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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); Real-Time Public Reporting Requirements (RIN 3038-AE60); Swap Data Recordkeeping and Reporting Requirements (RIN 3038-AE31)

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 reporting rules. FIA’s membership includes financial institutions, brokerage firms, trading firms and commercial end users that are active in physical commodities and their related swaps markets (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: (1) Certain Swap Data Repository and Data Reporting Requirements; (2) Real-Time Public Reporting Requirements; and (3) Swap Data Recordkeeping and Reporting Requirements.²

The Commission adopted the existing swap data reporting rules under an accelerated time frame after the passage of the Dodd-Frank Act with the intent of revisiting the rules in the future. We support the Commission’s efforts to now streamline and enhance the quality of the data reported to swap data repositories (“**SDRs**”). We believe that the proposed framework for reporting swap data under the Real-Time and SDR Reporting Proposals would substantially improve the accuracy, reliability and utility of swap data. Thus, as we previously commented, the

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.

² Certain Swap Data Repository and Data Reporting Requirements, 84 Fed. Reg. 21,044 (proposed May 13, 2019) (to be codified at 17 C.F.R. pts. 23, 43, 45, and 49) (hereinafter, the “**Swap Data Reconciliation Proposal**”); Real-Time Public Reporting Requirements, 85 Fed. Reg. 21,516 (proposed Apr. 17, 2020) (to be codified at 17 C.F.R. pt. 43) (hereinafter, the “**Real-Time Reporting Proposal**”); and Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 21,578 (proposed Apr. 17, 2020) (to be codified at 17 C.F.R. pts. 45, 46, and 49) (hereinafter, the “**SDR Reporting Proposal**”).

Commission should not consider imposing further verification requirements pursuant to its 2019 Swap Data Reconciliation Proposal until it has finalized and implemented the amendments to streamline data fields and leverage SDR validation processes.³ Only after it has fully assessed the impact of these important measures will the Commission be positioned to evaluate whether any additional verification requirements are necessary beyond the existing requirements related to the correction of errors and omissions. We also recommend certain targeted modifications to the Real-Time and SDR Reporting Proposals that are designed to further enhance the accuracy and reliability of swap data, as described more fully below.

I. Executive Summary

For the benefit of the Commission and Staff, the following is a brief summary of our comments. FIA's commodities members are pleased to support, among other aspects of the proposals:

- The Commission's efforts to right-size the data reported to SDRs;
- Leveraging the SDR data validation processes to improve data quality;
- Extending the reporting deadline for Part 45 to T+1 or T+2, depending upon the nature of the reporting counterparty;
- Requiring reporting counterparties to report a single swap creation data report when entering into new swaps; and
- Removing the obligation for end users to report valuation data.

FIA's commodities members also offer the following suggested modifications to the proposed rules, namely, that the Commission:

- Not expand the 116 data elements proposed in the Technical Specifications, as all of the additional elements for which the Commission has requested comment are either available from other resources, address static rather than transaction-specific data, and/or impose an undue burden on reporting counterparties, including commercial end users;
- Require reporting counterparties to timely respond to any error messages resulting from an SDR's validation processes instead of deeming it a failure to report until any necessary corrections have been made;
- Refrain from imposing additional swap data reconciliation requirements until after assessing the efficacy of the measures imposed by the Real-Time and SDR Reporting Proposals;

³ Letter from Walt Lukken, President & Chief Executive Officer, FIA, to Christopher Kirkpatrick, Secretary, CFTC (Aug. 27, 2019), <https://www.fia.org/sites/default/files/2019-10/CFTC%20Certain%20Swap%20Data%20Repository%20and%20Data%20Reporting%20Requirements%20082719%20%281%29.pdf>.

- Not require correction of errors or omissions for swaps that are no longer open. If the Commission determines such corrections are necessary, it should limit the look-back period to five years after final termination of the swap and/or limit corrections to a specific set of data elements, such as price and underlying commodity;
- Extend the compliance date for all aspects of the Real-Time and SDR Reporting Proposals to the later of (1) two years following the effective date of the final rules, or (2) one year following finalization of the required data fields and validation processes of the reporting counterparty's SDR;
- Remove the obligation to report a post-priced swap prior to the price being determined;
- For the reporting of corporate events of non-reporting counterparties, measure the reporting deadline from the day that the non-reporting counterparty informs the reporting counterparty of the corporate event;
- Avoid imposing duplicative margin and collateral reporting requirements, and instead leverage existing sources of data and consolidate any margin and collateral reporting requirements into a single rule;
- For voice executed swaps, clarify that the "execution timestamp" data element may reflect the date and time the trade was entered into a trade capture system; and
- Invoke the sunset provision in CFTC Rule 20.9 to terminate the Commission's swaps large trader reporting rules in Part 20.

