that may exist." *Id.* at 21121.

⁷ For example, under current Part 45 of the CFTC's regulations, reporting counterparties are required to report "any other term matched or affirmed by the counterparties in verifying the swap." Appendix 1 of Part 45 of the CFTC's regulations. Further, terms like "confirmation data" are not clearly defined. 17 C.F.R. § 45.1.

Roadmap, DMO prioritized the identification of an “initial set of minimum validations, including blank/not blank validations,” among other validation triggers, designed to improve the consistency and completeness of data reporting.⁸

There are existing regulatory requirements to correct errors and omissions, and reporting counterparties that are swap dealers are already required to have policies and procedures to ensure compliance with the Commodity Exchange Act and CFTC regulations, including Parts 43 and 45.⁹ Overall, 98% of swaps reported to the CFTC have a swap dealer as a counterparty to the swap, according to a recent Commission review of the market.¹⁰ Thus, a large majority of the market is already covered by requirements to have policies and procedures to correct errors and omissions in swap data. Adding these verification requirements will have little marginal benefit relative to the increased costs on reporting counterparties, in particular those that are not registered swap dealers.

By focusing on obtaining a critical set of data elements, utilizing existing and future upfront data validations, and leveraging existing requirements to correct errors and omissions, it may be unnecessary for the Commission to finalize any additional verification requirements. At the least, the Commission should not consider imposing further verification requirements until it has finalized and implemented amendments to streamline data fields and validation processes and has fully assessed the efficacy of these important measures. Only then will the Commission be in a position to conduct an appropriate cost-benefit analysis regarding any proposal to impose new verification requirements. This is particularly important here because the proposed verification requirements would impose new regulatory obligations on end users.

II. To the Extent That Additional Verification of Swap Data Is Required, the Commission Should Take a Principles-Based Approach

To the extent that the Commission determines that additional verification requirements are necessary to improve the accuracy and completeness of swap data, any such regulations should be principles-based. Verification of swap data and/or remediation of known errors or omissions is not a “one-size-fits-all” task. Any rules governing data verification need to accommodate the wide range of systems and processes (including manual and automated systems), market participants (including reporting parties that may be end users), asset classes (including physical commodity swaps) and transaction volumes that may be involved in the process.

One example of the need for a more principles-based approach is the time allowed for addressing known data issues. Under the Proposal, a reporting party would be required to remediate any errors or omissions as soon as technologically practicable, but no later than three business days after discovery. To the extent the reporting party is unable to remedy the issue within three business days, it would be required to inform the Director of DMO regarding the initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting

⁸ DMO Roadmap at 5.

⁹ 17 C.F.R. §§ 45.14 and 43.3(e); 17 C.F.R. §§ 3.3(d), 23.201, 23.204, 23.205, 23.602, 23.606.

¹⁰ *De Minimis* Exception to the Swap Dealer Definition, 83 Fed. Reg. 56666, 56674 (Nov. 13, 2018).

the errors or omissions. As the CFTC is aware, issues that result in reporting errors or omissions vary greatly in terms of the underlying cause as well as the size and complexity. Under certain circumstances, a reporting party may be able to correct known errors or omissions within three business days of discovery. However, in many cases a reporting party may need to invest more time to appropriately analyze the root cause and scope, and to determine how best to remediate the issue, including for example, whether software changes are needed, an exercise that necessarily requires more time. Even providing an “initial” assessment of the issue within three business days may be impracticable in many cases. FIA’s commodities members report that these reviews routinely take significantly more than three business days to determine scope, let alone to outline a remediation plan. Remediation plans may require coordination among a number of systems and functions within a firm.

In contrast to a rigid, prescriptive approach, a principles-based framework would allow reporting parties to expend resources, as appropriate, to investigate and remediate known issues depending on the circumstances. This also would obviate the need for the Commission to have to consistently revisit and update the rules to reflect current technologies and market dynamics.

III. The CFTC Should Eliminate the Proposed Obligation to Notify the Director of DMO if a Reporting Party Cannot Remediate an Issue Within a Specified Time Period

As noted above, the Proposal would impose a new obligation for reporting parties to provide written notification to the Director of DMO, including an initial assessment of the scope of the issue and an initial remediation plan, if a reporting party is unable to correct errors or omissions within three business days after discovery. This provision would impose a substantial burden on reporting parties (and the Commission) without a corresponding benefit.

When working through a reporting issue, reporting parties often need to work with the applicable SDR to best identify how to correct and upload reports as appropriate. Reporting parties also may work with Commission staff at DMO and the Division of Swap Dealer and Intermediary Oversight to address errors and omissions. The Commission should continue to allow this flexibility for market participants to work with the applicable SDR, and not impose a requirement to notify the Commission (including DMO).

Further, swap dealers—which, as noted above, are a counterparty to 98% of all swaps—are required to produce Chief Compliance Officer (“CCO”) annual reports to the CFTC addressing areas for improvement and material non-compliance.¹¹ If the CFTC nevertheless concludes that it is necessary to impose a notice requirement beyond the annual report, it should be principles-based and consistent with the obligations of swap dealers to report “material” issues to the CFTC.

¹¹ 17 C.F.R. § 3.3(d).

Christopher Kirkpatrick, Secretary

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IV. Conclusion

FIA appreciates the opportunity to comment on the Proposal. Please contact Allison Lurton, General Counsel and Chief Legal Officer, at 202-466-5460, if you have any questions about this letter.

Sincerely,

A handwritten signature in cursive script that reads "Walt L. Lukken".

Walt Lukken

President & Chief Executive Officer

cc: Honorable Heath Tarbert, Chairman
Honorable Brian D. Quintenz, Commissioner
Honorable Rostin Behnam, Commissioner
Honorable Dan Berkovitz, Commissioner
Meghan Tente, Acting Associate Director, DMO
Benjamin DeMaria, Special Counsel, DMO