II. The Commission's proposal to right-size required data fields and leverage SDR validation processes will substantially improve swap data quality.

FIA's commodities members support the Commission's proposed streamlining of swap data reported pursuant to Parts 43 and 45 along with its proposed enhancement of existing SDR validation requirements. 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, the Commission has crafted a reporting framework that should substantially enhance the accuracy, reliability and utility of swap data.

A. Streamlining and clarifying what swap data must be reported to an SDR should increase the accuracy of the data.

The Real-Time and SDR Reporting Proposals reflect the Commission's efforts to refine the set of swap data elements that must be reported to SDRs. Finalizing a precise set of required data fields and requiring accurate submissions to SDRs are important measures that are likely to resolve any existing data irregularities. The SDR Reporting Proposal would require each reporting counterparty, swap execution facility ("SEF"), designated contract market ("DCM") and derivatives clearing organization ("DCO") to report to an SDR the swap creation and

continuation data contained in appendix 1 to Part 45.⁴ Similarly, the Real-Time Reporting Proposal would require reporting counterparties, SEFs and DCMs to report the swap transaction and pricing data (“**STAPD**”) elements in appendix C to Part 43.⁵ The data required in appendix C to Part 43 would represent a harmonized subset of the data required in appendix 1 to Part 45.⁶ We expect that this will enhance the accuracy and utility of reported swap data while reducing the unnecessary burden of reporting every possible data element of a swap transaction.

The Commission has posed a series of questions concerning whether to expand the 116 data elements proposed in the Technical Specifications. Increasing the number of reportable data elements would result in additional costs to build and implement systems without providing associated benefits to the Commission. In fact, it may undermine the Commission’s ability to obtain high quality data for a core set of elements. We have reviewed the additional data fields proposed to be included and, on balance, do not find that any of them merit inclusion when weighed against the additional costs. All of the additional elements for which the Commission has requested comment are available from other resources, involve static rather than transaction-specific information, and/or impose an undue burden on end users (*i.e.*, market participants that are not swap dealers, major swap participants (“**MSPs**”) or DCOs). FIA’s commodities members provide the Commission with the following specific examples of data elements for which the Commission requested comment.

1. The Commission should not require reporting of parent and ultimate parent indicators.

The Commission asked whether reporting counterparties should report parent and ultimate parent information for each swap trade or in a regularly updated reference file maintained by SDRs (*e.g.*, updated monthly or quarterly).⁷ Requiring this additional data would impose significant costs on reporting counterparties because it is not the type of information currently captured in swap reporting systems. Moreover, a reporting counterparty would not be in a position to report corporate information about its counterparty. Furthermore, the Commission already has access to this information through the Global Legal Entity Identifier System (“**GLEIS**”). As part of obtaining a legal entity identifier (“**LEI**”), each swap market participant must identify its parent and ultimate parent. Requiring reporting counterparties to separately report parent and ultimate parent data to the Commission, and requiring SDRs to maintain a reference file of relationship data, would be duplicative of information available through the GLEIS. As a general matter, FIA’s commodities members urge the Commission to consider whether requested data is already provided through another mechanism before imposing additional reporting requirements on market participants.

⁴ SDR Reporting Proposal at 21,604.

⁵ Real-Time Reporting Proposal at 21,528.

⁶ *Id.* at 21,542.

⁷ SDR Reporting Proposal at 21,611.

2. The Commission should not require reporting of swap dealing indicators.

The Commission also asked whether it should require reporting counterparties to indicate whether a specific swap: (1) was entered into for dealing purposes (as opposed to hedging, investing, or proprietary trading); and/or (2) should not be considered in determining whether a person is a swap dealer pursuant to one of the exclusions or exceptions in the swap dealer definition.⁸ As a threshold matter, FIA's commodities members believe the inclusion of a dealing indicator would unduly expand the scope of the SDR Reporting Proposal. The Commission has appropriately indicated that the primary purpose of the proposal is to improve data accuracy for a core set of data elements.⁹ We urge the Commission to maintain this focus and rely on other means to analyze issues related to the *de minimis* threshold.

Requiring reporting counterparties to indicate whether a swap was entered into for a dealing purpose presents significant operational and commercial challenges for reporting counterparties. First, registered swap dealers, which account for 98% of all swaps reported, typically do not track whether their swaps are entered into for a dealing purpose, in light of their regulatory status.¹⁰ Furthermore, they would not be in a position to provide this information on behalf of their non-swap dealer counterparties, and it is likely that non-swap dealers would not want to divulge this information to a bilateral trading counterparty for commercial and/or competitive reasons. Finally, the addition of a dealing indicator would run counter to the Commission's ongoing efforts to reduce the reporting burden on non-swap dealer/MSP/DCO reporting counterparties.

3. The Commission should not require reporting of the USD equivalent notional amount data element.

As with the proposed swap dealing indicators, FIA's commodities members urge the Commission to remain focused on a core set of critical data elements, rather than incorporating additional elements to address various regulatory issues unrelated to real-time and SDR reporting. The Commission has indicated that it is considering requiring the submission of additional USD equivalent notional amount data to enable, among other things, the tracking of dealing swaps engaged in by non-swap dealers for purposes of measuring individual activity against the *de minimis* threshold.¹¹ As the Commission has recognized, the vast majority of reported swaps involve at least one registered swap dealer.¹² The Commission should not

⁸ *Id.* at 21,614.

⁹ The Commission has explained that the proposal is intended to "streamline the requirements for reporting new swaps, define and adopt swap data elements that harmonize with international technical guidance, and reduce reporting burdens for reporting counterparties that are not [swap dealers] or MSPs." *Id.* at 21,578.

¹⁰ A recent Commission review of the market found that approximately 98% of swaps reported to an SDR have a swap dealer as a counterparty. *See De Minimis Exception to the Swap Dealer Definition*, 83 Fed. Reg. 56,666, 56,674 (Nov. 13, 2018) (hereinafter, the "**De Minimis Exception Final Rule**").

¹¹ FIA's position regarding the inclusion of data elements designed to elicit information regarding uncleared margin is addressed in further detail in Section V(D) of this letter.

¹² *See supra* note 10.

promulgate a rule designed to address individual compliance with respect to a very small group of market participants by a means that imposes substantial costs on all reporting counterparties. This is particularly true where, from a systemic perspective, the Commission has already concluded that the threshold levels are appropriate.¹³

FIA's commodities members recommend that the Commission not add the USD equivalent notional amount data element contemplated in Question 20 of the SDR Reporting Proposal.¹⁴ In the *De Minimis* Exception Final Rule, the Commission noted that the data it relied upon was "significantly more detailed" than the data it had when establishing the initial \$3 billion threshold, and noted "the Commission believes that it does have sufficient data to support this action, so it is not necessary to wait for future changes to the data reporting regime."¹⁵ Moreover, to date, other than very limited guidance from Commission Staff, the Commission has deferred to industry practice to calculate the gross notional amount of a swap.¹⁶ As a result, if the Commission were to add the USD equivalent notional data element, FIA's commodities members expect that the calculations would vary across reporting counterparties. Absent consistency in the methodology, the data would provide little to no value to the Commission. Furthermore, if the Commission were to adopt additional guidance regarding notional amount calculation, market participants would need the opportunity to review and comment prior to publication.

B. The SDR validation processes in the Real-Time and SDR Reporting Proposals should substantially improve swap data accuracy.

The Real-Time and SDR Reporting Proposals contain several provisions that would strengthen SDR validation processes for real-time data elements, swap creation data and required swap continuation data. We support the Commission's determination to leverage and enhance SDR validation processes, which are designed to reject swap data reports that have missing or invalid data. Proposed Rule 45.13(b)(1) would require that for each swap data report submitted to an SDR, an SDR must notify the reporting counterparty whether the report satisfied its swap data validation processes.¹⁷ The SDR would be required to provide such notification as soon as technologically practicable ("ASATP") after accepting the required report, in accordance with Proposed Rule 49.10.¹⁸

FIA's commodities members offer one adjustment to this proposal. Pursuant to Proposed Rule 45.13(b)(2), the Commission would not consider an entity's reporting obligation satisfied until it

¹³ See *De Minimis* Exception Final Rule at 56,675.

¹⁴ SDR Reporting Proposal at 21,611-12.

¹⁵ *De Minimis* Exception Final Rule at 56,676-77.

¹⁶ See Frequently Asked Questions (FAQ) – Division of Swap Dealer and Intermediary Oversight ("DSIO") Responds to FAQs About Swap Entities, Commodity Futures Trading Commission, https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/swapentities_faq_final.pdf.

¹⁷ SDR Reporting Proposal at 21,604.

¹⁸ *Id.*

has completed the SDR's validation processes.¹⁹ While it is critical that market participants review and address any error messages received, the Commission should require reporting counterparties to promptly respond and make corrections to address any such error messages, rather than deem a report not to have been made. FIA's commodities members are concerned that the proposed approach does not establish the necessary distinction between a party that is working in good faith to correct and resubmit data to an SDR and a party that has simply failed to report swap data. In other words, the consequence for not passing the SDR validation processes in advance of the reporting schedule should not be the same as the consequence for failing to report swap data entirely.

III. The Commission should not impose additional swap data reconciliation requirements.

As discussed above, FIA's commodities members believe that streamlining the required data fields and enhancing SDR validation processes would achieve the Commission's goal of improving swap data quality. These foundational measures contained in the Real-Time and SDR Reporting Proposals are likely to resolve a large proportion of any existing data irregularities without the need for further verification. At the least, the Commission should not consider imposing further verification requirements until it has finalized and implemented the measures contained in the Real-Time and SDR Reporting Proposals 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.

A. The Commission should allow SDRs and reporting counterparties to determine their own processes to reconcile swap data reported to an SDR.

The Swap Data Reconciliation Proposal would require SDRs to distribute open swaps reports to reporting counterparties, which must then reconcile the reports against their internal books and records within a prescribed timeframe.²⁰ This prescriptive approach to reconciliation would impose significant burdens on both swap dealers and non-swap dealer reporting counterparties. Moreover, 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 ("CEA") and Commission regulations, including Parts 43 and 45. As the Commission points out, approximately 98% of swaps reported to an SDR have a swap dealer as a counterparty.²¹ Thus, a large majority of the market is already covered by requirements 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.

¹⁹ *Id.*

²⁰ Swap Data Reconciliation Proposal at 21,067.

²¹ *See supra* note 10.

To the extent the Commission determines that additional verification requirements are necessary, any such requirements should be principles-based rather than prescriptive requirements to remediate and report errors within a set timeframe, as proposed. 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 counterparties that may be end users), asset classes (including physical commodity swaps) and transaction volumes that may be involved in the process. The additional verification requirements contained in the Swap Data Reconciliation Proposal do not accommodate these important considerations.

B. The Commission should eliminate the three-day requirement for error remediation and the requirement to notify the Division of Market Oversight of errors.

One example of the need for a more principles-based approach is the time allowed for addressing known data issues. Under the Swap Data Reconciliation Proposal, a reporting counterparty would be required to remediate any errors or omissions as soon as technologically practicable, but no later than three business days after discovery.²² To the extent the reporting counterparty is unable to remedy the issue within three business days, it would be required to inform the Director of the Division of Market Oversight (“**DMO**”) regarding the initial assessment of the scope of the errors or omissions and an initial remediation plan for correcting the errors or omissions.²³ We recommend that these obligations be eliminated, as they would impose a substantial burden on reporting counterparties and the Commission without substantially improving the Commission’s understanding of these errors.

As the Commission is aware, issues that result in reporting errors or omissions vary greatly in terms of their underlying cause, as well as their size and complexity. Under certain circumstances, a reporting counterparty may be able to correct known errors or omissions within three business days of discovery. However, in many cases, a reporting counterparty 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 very likely will require more time. Even providing an “initial” assessment of the issue within three business days may be impracticable in many cases. Members report that these reviews routinely take significantly more than three business days to determine scope, let alone to outline a remediation plan to a regulator. Remediation plans may require coordination among a number of systems, functions and departments within a company.

When working through a reporting issue, reporting counterparties often need to work with the applicable SDR to best identify how to correct and upload reports as appropriate. Reporting counterparties also may work with Commission Staff at DMO and the Division of Swap Dealer and Intermediary Oversight (“**DSIO**”) to address errors and omissions. The Commission should

²² Swap Data Reconciliation Proposal at 21,069.

²³ *Id.*

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 or DSIO).

Further, swap dealers are required to produce Chief Compliance Officer annual reports to the Commission that address areas for improvement and material non-compliance issues.²⁴ If the Commission 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 Commission.

C. The Commission should eliminate or narrow the obligation to remediate errors or omissions for swaps that are no longer open.

Under the Swap Data Reconciliation Proposal, a reporting counterparty would have the obligation to remediate all data elements for all swap reports, including swaps that are no longer open (“**dead swaps**”).²⁵ FIA’s commodities members recommend that the Commission remove the obligation for reporting counterparties to make corrections to reports involving dead swaps because the obligation imposes significant costs on reporting counterparties in the form of an indefinite remediation period. Furthermore, the correction of dead swaps provides little to no benefit to the Commission’s efforts to monitor risk in the swaps market, and there is little to no benefit to price discovery when SDRs publish stale data to the real-time ticker.

If the Commission nevertheless determines to require reporting counterparties to correct data for dead swaps, it should narrow the obligation to correct a specific set of data elements such as the price and underlying commodity. Alternatively, because an SDR is required pursuant to Proposed Rule 49.12 to make swap data readily accessible to the Commission for a period of five years after termination of the swap, the Commission should narrow a reporting counterparty’s obligation to correct data for dead swaps to five years after final termination.²⁶ In this way, if a reporting counterparty discovers an error or omission in its swap reports, the obligation to correct would be tailored to reports of interest to the Commission, that is, swap reports the Commission requires an SDR to make readily accessible.

IV. The Commission should consider certain targeted revisions to the Real-Time and SDR Reporting Proposals.

FIA’s commodities members support the Commission’s efforts in the Real-Time and SDR Reporting Proposals to streamline the swap data that market participants must report to SDRs. To that end, we recommend a limited number of revisions to the proposals, as described below.

²⁴ 17 C.F.R. § 3.3(e).

²⁵ Swap Data Reconciliation Proposal at 21,069.

²⁶ *Id.* at 21,055.

A. The Commission should extend the compliance date for the Real-Time and SDR Reporting Proposals.

The Commission has proposed a compliance date of one year after publication of the final rules, with the exception of rules related to unique transaction identifiers (“**UTIs**”), which have an earlier compliance date of December 30, 2020.²⁷ FIA’s commodities members are concerned that the proposed compliance dates do not provide sufficient time for market participants to undertake the system developments necessary for compliance with the revised reporting requirements. Accordingly, we recommend that the compliance date for all aspects of the Real-Time and SDR Reporting Proposals be extended to the later of (1) two years following the effective date of the final rules, or (2) one year following finalization of the required data fields and validation processes of the reporting counterparty’s SDR.

To comply with the Commission’s final rules, reporting counterparties will need to undertake substantial work to develop and test the technology necessary to modify their existing swap reporting infrastructure. This work includes building new systems, updating and modifying existing systems, and conducting pre-production testing to ensure compliance with the modified swap reporting rules. This is more than a coding exercise. For new data elements, market participants will need to determine whether the information is currently captured somewhere within the organization in a systematic manner. To the extent that it is currently captured, the data will need to be integrated into front office systems. To the extent data is not already captured, new processes will need to be developed to obtain the information. Furthermore, reporting counterparties must continue to devote resources to reporting swap data to SDRs while building and testing new reporting infrastructure. The Commission should account for these extensive processes when finalizing a compliance date for the final rules.

As part of this overhaul, market participants also will need to consider how best to modify reporting systems to replace unique swap identifiers (“**USIs**”) with UTIs. These modifications should occur in tandem with those required by the rest of the reporting rules. Requiring market participants to readjust systems multiple times adds significant costs. These costs are further compounded by the global nature of UTI implementation, which likely will involve various different compliance dates across jurisdictions. Delaying the transition to UTIs would reduce the impact of disparate implementation. Moreover, the ongoing global pandemic of COVID-19 has exacerbated resource constraints as market participants have shifted to focus on the health crisis and associated market volatility. Accordingly, instead of bifurcating compliance dates, FIA’s commodities members recommend eliminating the December 30, 2020, compliance date for rules related to UTIs, and instead imposing one compliance date for all of the final rules.

Finally, a reporting counterparty cannot undertake system developments until its SDR finalizes and disseminates the required data fields and updated validation processes. Accordingly, any compliance date for the final rules should take this prerequisite into account. FIA’s commodities members believe that, in order to complete the necessary system developments, reporting counterparties will need at least one year from the time their SDR finalizes the required data

²⁷ Real-Time Reporting Proposal at 21,544; SDR Reporting Proposal at 21,614.

fields and validation processes. Accordingly, we ask the Commission to extend the compliance date for all aspects of the final rules to the later of (1) two years following the effective date of the final rules, or (2) one year following finalization of the required data fields and validation processes of the reporting counterparty's SDR.

B. The Commission should not require reporting counterparties to report swap data before the price of the swap has been determined.

We appreciate the Commission's effort to provide clarity and uniformity regarding the reporting of post-priced swaps. The Real-Time Reporting Proposal would require reporting of post-priced swaps upon the earlier of: (1) the price being determined; or (2) 11:59:59 pm eastern time on the execution date.²⁸ Rather than provide for the potential requirement to report a swap without a price by 11:59:59 pm on the execution date, we recommend that the Commission not require reporting until the price has been determined.

FIA's commodities members do not believe there is value to the Commission in having reporting counterparties submit swap data without a price element. We agree with the Commission's statement in the Real-Time Proposal that reporting post-priced swaps "before the price is determined does not serve a significant price discovery function," and instead "may confuse market participants or constitute unhelpful 'noise' on the public tape."²⁹ Furthermore, allowing post-priced swaps to be reported once the price has been set should reduce the risk of market participants "front-running" the reporting counterparties' swaps, because market participants would not have the ability to trade in advance of all the terms being established.

To ensure timely swap reports, the Commission's rules should provide that if a price is determined before the reporting deadline, a reporting counterparty should report the data within the required timeframe. To the extent a price is determined after the reporting deadline, a reporting counterparty should be required to report the data ASATP after the price has been determined.

C. Reporting counterparties should only be required to report relevant corporate events of the non-reporting counterparty within T+2 of the date the non-reporting counterparty informs the reporting counterparty.

FIA's commodities members support the Commission's proposal to extend the reporting deadline for life cycle events. The SDR Reporting Proposal would extend the life cycle event reporting deadline for swap dealer, MSP and DCO reporting counterparties from the same day to T+1 following any life cycle event.³⁰ For non-swap dealer/MSP/DCO reporting counterparties, the deadline would be extended to T+2 following any life cycle event.³¹ Additionally, the SDR Reporting Proposal contemplates updating the deadline for reporting counterparties to report

²⁸ Real-Time Reporting Proposal at 21,523.

²⁹ *Id.* at 21,522.

³⁰ SDR Reporting Proposal at 21,590.

³¹ *Id.*

corporate events of non-reporting counterparties to T+2, measured from the day that the corporate event occurs.³² We recommend the reporting deadline instead be measured from the date that the non-reporting counterparty informs the reporting counterparty of the relevant corporate event, a standard obligation in master swap documentation. Measuring the reporting deadline from the day that the corporate event occurs imposes regulatory liability on the reporting counterparty to report information that is outside of its possession and control.

D. The Commission should leverage existing sources of margin and collateral data and consolidate its various proposed margin and collateral rules.

The SDR Reporting Proposal contemplates requiring reporting counterparties that are swap dealers, MSPs or DCOs to include margin and collateral data in their swap reports.³³ FIA's commodities members urge the Commission to leverage existing sources of margin and collateral data rather than impose duplicative reporting requirements. If the Commission nevertheless decides to impose new margin and collateral reporting requirements, it should permit the flexibility to report this data at the portfolio level.

FIA's commodities members understand that margin and collateral data provide important visibility into potential systemic risk. However, the Commission already has access to a substantial array of margin and collateral data. We recommend that the Commission leverage this data before imposing additional reporting requirements. As an example, for cleared swaps, CFTC Rule 39.19(c)(1)(i) requires DCOs to report initial and variation margin to the Commission on a daily basis.³⁴ Additionally, the National Futures Association ("NFA") requires swap dealers to file risk exposure reports on a monthly basis.³⁵ In these reports, swap dealers must include, for all swaps activity: (1) total swaps current exposure before collateral, (2) total swaps current exposure net of collateral, and (3) the 15 largest swap counterparty current exposures under each of those measures.³⁶ Furthermore, the Commission also has proposed collateral reporting requirements in its proposed capital rule for swap dealers.³⁷

FIA's commodities members urge the Commission to evaluate any potential collateral reporting requirements within the context of the existing information available to the Commission, both currently and in its proposed rules, in order to adopt a single framework that provides the Commission with necessary information. The Commission should avoid imposing duplicative collateral reporting requirements that request similar information pursuant to different rules that may necessitate reporting the information at different times and in different formats. This

³² *Id.*; 17 C.F.R. § 45.4(d)(1)(i)(A) and (ii)(A).

³³ SDR Reporting Proposal at 21,591.

³⁴ 17 C.F.R. § 39.19(c)(1)(i).

³⁵ *See* NFA Notice I-17-10 (May 30, 2017).

³⁶ *See id.*

³⁷ Capital Requirements of Swap Dealers and Major Swap Participants, 81 Fed. Reg. 91,252, 91,279-80 (proposed Dec. 16, 2016) (to be codified at 17 C.F.R. pts. 1, 23, and 140), comment period re-opened by 84 Fed. Reg. 69,664 (proposed Dec. 19, 2019).

duplicative approach would substantially burden reporting counterparties without providing the Commission with a corresponding benefit.

E. For voice executed swaps, the Commission should clarify that the execution timestamp may reflect the date and time the trade was entered into a trade capture system.

In the Real-Time Reporting Proposal, the Commission explained that the “execution timestamp” data element must include the date and time that the swap was executed, rather than the date and time it was recorded in a computer system or transmitted to the SDR.³⁸ While this approach may be appropriate for transactions executed electronically, FIA’s commodities members believe it is not technologically feasible to follow this approach for voice executed transactions, and it would inevitably lead to inconsistencies across reporting counterparties. To improve the quality of information, we suggest that—at least for voice executed transactions—this element should include the date and time the swap was entered into the reporting counterparty’s trade capture system or transmitted to the SDR, provided such entry or transmittal occurs timely upon execution.

F. FIA’s commodities members support the Commission’s proposal to implement T+1 or T+2 reporting deadlines for Part 45.

Under the SDR Reporting Proposal, the reporting counterparty would be required to report a broad set of swap data elements on a T+1 or T+2 basis, depending on the type of entity.³⁹ FIA’s commodities members agree with the Commission that this new reporting schedule will improve data quality by providing market participants with more time to verify the accuracy of the swap data they are reporting.⁴⁰ Additionally, the T+1 or T+2 timeline aligns with the reporting deadlines set by the Securities and Exchange Commission (“SEC”) and the European Securities and Markets Authority (“ESMA”).⁴¹ For these reasons, we support the Commission’s proposal to implement T+1 or T+2 reporting deadlines for Part 45.

G. FIA’s commodities members support the reporting counterparties’ submission of a single swap creation data report for new swaps.

FIA’s commodities members support the Commission’s efforts to reduce the number of swap data reports submitted to SDRs. The SDR Reporting Proposal would require SEFs, DCMs and reporting counterparties to report a single swap creation data report when entering into new swaps.⁴² Currently, these entities must submit separate primary economic terms (“PET”) data

³⁸ Real-Time Reporting Proposal at 21,544.

³⁹ For exchange-cleared swaps, SEFs and DCMs would be required to report to an SDR on a T+1 basis. *See* SDR Reporting Proposal at 21,585. For off-facility swaps, swap dealer, MSP, and DCO reporting counterparties would be required to report to an SDR on a T+1 basis, while non-SD/MSP/DCO reporting counterparties would be required to report on a T+2 basis. *See id.*

⁴⁰ *Id.* at 21,584.

⁴¹ *Id.*

⁴² *Id.* at 21,616.

reports and confirmation data reports. As the Commission notes, consolidating this data into a single report could reduce the number of swap creation data reports sent to SDRs by 30%.⁴³

H. FIA’s commodities members support the removal of valuation data reporting by non-swap dealer/MSP/DCO reporting counterparties.

The Commission asked for comments on whether removing the valuation data reporting requirement for non-swap dealer/MSP/DCO counterparties raises any concerns about the Commission’s ability to monitor systemic risk in the U.S. swaps market.⁴⁴ FIA’s commodities members agree with the Commission’s statement that the quarterly valuation data reported by non-swap dealer/MSP/DCO counterparties is not integral to the Commission’s ability to monitor systemic risk and does not justify the cost to report.⁴⁵ Accordingly, we support the Commission’s proposal to remove the requirement for non-swap dealer/MSP/DCO reporting counterparties to report valuation data.⁴⁶

V. The Commission should sunset the Part 20 swaps large trader reporting rule.

We urge the Commission to invoke the sunset provision in CFTC Rule 20.9 to terminate its swaps large trader reporting rule in Part 20 (“**Swaps LTR**”).⁴⁷ Swaps LTR was intended as a temporary measure that would persist until the development of SDRs. CFTC Rule 20.9 contains a sunset provision that allows the Commission to render all or part of the large trader rule ineffective upon a finding by the Commission that “operating [SDRs] are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets.”⁴⁸ Recognizing that those conditions have been met, we recommend that the Commission sunset Swaps LTR.

As the Commission is aware, the regulatory landscape today is significantly different from 2011, when it adopted Swaps LTR. SDRs have been operational and receiving swap data for over six years, and are required to have policies and procedures in place to calculate positions for position limits purposes.⁴⁹ As the Commission noted, it can now analyze swap data from the SDRs for various purposes, such as re-evaluating the current swap categories and determining appropriate minimum block and cap sizes in part 43.⁵⁰ FIA’s commodities members also note that under the Commission’s latest proposed position limits rule, the scope of swaps that would be subject to the proposed limits is significantly narrower than the scope of swaps currently subject to Swaps

⁴³ *Id.*

⁴⁴ *Id.* at 21,591.

⁴⁵ *Id.* at 21,590.

⁴⁶ *Id.*

⁴⁷ *See* Large Trader Reporting for Physical Commodity Swaps, 76 Fed. Reg. 43,851 (July 22, 2011).

⁴⁸ 17 C.F.R. § 20.9; SDR Reporting Proposal at 21,614.

⁴⁹ *See* 17 C.F.R. § 49.12.

⁵⁰ SDR Reporting Proposal at 21,614.

LTR.⁵¹ As a result, the Swaps LTR rule would provide little, if any, benefit to Commission efforts to monitor compliance with position limits that apply to certain physical commodity swaps.

VI. Conclusion

FIA's commodities members appreciate the opportunity to comment on the Proposals. Please contact Allison Lurton, Senior Vice President and General Counsel, at 202-466-5460, if you have any questions about this letter.

Sincerely,



Walt Lukken
President & Chief Executive Officer

cc: Honorable Heath P. Tarbert, Chairman
Honorable Brian D. Quintenz, Commissioner
Honorable Rostin Behnam, Commissioner
Honorable Dan M. Berkovitz, Commissioner
Meghan Tente, Acting Associate Director, DMO
Benjamin DeMaria, Special Counsel, DMO
David E. Aron, Special Counsel, DMO
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Nancy Doyle, Senior Special Counsel, Office of International Affairs
Gloria Clement, Senior Special Counsel, Office of the Chief Economist
John Roberts, Senior Research Analyst, Office of the Chief Economist
John Coughlan, Research Economist, Office of the Chief Economist

⁵¹ Swaps that are subject to Swaps LTR (paired swaps or swaptions) include swaps that are directly or indirectly linked to one of forty-six futures contracts, whereas swaps subject to the Commission's latest position limits proposed rule (referenced contracts) include swaps with the same material terms as one of twenty-five core referenced futures contracts. *See* Position Limits for Derivatives, 85 Fed. Reg. 11,596, 11,598 and 11,615 n. 128 (proposed Feb. 27, 2020) (to be codified at 17 C.F.R. pts. 1, 15, 17, 19, 40, 140, 150, and 151).